

**Checklist for Purchasing and Contracting, in Accordance With  
Article 8 of Chapter 143 of the General Statutes, Public Contracts, and  
Other Relevant Statutes**

The questions below are designed to be answered with a “YES.” “NO” answers indicate *possible* statutory violations and internal control weaknesses that should be investigated. NO answers should be brought to management's attention and may need to be disclosed in the notes to the financial statements. This checklist should be used only as a guide. It is not intended to be all inclusive. It is not intended to substitute for a full reading and understanding of the relevant General Statute(s). A listing of the NC General Statutes is available on the General Assembly web site, <http://www.ncga.state.nc.us/>. Persons referring to the statutes on this web site should be sure that changes from the latest session laws have been incorporated. If the web site indicates the statutes have not been updated, there should be a cross reference guide for those session laws affecting specified general statutes. (Note that this checklist is based upon the revisions in Session Law 2001-328 and 2001-496. **The majority of sections affecting local governments are effective January 1, 2002.**

**A unit’s local attorney should be consulted to determine if a NO answer to this checklist actually indicates a statutory violation.)**

Note also that this checklist does not address purchasing of contracting guidelines or prohibitions which may be attached to federal or State grant receipts. Local governmental units continue to have the option to adopt more stringent purchasing and contracting requirements, by local resolution. The auditor should examine the grant documents, the compliance supplements, and any local policies to determine if additional guidelines or prohibitions on purchasing and contracting may apply.

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	<b>Requirements applicable to contracts for construction, erection, alteration or repair of buildings.</b> These guidelines should be followed by the local government representatives responsible for determining specifications, awarding the contracts, and/or developing the contract specifications.				
143-128(a)	(1) Have contract specifications been outlined for heating, ventilation, air conditioning (HVAC) and accessories (either as separate systems or combined), refrigeration for cold storage with a cooling load of 15 tons or more of refrigeration, and all related work?				
	(2) Have contract specifications been outlined for plumbing and gas fittings, accessories, and all related work?				
	(3) Have contract specifications been outlined for electrical wiring, installations, and all related work?				
	(4) Have other contract specifications not already listed been outlined? These would include general work related to the erection, construction, alteration, or repair of a building.				
	A local unit may include additional specification for building construction and repair contracts. If the local unit has exercised this option, have those specifications been clearly outlined to the potential bidders?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	If a contract will be let for bid on both the separate-prime system and dual bidding system, are the specifications written/drawn so that separate and independent bidding may be done on each subdivision of work?				
143-128(a1)	Counties, municipalities and other public bodies may contract for the construction and repair of buildings using one of the five methods below. Have the unit's contracts for building construction and repair followed the allowable methods?				
	(1) Separate-prime bidding?				
	(2) Single-prime bidding?				
	(3) Dual bidding pursuant to subsection (d1) of this section?				
	(4) Construction management at risk contracts, as allowed in G.S. 143-128.1?				
	(5) Alternative contracting methods authorized in G.S. 143-135.26(9)?				
143-128(b)	If the local unit uses the separate-prime method, has it accepted bids for each of the subdivisions of work outlined in subsection (a), above? This may include additional specifications or plans required by the local unit.				
	Is the successful bidder for each subdivision of work known as a responsible and reliable person or firm, regularly engaged in their respective lines of work?				
	Were the successful bidders the lowest responsible, responsive bidders, after considering quality, performance, time constraints, and minority participation goals? Consider if documentation of the governing board's decision process would be prudent.				
	For contracts awarded under this subsection, do the subcontractors have access to dispute resolution made available by the local unit, pursuant to subsection (g)?				
143-128(d)	When using the single-prime method of contracting, have the bidders included on their bids the contractors responsible for HVAC work, plumbing, electrical, and other general construction?				
	Is the successful bidder the lowest responsible, responsive bidder, considering quality, performance, time constraints and minority participation goals? Consider if documentation of the governing board's decision process would be prudent.				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	For contracts awarded under this subsection, do the subcontractors have access to dispute resolution made available by the local unit, pursuant to subsection (g)?				
143-128(d1)	<b>Dual Bidding.</b> If a unit accepts bids for construction or repair work under both the single-prime and separate-prime methods, was the successful bidder the lowest responsible, responsive bidder under the single-prime method or the lowest responsible, responsive bidders under the separate-prime method? The unit should consider quality, performance, time constraints, and minority participation goals in determining the successful bidder(s).				
	Does the unit have a system in place to determine the successful bidder, considering cost of construction oversight, time for completion, and other factors as decided by the governing body? Consider if documentation of the governing board's system would be prudent.				
	In dual bidding, were the separate-prime bids received, but not opened, <i>one hour before</i> the single-prime bids?				
	The amount of a bid by a subcontractor to the general contractor under the single-prime method <i>may not exceed</i> the amount the subcontractor submits as a bid to the unit for the same work. Have the subcontractors followed this guidance?				
	Have the provisions of subsection (b) been applied to separate-prime contracts awarded under dual bidding? Have the provisions of subsection (d) been applied to the single-prime contract awarded under dual bidding?				
143-128(e)	OPTIONAL: If specified in the bid documents, has the local unit awarding the contract appointed a project expediter?				
	If required by the contract documents, has the project expediter allowed contractors and subcontractors doing HVAC, plumbing, electrical and general construction work equal input on the initial project schedule?				

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143-128(f1)	<b>Dispute resolution.</b> Has the local unit adopted the dispute resolution process adopted by the State Building Commission at G.S. 143-135.26(12)? OR				
	Has the local unit adopted an alternative dispute resolution process for issues related to the construction contract or the construction process?				
	Is the process open to all participants in the project, including the public entity itself, the architect, the construction manager, the contractors, the first-tier and lower-tier subcontractors?				
	The public entity may establish a reasonable dollar level for the amount in dispute. The amount may not be more than \$15,000. If one party to a dispute forces the second party into the dispute resolution process under this subsection, was that properly done considering the local and state guidelines?				
	The public entity may require the expense of resolution to be allocated among the parties. If the public entity is one of the parties in the dispute, has the public entity paid at least 1/3 of the cost of dispute resolution?				
	If the public entity requires in its contracts that participation in mediation of a dispute is a precondition to beginning litigation, has that requirement been consistently enforced?				
	Subsection (f1) is still applicable to disputes arising from construction, repair, alteration, etc. of buildings covered by the exceptions listed below. If applicable, has this requirement been followed?				
143-128(g)	<b>Exceptions.</b> This section is not applicable to the purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site. Has this exception been properly applied?				
	This section is not applicable to the construction, alteration, repair, etc. of a building, when the cost of such work is \$300,000 or less. Has this exception been properly applied? (Note that the <i>Informal Bidding</i> requirements may still be applicable to such projects.)				
143-128.1	<b>Construction management at risk contract.</b> The following definitions should be applied in this section.				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
143-128.1(a)	(1) "Construction management services" means services provided by a construction manager which may include preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.				
	(2) "Construction management at risk services" means services provided by a person, corporation, or entity, that (i) provides construction management services for a project throughout the preconstruction and construction phases, (ii) who is licensed as a general contractor, (iii) and who guarantees the cost of the project.				
	(3) "Construction manager at risk" means a person, corporation or entity providing construction management at risk services.				
	(4) "First-tier subcontractor" means a subcontractor who contracts directly with the construction manager at risk.				
143-128.1(b) continues	Has the construction manager at risk been selected in accordance with Article 3D, Chapter 143? [This would include such factors as demonstrated competence and qualifications for construction management and outreach efforts to minority businesses. Also, the public entity itself must have made good faith outreach attempts to minority businesses. G.S. 143-64.31(a)]				
143-64.31(a)	Did the unit, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, surveying and construction management at risk services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm?				
	Did the unit grant preference to a resident firm compared to a nonresident firm, in the same manner, on the same basis, and to the extent that a preference is granted in awarding contracts for these services by the other state to its resident firms over firms resident in the State of North Carolina?				
143-64.31(b)	If the public entity has contracted with a construction				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	manager at risk, has the public entity reported the appropriate information, below, to the Secretary of Administration?				
	(1) Was a detailed explanation of the reason why the particular construction manager at risk was selected submitted?				
	(2) Were the terms of the contract with the construction manager at risk submitted?				
	(3) Was a list of all other firms considered but not selected as the construction manager at risk and the amount of their proposed fees for services submitted?				
	(4) Was a report on the form of bidding utilized by the construction manager at risk submitted?				
143-128.1(b) continued	Was the design of the project done by a licensed engineer or architect?				
	Did the public entity contract directly with the licensed engineer or architect?				
143-128.1(c)	Did the construction manager at risk contract directly with the public entity?				
	Did the construction manager at risk advertise the project in accordance with G.S. 143-129?				
	Did the construction manager at risk submit its plan for minority business outreach to the local governing board for approval, prior to the construction manager at risk soliciting the first bids from the first-tier subcontractors?				
	Did the construction manager at risk prequalify and accept bids from first-tier subcontractors for construction work under this section?				
	Were the prequalification criteria developed by the local unit and the construction manager at risk ? The criteria should include quality, time constraints, performance, cost, capacity to perform, and other factors specified by the public entity.				
	Has the construction manager at risk made a good faith effort to recruit and select minority businesses for the project? Unless otherwise approved, Did the local unit that receives State appropriations for a building project or other State grant funds for a building project, including a building project done by a private entity on a facility to be leased or purchased by the local government unit, where the project cost is one hundred thousand dollars (\$100,000) or more, have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of the work. See <b>Minority Business Participation Goals</b> , below.				
	Did the construction manager at risk perform part of the work only when (i) the bidding produced no responsible, responsive bidder for that portion of the work; the lowest responsible, responsive builder will				

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	not execute a contract for the bid portion of the work; or the subcontractor defaults and a prequalified substitute cannot be found in time, and (ii) the local public entity approved of the construction manager at risk's performance of the work?				
	Were all bids opened in public, with the construction manager at risk operating as a fiduciary for the local unit?				
	Did the construction manager at risk award the contract to the lowest responsible, responsive bidder, taking into consideration, quality, performance, time constraints, minority participation goals, and any other factors the local unit may require? Consider documenting the construction manager at risk's decision making process.				
	If the public entity requires the substitution of any first-tier subcontractor, has the public entity compensated the construction manager at risk for any additional costs?				
143-128.1(d)	Did the construction manager at risk provide a payment and performance bond in accordance with G.S. 44A, Article 3? Detailed below.				
	<b><u>Procedures for Letting Public Contracts.</u></b> <b><u>Formal Bidding</u></b>				
143-129(a)	For contracts for construction or repair work in the amount of \$500,000 or more, were formal bids requested and received?				

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	For contracts for the purchase of apparatus, supplies, materials, equipment, etc. in the amount of \$90,000 or more, were formal bids requested and received? Note that <i>local school units</i> are governed by Chapter 143, Article 3 of the General Statutes.				
	If a local government unit has locally established a lower threshold for formal bidding on contracts for the purchase of apparatus, supplies, materials, equipment, etc., has that lower level been observed?				
	PURCHASE CONTRACTS ONLY: A local governing board may delegate the authority to award contracts, reject bids, readvertise for bids to the manager of the local unit or the purchasing agent of the local unit. If that has been done, have the officials followed all laws in this Article which would have applied to the governing board?				
143-129(b)	For local governments and political subdivisions of the State, was the advertisement for bids published in a local, general circulation newspaper and/or was the advertisement made by electronic means?				
	If the advertisement was <i>only</i> done electronically, was this authorized by the local governing board in a regular meeting? (The approval to advertise electronically can apply to individual contracts or to all contracts governed by this section.)				
	Were there seven (7) full days between the publication of the advertisement and the opening of the bids? (Note that this is the <i>minimum</i> . Longer advertisements are allowed and may be to the local unit's advantage.)				
	<b>Did the advertisement include:</b> The time and place where plans and specifications of the proposed work or a complete description of the apparatus, supplies, materials or equipment may be examined?				
	The time and place for the opening of the bids?				
	A provision reserving to the governing board the right to reject any or all bids?				
	If proposals are rejected, was the rejection in the best interest of the local unit? (Documentation of the reasons for rejection is not required by law. A local unit may find it prudent to document why proposals were rejected as not in the best interest of the local unit.)				
	Proposals may not be rejected to avoid the requirements of this Article. Has the local unit complied with this provision? (As above, consider if documenting the unit's decision would be prudent.)				
	No board or governing body of a political subdivision of the State may assume responsibility for construction or purchase contracts, or guarantee the				

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	payments of labor or materials therefore, except under the provisions of this Article. Has the local governmental unit only assumed payment responsibility for contracts governed by this Article?				
	Were all the bids/proposals opened in public?				
	Was the contract awarded to the lowest responsible, responsive bidder after considering quality, performance and specified time constraints for performance? (If the contract was awarded to other than the lowest bidder, consider if documentation of the governing board's decision process would be prudent.)				
	<b>If the lowest responsible bid exceeds available funds for the project or purchase...</b>				
	Has the local governing body entered into negotiation with the lowest responsible bidder in order to make reasonable changes in plans/specifications as may be needed in order to bring the contract price within the funds available <b>OR</b>				
	Did the local unit readvertise, requesting proposals, after having made changes to the plans and/or specifications to bring the project's expected cost within the funds available?				
	The governing board should not consider a construction or repair proposal that is not accompanied by a proper deposit. Was the proposal for construction or repair work accompanied by a deposit in cash, certified check, or cashier's check drawn on a bank or trust company insured by FDIC? (This is NA for purchase contracts.)				
	Was the amount of deposit at least equal to 5% of the proposal?				
	As an alternative, did the bidder provide a bid bond executed with a surety company licensed in North Carolina to execute such bonds?				
	Was the bond payable to the unit if the bidder fails to execute the contract in accordance with the bid bond?				
	If the successful bidder fails to execute the contract within 10 days of awarding the contract, or fails to provide adequate surety, did the local governing board retain the deposit?				
	Have the bids remained sealed until the advertised time of opening, unless the bidder has given specific permission to disclose the contents of his/her bid?				
143-129(c) continues	Are all contracts of the local unit, governed by this section, executed in writing?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	For construction or repair contracts, has the successful bidder furnished a bond in accordance with Article 3, Chapter 44A? ( <i>Portions</i> below. A full reading and understanding of Article 3, Chapter 44A is recommended.)				
44A-26(a)	Has a performance and payment bond, as described in subdivisions (1) and (2) below, been put in place if the project cost exceeds \$300,000 and the contractor or construction manager at risk has a contract in excess of \$50,000? (Note that at its discretion, a governing board may require bonds conforming to G.S. 44A-26(a)(1) and 44A-26(a)(2) for other construction contracts.)				
44A-26(a)(1)	This section is for the protection of the contracting body constructing the project. Has a performance bond been put in place for 100% of the construction contract amount, conditioned on the faithful performance of the contract in accordance with the plans, specifications, and conditions of the contract?				
44A-26(a)(2)	This section is for the protection of the persons providing labor or materials to a contractor, subcontractor, or construction manager at risk. Has a payment bond for 100% of the construction contract amount been put in place, conditioned upon the prompt payment of all labor and materials for which a contractor or subcontractor is liable?				
44A-30(a)	No action or agreement between the contracting body, the contractor, or the surety may reduce the time for giving notice under G.S. 44A-27(b) [120 days] or G.S. 44A-28(b) [1 year from the end of labor or delivery of materials, or 1 year from final settlement with the contractor]. Has the local unit abided by this provision?				
44A-31(a)	If a person entitled to bring action or a defendant in an action upon the payment bond requests a certified copy of the payment bond and/or the construction contract from the governing board, has the governing board produced the documents within 10 days of the request? Note that the contracting body may require a reasonable payment for the actual cost of furnishing a certified copy.				
143-129(c) continued	As an alternative to bonding, has the successful bidder deposited money, a certified check or government securities equal to the amount of the construction/repair contract with the board or governing body?				
	Has the contract been altered only pursuant to a written agreement between the contractor and the governing board?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	If a claim by a political subdivision of the State has been pending against a surety company for 180 days, the governing board of a political subdivision may reject the surety company's bond. If this is applicable, has the local unit rejected the surety company's bond?				
143-129(d)	Contracts governed by this section may not prohibit the use of unemployment relief labor paid for in whole or part by State or federal funds. Have the contracts governed by this section complied with this requirement?				
143-129(e)	<p><b>Exceptions.</b> The requirements of Article 3, Chapter 143 do not apply in the following situations. Have the exceptions been properly followed?</p> <p>(1) The Article requirements do not apply to the purchase, lease, or other acquisition of any apparatus, supplies, materials or equipment from the United States of America, any of its agencies, any governmental unit in the United States, or one of that unit's agencies. (Note that this subsection also addresses procedural issues for the acquisition of property under this section.)</p> <p>(2) The Article requirements do not apply in cases of special emergency involving the health and safety of the people or their property.</p> <p>(3) The Article requirements do not apply to purchases made through a competitive bidding group purchasing program. The program must be formally organized, offering completely bid purchasing services at discount prices to two or more public agencies.</p> <p>(4) The Article requirements do not apply to construction or repair work undertaken during the progress of a construction or repair project originally begun pursuant to this section. (Note that change orders are still subject to the <i>preaudit</i> requirements of G.S. 159-28. The staff of the LGC addressed this issue in <a href="#">Memorandum #924</a>, dated September 21, 2000.)</p> <p>(5) The Article requirements do not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or natural gas. (Note that these purchases may be subject to G.S. 143-131, below.)</p> <p>(6) The Article requirements do not apply to purchases of apparatus, supplies, materials or equipment when (i) performance or price competition is not available, (ii) a needed product is available from only one supplier, or (iii) standardization or compatibility is the overriding consideration. The governing board must approve these purchases prior to the awarding of the contract.</p>				

General Statute					Initials/
Reference	Attribute	Yes	No	N/A	WP ref.
	Subsection (6) has <i>additional exceptions for purchases by hospitals</i> . The Article requirements do not apply to public hospital purchases if (i) a particular medical item or prosthetic appliance is needed, (ii) a particular product is ordered by an attending physician for his patients, (iii) additional products are needed to complete an ongoing job or task, (iv) products are purchased for “over-the-counter” resale, (v) a particular product is needed or desired for experimental, developmental, or research work, or (vi) equipment is already installed, connected, and in service under a lease or other agreement. In these cases, the hospital governing board should determine that the product should be purchased. The governing body of the hospital should keep records on the assets purchased under this subsection. This documentation should be considered public records.				
	(7) The Article requirements do not apply to purchases of information technology through contacts established by the State Office of Information Technology Services.				
	(8) The Article requirements do not apply to guaranteed energy savings contracts, which are governed by Article 3B, Chapter 143.				
	(9) The Article requirements do not apply to purchases from contracts established by the State, in which the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, or conditions as established by the State contract.				
	(10) The Article requirements do not apply to purchases of used apparatus, supplies, materials, or equipment. Remanufactured, refabricated, or demo models are not considered “used” in this subsection.				
	(11) The Article requirements do not apply to contracts by a public entity with a construction manager at risk executed pursuant to G.S. 143-128.1				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
143-129(g)	<p>The governing body of a political subdivision may waive the bidding requirements of subsection (a) for the purchase of apparatus, supplies, material, or equipment for a person or entity which has completed in the previous 12 months a public formal bid process substantially similar to that required by this Article, and has contracted to furnish apparatus, supplies, materials or equipment to the United States of America, a federal agency, the State of North Carolina, a State agency, a political subdivision of the State, or any other state, other state agency or political subdivision of that state. If the governing board chooses to waive the bidding requirements, has the vendor sold the asset to the local unit at the same or more favorable terms than was provided to the other unit(s)?</p>				
	<p>Have purchases made under this subsection been approved by the governing board at a regular meeting, no fewer than 10 days after the newspaper publication of the governing board's intent to waive the bidding contract in order to contract with a qualified supplier under this subsection?</p>				
143-129(h)	<p><b>Regional Public Transportation Authorities (RPTAs) and Regional Transportation Authorities (RTAs)</b> RPTAs and RTAs are allowed to use competitive proposals [also known as Requests for Proposals, (RFPs)] in lieu of the bidding requirements of G.S. 143-129(b) for the acquisition, purchase, or lease of apparatus, supplies, materials or equipment. If a RPTA or RTA uses this procurement method, have all of the following criteria been properly followed?</p>				
	<p>During a regular board meeting, prior to the issuance of the RFPs, has the governing board declared that the RFP method of procurement is the most appropriate method for the purchase of apparatus, supplies, materials, and equipment?</p>				
	<p>(1) Have the requests for proposals been publicized, including all the evaluation factors and their relative importance?</p>				
	<p>(2) Have proposals been solicited from an adequate number of qualified sources?</p>				
	<p>(3) Do the RPTAs and RTAs have methods in place to make technical evaluations of the proposals and determine the successful bidder?</p>				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	Does the system in (3) above avoid strict adherence to price, and does the system consider all factors to determine which proposal is most advantageous to the RPTA or RTA?				
	(4) Once the initial proposals are received, the RPTA or RTA may enter into additional negotiations or discussions with the respondents. If the unit exercises this <i>option</i> , have the following requirements been observed?				
	The negotiations may be with all offerors or with offerors determined to be within a competitive range.				
	One or more revised proposals may be requested from the bidder(s).				
	A best and final offer proposal may be requested of the remaining offerors.				
	The details and deficiencies of an offeror's proposal <i>were not disclosed</i> to other offerors during any period of negotiation or discussion.				
	(5) The award of the purchase contract was made to the firm offering the proposal most advantageous to the RPTA or RTA. (Consider if additional documentation of the governing board's selection process would be prudent.)				
	Were the contents of the proposals treated as public records only 14 days prior to the award of the contract?				
	At a regular meeting, prior to the awarding of the contract, has the governing board certified that all requirements of this subsection been followed?				
143-129.1	<p><b>Withdrawal of a bid</b></p> <p><b><u>This checklist addresses the basic implications of a withdrawn bid. If this is an issue, a full reading and understanding of G.S. 143-129.1 is essential to ensure that the local unit follows all procedures in either allowing or disallowing the withdrawal of a bid without the loss of the surety deposit or bond by the bidder.</u></b></p>				
	A bidder may withdraw a bid for construction or repair of a building or the acquisition of equipment, supplies or materials, after the opening of the bid, without forfeiture of the security deposit/bond, if the price on the bid was the result of a mistake of a substantial amount. Has this statute been observed if a bidder wishes to withdraw a bid after opening and without forfeiture of the security deposit?				
	Has the bidder produced evidence that the bid was due to a clerical error, of a substantial amount?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	Has the bidder produced evidence that the bid price omitted a substantial amount of construction/repair work or omitted a substantial amount of supplies, material, apparatus, or equipment?				
	Has the bidder produced evidence such as original working documents that indicate that the price bid was an unintentional error?				
	Was the request to withdraw the bid made to the public entity in writing within 72 hours of the bid opening? (NOTE that a longer period for bid withdrawal may apply if such a period was specified in the instructions to bidders and was provided prior to the opening of the bids.)				
	If a request to withdraw a bid was made, were the remaining bids considered for award of the contract?				
	If the contract is relet, has the bidder who withdrew a bid <i>been barred from rebidding</i> on the work or purchase?				
	No withdrawal of a bid is allowed if it results in the award of the contract to another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which the bidder has an interest. Has this prohibition been observed?				
	No bidder who has withdrawn a bid may supply materials or labor to, or perform any subcontract work for, any person who is the successful bidder on the project from which the first bidder withdrew. Has this prohibition been observed?				
	<b><u>The following sections are limited to specific situations, as indicated by the titles. If these issues are applicable, the checklist user should read and understand the appropriate section of the General Statutes.</u></b>				
143-129.2	<b>Construction, design and operation of solid waste management facilities.</b> Local units are given additional discretion in awarding contracts related to solid waste management facilities. The intent is that the local unit select the bidder with the best overall proposal for the local government. The contract may not exceed 40 years. Has the local government followed these general guidelines?				

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143-129.4	<b>Guaranteed energy savings contracts.</b> Contracting for guaranteed energy savings contracts are governed by Article 3B, Part 2, of Chapter 143. The bids may be received through requests for proposals from qualified entities. There must be at least two bids received before the bids may be opened. The bids are to be evaluated by a licensed architect or engineer on behalf of the local unit. The governing board of the local unit may select the provider that best meets the factors of price, construction cost, quality, amount of energy savings, reputation of the bidder, conformity with published specifications, time constraints, and any other factors the local unit feels are important. Has the local unit complied with these guidelines?				
143-129.5	<b>Purchases from nonprofit work centers for the blind and severely disabled.</b> Local units are allowed to purchase goods and obtain services directly from such nonprofit work centers, as defined in G.S. 143-48. Has the local unit followed this guideline?				
143-129.7	<b>Purchase with trade-in of apparatus, supplies, materials, and equipment.</b> If a local unit has included the option for the bidder to purchase personal property owned by the local unit in its specifications for the bid on the acquisition of apparatus, supplies, materials and equipment, has that option been considered in the awarding of the contract for purchase of apparatus, supplies, materials, and equipment?				
143-129.8	<b>Purchase of information technology goods and services.</b> Subsection (a) recognizes the "...complex and innovative nature of information technology goods and services..." and allows alternative methods of contracting and purchasing, in order to best meet the local units' needs. The following options may be used in addition to other State statutes or instead of other State statutes.				
143-129.8(b)	Contracts for information technology goods and services may be awarded on the results of requests for proposals if the local unit adheres to the following guidelines.				
	(1) Was the notice of the request for proposals made in accordance with G.S. 143-129(a)?				
	(2) Was the contract awarded to the bidder with the best overall proposal?				
	Were the factors to be used in determining the award of the contract identified in the request for proposals? Consider if it would be prudent to document the local unit's decision process.				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
143-129.8(c)	If the awarding unit chooses to establish selection criteria under G.S. 143-135.9, for the "Best Value," has the unit complied with all applicable sections of that statute?				
	The awarding unit is permitted to negotiate with a bidder to reach a final contract. If the awarding agency has done this, does the final contract meet the criteria below?				
	Negotiated changes may not change the original request for proposals to the point that the proposer or potential proposers are denied a fair opportunity to compete for the contract. Do the negotiated changes conform with this requirement?				
	Negotiated changes may not be to such an extent that had they been included in the original request for proposal, the awarding of the contract would have been to a different bidder. Do the negotiated changes conform to this requirement?				
143-129.8(d)	The proposals submitted under this section should not be available for public inspection until a contract has been awarded. Has the awarding unit complied with this restriction?				
143-131(a)	<b>Informal Bidding</b>				
	For contracts for construction or repair work in the amount of \$30,000 or more, but less than \$500,000, were informal bids requested and received?				
	For contracts for the purchase of apparatus, supplies, materials, equipment, etc. in the amount of \$30,000 or more, but less than \$90,000, were informal bids requested and received? Note that <i>local school units</i> are governed by Chapter 143, Article 3 of the General Statutes.				
	Was the award of the contract made <i>after</i> the collection of the informal bids?				
	Was the contract awarded to the lowest responsible, responsive bidder after considering quality, performance and specified time constraints for performance? (If the contract was awarded to other than the lowest bidder, consider if documentation of the governing board's decision process would be prudent.)				
	Has a record been kept of all the informal bids? (Records may be evidenced by faxes, notes, etc. documenting that bids were solicited and received.)				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	Have the responsible unit officials kept a record of all bids submitted? (Note that the record of the bids is not available for inspection, based on a public request, until <i>after</i> the awarding of the contract. The local government unit may disclose the bids, at its discretion, once all the bids have been received. I.E., access to the information should be guarded so that a last-minute bidder does not have an unfair advantage.)				
143-131(b)	Has the local government unit made efforts to solicit minority participation in contracts for the erection, construction, alteration or repair of any building? (Note that if the contract between the unit and the minority business/contractor is part of a construction project requiring formal bidding, the contract with the minority entity may be subject to the formal bid requirements. No judicial rulings on this question are currently available.) See below for more details on minority participation.				
	Does the unit have documentation showing which contractors were solicited for bids?				
	Does the unit have documentation as evidence of recruiting efforts for minority participation in these construction/repair contracts?				
	Has the appropriate information been submitted to the NC Dept. of Administration, Office of Historically Underutilized Businesses at the completion of the project?				
	Does that documentation include: the type of project involved, the total dollar value of the project, the dollar value of minority business participation, and documentation of efforts to recruit minority participation in the project?				
143-132	<b>Minimum number of bids for public contracts.</b>				
143-132(a)	For construction and repair contracts subject to G.S.143-129 [Formal bidding], were at least three (3) competitive bids received from reputable and qualified contractors, regularly employed in their respective lines of work?				
	The three bid requirement is not applicable to contracts negotiated as allowed in G.S. 143-129. May the three bid requirement be avoided because this is a negotiated contract complying with the exceptions above?				
	If three bids were not received from reputable and qualified contractors regularly employed in their line of work, did the local unit readvertise the requests for bids?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	If the second advertisement does not result in bids from three reputable and qualified contractors, did the governing board award the contract to the lowest responsible bidder? (The contract may be awarded at this point even if there is only one responsible and responsive bidder.)				
143-132(b)	When the local unit contracts for bids in the alternative between single-prime and separate-prime [Dual bidding], has the unit complied with the following guidelines?				
	Has each single-prime bid been counted as a competitive bid in the work areas of HVAC, plumbing, electrical and general construction work?				
	Has each full set of separate-prime bids been counted as one competitive single-prime bid, for the purposes of meeting the three competitive bid requirement?				
	If there were at least three single-prime bids and there was not a full set of separate-prime bids, did the separate-prime bids remain unopened?				
143-133	Contracts may not be divided in order to avoid the requirements of Article 8, Chapter 143. Has this requirement been followed?				
----	Is there a local resolution for bidding, contracting and purchasing that requires more of the local unit than the State laws? Has the unit followed its own local resolution(s)?				
143-128.2	<b>Minority business participation goals.</b>				
143-128.2(a)	If a local unit has a building project with an estimated cost of \$100,000 or more, and the local unit receives State funds for the building project, does the unit have the established goal that minority businesses will participate in 10% of the total value of the work?				
	If a private entity is receiving State funds for a building project estimated at \$100,000 or more, which the private entity will lease or sell to a local government unit, does the private entity have the established goal that minority businesses will participate in 10% of the total value of the work?				
	If a local government unit has a different verifiable goal, was that goal adopted prior to 12/1/2001?				
	Did the local government have, and continue to have, a sufficiently strong basis in evidence to justify the use of a different minority participation goal? Consider if documentation of the evidence would be prudent.				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	<p><b>FOR PROJECTS FUNDED WITH LOCAL MONEY.</b> Has a city, county, or other local unit, after notice and a public hearing, adopted an appropriate, verifiable percentage goal for participation by minority businesses as compared to the total value of building project work? (Note that previously adopted percentage goals may still be used if they were adopted prior to December 1, 2001 and there is still evidence available to justify the use of the goal.)</p>				
	Has each entity required to have a verifiable participation percentage made good faith attempts to recruit minority business participation as described in this section, or under G.S. 143-131 [Informal bidding]?				
143-128.2(b)	Prior to soliciting bids, did a public entity determine what good faith efforts that it would take in order to make it possible for minority businesses to submit successful bids on a building project? See subsection (e) below.				
	Have contractors and first-tier subcontractors in construction management at risk projects made good faith efforts pursuant to subsection (f) below?				
143-128.2(c)	For all construction/repair projects bid under the methods of 143-128(a1), have the bidders, including first-tier subcontractors for construction management at risk projects, listed on their bids the minority businesses that the bidder will use on the project?				
	For all construction/repair projects bid under the methods of G.S. 143-128(a1), have the bidders, including first-tier subcontractors for construction management at risk projects, submitted an affidavit detailing the good faith efforts made pursuant to subsection (f)?				
	Do the bids include the total dollar amount of work to be done by minority businesses?				
	If a contractor, including a first-tier subcontractor on a construction manager at risk project, will perform all of the contracted work using its own workforce, has that contractor filed an affidavit to that fact? (Note that if such affidavit is appropriate, it substitutes for the earlier affidavit.)				
	Has the apparent lowest responsible, responsive bidder also filed the following documents, within the time specified in the bid documents?				
	(1)(a) Has the apparent successful bidder filed an affidavit detailing the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	Is the percentage equal or greater than the goal percentage?				
	OR, (1)(b) Has the apparent successful bidder filed documentation of the bidder's good faith efforts to meet the goal?				
	Does the documentation include evidence of implementation of good faith efforts, including advertisements, solicitations, and other evidence demonstrating efforts to recruit minority business participation?				
	(2) Has the apparent successful bidder filed within 30 days of the contract award, a listing detailing all subcontractors identified for this particular project?				
	Failure to file the required affidavit or documentation of good faith efforts is grounds for rejection of the bid. Has the unit rejected the bid if the required documents were not filed?				
143-128.2(d)	No subcontractor identified and listed because of the above section may be replaced except for the following causes. Has the local unit correctly observed these limits?				
	(1) The subcontractor originally listed on the bid may be replaced if the contractor or construction manager at risk determines the subcontractor's bid was nonresponsive or nonresponsive.				
	The subcontractor originally listed on the bid may be replaced if the subcontractor refuses to enter into a contract for the complete performance of the bid work.				
	(2) The subcontractor originally listed may be substituted with the approval of the local unit, if good cause is evident.				
	Have the good faith efforts detailed in G.S. 143-131(b) been applied to the selection of a substitute subcontractor when informal bidding applies?				
	Prior to the substitution of a subcontractor, did the contractor inform the governing body of the contractor's good faith efforts required under informal bidding?				
143-128.2(e)	Before awarding a contract, has the public entity done the following?				
	(1) Has the public entity developed and implemented a minority business participation plan to reach out to minority businesses that can perform public building projects?				
	Does that outreach/recruitment plan encourage interaction between minority and nonminority businesses?				
	(2) Has the public entity attended the scheduled prebid conference(s)?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	(3) Minority business may request that the public entity notify them of public construction/repair projects put out for bid. Minority businesses may also notify the Office of Historically Underutilized Businesses of their interest in bidding on this type of work. At least 10 days before the scheduled day of bid opening, did the public entity notify these minority businesses of the construction/repair project let for bid?				
	Did the notification include the following?				
	(a) A description of the work for which the bid is being solicited?				
	(b) The date, time, and location where bids are to be submitted?				
	(c) The name of the individual within the public entity who will be available to answer questions about the project?				
	(d) Where bid documents may be reviewed?				
	(e) Any special requirements that may exist?				
	(4) Did the public entity use other media, as appropriate, to inform potential minority businesses of the bid being sought?				
143-128.2(f)	Did the public entity require bidders to undertake good faith efforts from the list of 10 items below?				
	If the public entity has required contractors to perform additional good faith efforts, have the contractors complied with that request?				
	(Note that a point system to be developed by the Secretary of Administration is required in the law. At this time, the point system has not been developed. At publication time for this checklist, contractors are encouraged to show good faith efforts to promote minority business participation in at least 5 of the following 10 efforts.)				
	(1) Did the contractor contact minority businesses that reasonably could have been expected to submit a quote on specified project work?				
	Did the contractor contact minority businesses known to the contractor, or on State or local gov't maintained lists of minority businesses?				
	Was the contact made at least 10 days before the scheduled bid opening, and did the contact include the nature and scope of work to be performed?				
	(2) Did the contractor make construction plans, specifications and requirements available to, or provide to, prospective minority businesses at least 10 days before the bids were due?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	(3) Did the contractor break down or combine elements of work into economically feasible units to facilitate minority participation?				
	(4) Did the contractor work with minority trade associations, community groups, contractor organizations identified by the Office of Historically Underutilized Businesses, or groups specified in the bid documents to recruit minority businesses?				
	(5) Did the contractor attend prebid meetings scheduled by the public owner?				
	(6) Did the contractor provide assistance in getting required bonding, insurance, or providing alternatives to bonding or insurance for subcontractors?				
	(7) Did the contractor negotiate in good faith with interested minority businesses and refrain from rejecting them without sound reasons, based on their capabilities?				
	If the contractor has rejected an interested minority business, has the lack of qualifications been documented in writing?				
	(8) Did the contractor provide assistance to otherwise qualified minority businesses in need of equipment, loan capital, lines of credit, joint pay agreements to secure loans, supplies, letters of credit, or the waiver of credit that is normally required?				
	Did the contractor assist the minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit?				
	(9) Did the contractor negotiate joint venture or partnership arrangements with minority businesses in order to increase opportunities for minority business participation on public construction/repair projects when possible?				
	(10) Did the contractor provide quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands?				
143-128.2(g)	Have the following terms, definitions, and conditions been properly applied in the context of minority business participation, within the context of this section?				
	(1) Has "minority business" been used to mean or applied to businesses meeting the following criteria?				
	(a) A minority business is one where at least 51% of the ownership interest is by one or more minority persons, or persons who are socially or economically disadvantaged,				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	OR a corporation where at least 51% of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals.				
	AND (b) where the management and daily business operations are controlled by one or more of the minority or socially and economically disadvantaged individuals who own the business.				
	Has the term “minority person” been properly used and applied in contracts and bids covered by this section?				
	(2) Is the “minority person” a citizen or lawful permanent resident of the United States, who meets one of the five following criteria?				
	(a) Is the minority person Black (having origins in any of the black racial groups in Africa)?				
	(b) Is the minority person Hispanic (a person of Spanish or Portuguese culture with origins in Mexico, Central or South America, or the Caribbean Islands, regardless of race)?				
	(c) Is the minority person Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, and Asia, the Indian subcontinent, or the Pacific Islands.)				
	(d) Is the minority person American Indian (a person having origins in any of the original Indian peoples of North America)?				
	(e) Is the minority person Female?				
	(3) If a business qualifies as a minority business for the purposes of this section because of ownership by a “socially and economically disadvantaged individual(s),” was the definition of “socially and economically disadvantaged” based on the definition in the United States Code, 15 U.S.C. 637?				
143-128.2(h)	Have the municipalities, counties, and other public bodies awarded the contracts governed by G.S. 143-128.1, 143-129 and 143-131 without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition [Defined in G.S. 168A-3]?				
	Nothing in this section should be interpreted to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority business contractors or minority business subcontractors <i>who do not submit the lowest responsible, responsive bid(s)</i> . Has the local government unit complied with this restriction?				
143-128.2(i)	Have public records related to minority participation efforts related to the building project(s) been kept by the public entity for at least 3 years after the completion of the building project?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
143-128.2(j)	Except for subsections (a), (g), (h) and (i), this section applies only to building projects costing \$300,000 or more. Has the local unit correctly applied this guideline?				
	This section does not apply to the purchase or erection of prefabricated or relocatable buildings, except for that portion of work which must be done on the construction site. Has the local unit correctly complied with this guideline?				
143-128.3(a)	<b>Minority business participation administration.</b>				
	If the public entity is subject to G.S. 143-128.2, has it reported the following information to the Dept. of Administration, Office of Historically Underutilized Businesses, for each of its building projects?				
	(1) Has the local unit reported the verifiable percentage goal?				
	(2) Has the local unit reported the type and dollar value of the project?				
	Has the local unit reported minority business utilization by minority business category, trade, and the total dollar value of contracts awarded to each minority group for each project?				
	Has the local unit reported the good faith effort guidelines or rules used to recruit minority business participation?				
	Has the local unit provided copies of the good faith documentation provided by the successful bidder?				
	(3) Has the local unit reported the utilization of minority businesses under the various construction methods described in G.S. 143-128(a1)? Has the local unit submitted the required data in the format prescribed by the Secretary of Administration?				
143-128.3(b)	If a local unit has been notified by the Secretary of Administration that it has failed to comply with minority participation goals on a certain project, has the local unit developed a corrective action plan that addresses the deficiencies identified by the Secretary?				
	Has the plan been implemented, to the extent feasible, on the current project?				
	Has the plan been implemented on subsequent construction/repair projects of the local unit?				
	If the local unit has failed to file a corrective action plan or failed to implement the corrective action plan correctly and/or completely, has the local unit complied with the one or both of the following, as required by the Dept. of Administration?				
	(1) Has the local unit consulted with the Office of Historically Underutilized Businesses on a new corrective action plan?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	Has the new corrective action plan been approved by the Dept. of Administration and the Attorney General?				
	If the local unit has been represented by one official, does that unit representative have managerial responsibility for the construction project?				
	(2) If applicable, the local unit may not bid another contract under G.S. 143-128 unless there has been a prior review of the new good faith effort corrective action plan developed under subdivision (1) above. Has the local unit complied with this?				
	Was that review conducted by the Dept. of Administration and the Attorney General?				
	The Dept. of Administration may bar local units from soliciting bids on contracts under 143-128 for a time not to exceed one year, without review of the unit's corrective action plan. If the Dept. of Administration has barred the local unit from soliciting bids without prior review of its corrective action plan, has the local government complied with this restriction?				
	If the local entity wishes to contest the decision of the Secretary of Administration, is the case filed in accordance with G.S. 150B?				
143-128.3(e)	Has the local government unit complied with any minority participation guidelines developed by the Secretary of Administration?				
	<b>Building project design</b> (Note that G.S. 133-1.1 addresses additional responsibilities and requirements of architects and engineers, beyond what is addressed below and the scope of this checklist. As always, a full reading of the statutes at issue is recommended.)				
133-1.1(a)	The local representative(s) responsible for the approval of plans and specification or the awarding or entering into of contracts will have the plans and specifications prepared by a registered architect, a registered engineer, or by both an architect and engineer, as appropriate for the particular construction project. Have the local representatives had the plans prepared by the appropriate parties? (See below.)				
	(1) The plans and specifications were developed by an architect/engineer for repair projects estimated to cost \$300,000 or more, for repair work that does not include major structural change in framing or foundation support?				
	(1a) The plans and specifications were developed by an architect/engineer for repair projects estimated to cost \$100,000 or more, or five hundred thousand dollars (\$500,000) for the repair of public buildings by The University of North Carolina or its constituent institutions for repair work affecting a public building's life safety system(s)?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	(2) The plans and specifications were developed by an architect/engineer for repair projects estimated to cost \$135,000 or more, for repair work that does include major structural change in framing or foundation support?				
	(3) The plans and specifications were developed by an architect/engineer for repair projects estimated to cost \$135,000 or more, for the construction of or addition to public buildings?				
	Has the architect and/or engineer included his/her North Carolina seal on such plans or specifications?				
	Is the name and address of the architect and/or engineer included with the North Carolina seal?				
133-1.1(d)	On projects where no registered architect or engineer is required pursuant to this section, has the local unit received certification from a city or county inspector for the specific construction trades involved, that the project is in compliance with the State Building Code?				
	OR, for such projects described above, has the local unit received certification from a registered architect or engineer that the project is in compliance with the State Building Code?				
133-1.1(d)(1)	No certification is required under this subsection if any of the following subdivisions apply.				
	Is the project exempt from certification under this subsection because the plans and specifications were approved by the Dept. of Administration, Division of State Construction?				
	And, the completed project has been inspected by the Division of State Construction and the State Electrical Inspector?				
133-1.1(d)(2)	Is the construction project itself exempt from the State Building Code?				
133-1.1(d)(3)	Is the project exempt from certification under this subsection because the estimated total cost is less than \$100,000? And, the project does not alter life safety systems?				
1-53(1)	<b>Statue of Limitations on Breach-of-Contract</b>				
	Concerning a contract to improve real property, were breach-of-contract lawsuits brought about no later than 90 days after (i) substantial completion of the project as defined in G.S. 1-50(a)(5)(c), as long as proper notice of the claim has been given if required by the contract, or (ii) if prior to substantial completion the contract was terminated by either party, such an action may be brought no later than 90 days after the date of termination of the contract?				