
Coates' Canons Blog: 2011 Purchasing and Contracting Legislative Wrap-Up

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Article: <https://canons.sog.unc.edu/purchasing-and-contracting-legislative-wrap-up/>

This entry was posted on July 01, 2011 and is filed under Miscellaneous, Purchasing, Construction, Property Transactions



The North Carolina General Assembly adjourned on June 18, 2011 and will reconvene next month on July 13th. When it reconvenes in July, the legislature will only consider a narrow list of bills, namely redistricting, election laws, legislative appointments to boards and commissions, bills vetoed by the governor, and bills already in conference (**Res. 2011-9**). So, unless the General Assembly changes its rules, the 2011 Long Session is essentially over. If you're interested in a recap of this year's session, check out Aimee Wall's recent **blog post**.

Of the bills introduced this session that proposed statewide changes to purchasing and contracting laws impacting local governments, only a handful were enacted before the General Assembly adjourned. Some of the public bills left pending might receive attention in the 2012 short session next summer. Most local bills authorizing purchasing and contracting flexibility for individual local governments were enacted.

Significant Enacted Legislation

Summarized below is enacted legislation having the most significant impact on local government purchasing and contracting. A full summary of all relevant public purchasing and contracting legislation, including bills still pending and local bills, is available on the School of Government's Local Purchasing and Contracting website under the **Legislative Updates** tab.

Owner-Contractor Building Construction Projects

The legislation most directly related to local government contracting imposes new requirements for building construction projects supervised by the property owner without a general contractor. North Carolina law requires any building construction project costing \$30,000 or more to be superintended by a licensed general contractor. (**G.S. 87-1**) Exempt from this requirement are building construction projects where the property owner intends to solely occupy the building being built on his property for at least 12 months following completion of the project. For these projects, the property owner can act as his own general contractor and supervise the construction without having to hire a licensed general contractor. Local governments sometimes use this exemption as a cost-saving measure on building construction projects, electing to act as their own general contractor and directly supervising their subcontractors in lieu of hiring a general contractor to superintend the project.

S.L. 2011-376 (H 648) now requires property owners who are acting as their own general contractor to submit a verified affidavit to the local building inspector verifying their eligibility for exemption from general contractor licensure requirements. The affidavit must attest to three facts: (1) the person is the owner of the property or is legally authorized to act on the property owner's behalf; (2) the person will personally supervise the building construction; and (3) the person will be physically present for all required building inspections (this last requirement does not apply if the plans for the building were drawn and sealed by a licensed architect). The local building inspector is required to submit the affidavit to the NC Licensing Board for General Contractors for verification that the property owner is eligible to act as his own general contractor. If the Board determines that the property owner is not entitled to act as his own general contractor, the building

permit issued for the construction project must be revoked. Local building inspectors are prohibited from conducting building inspections during construction if the owner is not physically present (this requirement does not apply if the building plans were drawn and sealed by a licensed architect).

These requirements *do* apply to local governments choosing to act as their own general contractor on building construction projects. The legislation does not specify which employee or official must submit the affidavit on behalf of the local government; presumably that individual would be one who is legally authorized to act on behalf of the unit of government, such as the manager, finance officer, or public works director, and is capable of personally supervising the construction project. Given the new formality of a verified affidavit attesting to the person's legal authority to act on behalf of the property owner, and the requirement that this person be physically present at all building inspections (unless the plans are drawn and sealed by a licensed architect), local employees or officials submitting the affidavit should have clear written authorization to undertake this activity on behalf of their unit of government.

State Agency Multiple Award Schedule Contracts

North Carolina law currently requires state agencies to purchase furniture on a multiple award basis. (**G.S. 143-57.1**) A multiple award schedule contract is a procurement method that allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogue for lines of specified products to eligible purchasers as opposed to a contract for purchase of a single item. The intent of this procurement method is to enable evaluation of vendors on a variety of factors in addition to the cost of the item itself, such as total lifecycle costs, service, warranties, distribution processes, and past vendor performance.

S.L. 2011-360 (H 713) now requires state agencies to use the multiple award schedule contract method for purchases of equipment products in the following categories: communications, construction, forestry, and ground maintenance (each category of equipment products is specifically defined in the legislation). The Department of Administration is instructed to issue RFP's by August 31, 2011 for multiple award schedule contracts for all equipment product categories. Contracts let under this method must be for a term of not less than three years.

Entities authorized to purchase items from state contracts, including local governments, are *eligible* to purchase equipment products from state multiple award schedule contracts, but are *not* required to use this method in their own procurement processes. In fact, the authorization to use this procurement method is *only* for state contracts; local governments must still comply with formal and informal bidding requirements for purchases unless they are purchasing off a state contract or another exception to competitive bidding requirements applies.

State Agency Additional Procurement Methods

Additional procurement methods were authorized under **S.L. 2011-338 (S 404)** for state agencies and the Department of Administration (DOA) including purchasing goods and contracting for services through negotiations, reverse auctions, and best value procurement methods such as that defined in G.S. 143-135.9(a)(1). This legislation also authorizes DOA to solicit and accept electronic bids as well as establish procedures permitting the State to join with any federal, state, or local government or nonprofit in cooperative purchasing plans, projects, arrangements, or agreements.

While not directly impacting local government purchasing and contracting methods, the additional authorizations for procurement of state contracts and cooperative purchasing plans may provide more opportunities for local governments to purchase items from state contracts at reduced costs and enter into cooperative purchasing arrangements with state agencies.

Employment E-Verify Requirement

As originally introduced, **House Bill 36** prohibited state and local government contracts with contractors who knowingly employed illegal immigrants and required contractors to verify and certify their employees' legal status using the E-Verify Program administered by the United States Department of Homeland Security. The final version of this bill (**S.L. 2011-263**) removed provisions relating to government contracts and contractors, and instead requires all employers with 25 or more employees as well as cities and counties to use the E-Verify system to verify the work authorization of newly hired employees. For more information on the E-Verify requirements that apply to local government employers, see the School of Government's **legislative summaries website**.

Local Legislation

Several bills were enacted that granted purchasing and contracting flexibility to individual units of local government, including:

- Design/build construction in the City of Charlotte and the Town of Cornelius (**S.L. 2011-180**), and Wayne and Currituck Counties (**S.L. 2011-98**)
- Electronic bidding for informal bids in Winston-Salem (**S.L. 2011-80**)
- Purchasing flexibility for energy efficiency pilot projects and long-term leases for renewable energy facilities in Mecklenburg and Wake Counties and incorporated municipalities within Wake County (**S.L. 2011-150**)
- Small business enterprise programs for city contracts in the City of Durham (**S.L. 2011-168**)
- Clarified contract award procedures in the City of Greensboro (**S.L. 2011-111**) and the Town of Mount Airy (**S.L. 2011-140**)

For more legislative summaries on other topics of interest to local governments, please visit the School of Government's **legislative summaries website**.

Links

- canons.sog.unc.edu/purchasing-and-contracting-legislative-wrap-up/legislative_building_5-2/
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=S784
- canons.sog.unc.edu/?p=4919
- www.sog.unc.edu/node/767
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=87-1
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=H648
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=143-57.1
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=H713
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=S404
- www.ncleg.net/Sessions/2011/Bills/House/HTML/H36v1.html
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=H36%29
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