



**NEWTON**

BRILLIANT LEGACY + BRIGHT FUTURE

## **Purchasing Department**

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### **E-Verify Information Regarding City Contracts**

#### **1- What is the new E-Verify contracting prohibition?**

- a. The North Carolina Legislature enacted a new General Statute (Article 2 Chapter 64) on September 4, 2013.
- b. It reads:

*“NO CITY MAY ENTER INTO A CONTRACT UNLESS THE CONTRACTOR AND THE CONTRACTOR’S SUBCONTRACTORS COMPLY WITH ARTICLE 2 CHAPTER 64 (E-Verify) OF THE GENERAL STATUTES”.*

#### **2- What is E-Verify?**

It is a free, web-based system operated by the U.S. Department of Homeland Security’s Citizenship and Immigration Service (USCIS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the legal employment status of newly hired employees.

#### **3- Who is required to use E-Verify?**

Private employers who do business in the State of North Carolina and employ 25 or more workers in this State.

#### **4- If a contractor is not subject to the State E-Verify requirements, does their subcontractor’s still have to comply?**

Yes if the subcontractor employs 25 or more employees in this State.

#### **5- Which units of government are subject to the new law?**

All units have specific requirements spelled out in the General Statutes. For Cities it applies to all contracts, regardless of the type of contract.

- i. Formal Construction Contracts.
- ii. Informal Construction Contracts.
- iii. Formal Purchases.
- iv. Informal Purchases.
- v. Design Services (Mini-Brooks Act)
- vi. All Other (service, lease, grant to nonprofit, etc.)

#### **6- Does “contractor’s subcontractors” mean only the first tier subcontractors or all tiers?**

The Statute does not distinguish between different tiers; therefore it applies to all tiers of subcontractors.

**7- Does the new prohibition apply to employers with less than 25 employees?**

No

However the City must utilize some process to verify the E-Verify status of parties on all contracts or insert wording in all contractual documents that puts the compliance responsibility on those parties.

**8- Does the new prohibition apply to one person contracts like specialty instructions or repair persons?**

No

However the City must utilize some process to verify the status of that person unless the City is aware that this party is a one person entity.

**9- What about amendments to existing contracts or change orders for construction contracts?**

An amendment or change order to a contract that does not contain E-Verify information requires the City to obtain E-Verify documents.

An amendment or change order to a contract that already contains E-Verify information does not require new documentation.

**10- What about out-of-state contracts?**

No, if the vendor has less than 25 employees working in North Carolina.

However if there is any doubt the City should take the appropriate steps to verify that the vendor meets the E-Verify requirement.

**11- What about unwritten agreements/oral contracts?**

E-Verify is required.

**Please be aware that by North Carolina General Statutes require all Cities to have written contracts for all financial agreements.**

**Unwritten or oral agreements are unauthorized procedures by the City of Newton.**

**12- Many questions have been addressed to the UNC School of Government regarding specific types of contracts/purchases. Here is a list that requires E-Verify verification by the City.**

- a. Design Services
- b. All construction including the new design-build, design-build bridging and public private partnerships.
- c. Repair Contracts
- d. Office Supplies
- e. IT Purchases
- f. Purchase Orders
- g. P-Card Purchase
- h. Credit Card Purchases
- i. Small Purchases-Open Account
- j. Warranties and Service Contracts
- k. Property Leases and Leases With Option to Purchase

- l. Finance Agreements
- m. Economic Finance Agreements
- n. Grants to Non-Profits
- o. Piggyback Purchase
- p. State Contract Purchases
- q. Cooperative Purchases
  - i. **Please remember that for North Carolina, the Statue reads: Companies doing business in North Carolina that employs 25 or more employees in North Carolina.**

**13- Grants from the State or Federal Government?**

No, however if a contract utilizing the grants involves private parties within the State of North Carolina the E-Verify requirement applies to those parties.

**14- Contracts with other units of government (interlocal agreements and mutual aid agreements)?**

No, however if a contract involving private parties within the State of North Carolina is a result of this type contract the E-Verify requirement applies to those parties.

**15- Contracts with individuals that are employees of other units of government (police and/or deputy sheriffs).**

No

**16- Contracts that generate revenue for the local government (athletic field or facility rentals)?**

Yes

**17- Building permits, tax payments and utility deposits?**

No

**18- City employee related transactions (reimbursements)?**

No

**19- Employee health insurance programs?**

Yes, with the insurance provider.

The Statue has several areas that currently present issues of concern. It specifically reads contractors and subcontractors and it states all contracts. Speculation is that the Legislature intended for this new requirement to affect only construction and repair contracts. However since the term all contracts is a part of the Statue and all activities for Cities are contracts then it has been interpreted by the UNC School of Government to extend to all purchases by a City. Unless there is future modification to the Statue it will remain a requirement for any contract that the City enters into.

This requirement does not affect any contract that was entered into on or before September 3, 2013. Contracts entered into on or after September 4, 2013 and

amendments or change orders to contracts prior to September 4, 2013 must comply with the new E-Verify requirement.

There is no wording in the new Statue instructing Cities to follow specific guidelines to comply with the E-Verify requirement. It simply states that if a City enters into a contract with a party that is not E-Verify compliant the contract may be rendered null and void if challenged in the States legal system.

There is no penalty to local governments for failing to comply with the new E-Verify Statue other than the possibility that a contract may be rendered null and void. However for employer's who violate Article 2 of Chapter 64 (E-Verify) they are subject to civil penalties.

The City may utilize several methods in an attempt to comply with this requirement. Currently other units of government are using some combination of the following methods.

- 1- Affidavits
- 2- Boilerplate language in contracts.
- 3- Boilerplate language on purchase order forms.

There is no North Carolina database for E-Verify. It is a federal program (national database). The City does not have to constantly monitor contractors/vendors after contracts are issued. Only at their inception.

- 1- Construction and/repair contracts.
- 2- Annual contracts.

However for contracts that have periods of short duration, there appears to be a requirement to obtain new verification annually.

- 1- Purchase Orders
- 2- P-Card Purchases
- 3- Credit Card Purchases
- 4- Small Purchases-Open Accounts