

**ATTORNEY GENERAL'S POLICIES, CHECKLIST AND RECOMMENDED
QUESTIONS FOR CONTRACT REVIEWS
REQUIRED BY SESSION LAW 2010-194, AS AMENDED BY 2011-326
(REVIEW OF CERTAIN CONTRACTS EXCEEDING \$1,000,000)**

SL 2010-194 as amended by SL 2011-326 (codified as G.S. §114-8.3) requires the Attorney General or Attorney General's designee to review all proposed state contracts for supplies, materials, printing, equipment, and contractual services that exceed \$1,000,000 to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, are legally enforceable, and accomplish their intended purposes. The attached contract review checklist has been developed by the Attorney General's Office to assist attorneys performing contract reviews required by G.S. §114-8.3.

In most instances, the contract review should be conducted in two phases. If the agency or institution estimates that procurement will likely result in a contract exceeding \$1,000,000 in value, a designated attorney should review the request for proposals (RFP) or invitation for bids (IFB) before it is issued to the public. The preliminary review is a truncated examination, covering only the most basic inquiries: (1) is the procurement required to be reviewed under the statute; (2) if a response complying with the RFP/IFB is received from a qualified and responsive bidder, will the resulting contract contain the essential data for the formation of an enforceable contract; and, (3) does the RFP/IFB contain a concise and understandable statement of the agency's intent in issuing the proposed procurement.

A second legal review should be conducted after the agency's evaluators and purchasing staff have selected a proposed vendor for the contract award, because the vendor's proposal or bid will usually become part of the contract (i.e., state contracts usually consist of an RFP or IFB, any addenda, and the vendor's proposal or bid). Thus, the reviewing attorney must review the vendor's proposal or bid to determine if the proposal or bid made changes to or proposed deviations from the RFP's or IFB's requirements, terms, conditions, specifications and/or scope of work and whether the resulting contract, inclusive of the vendor's proposal or bid, will comply with the requirements of G.S. §114-8.3.

The attached contract review checklist should be used by the reviewing attorney in both the preliminary and final review phases of the process. Reviewing counsel, of course, will frequently lack detailed information concerning policy issues and other factors related to the contract development process and specific needs of the agency or institution. It is therefore critical that appropriate communication takes place between the reviewing attorney and contracting entity throughout the review process.

The legislation also authorizes the Attorney General to designate attorneys outside the Attorney General's Office to perform the review required by G.S. §114-8.3. As a matter of policy, it has been determined that required reviews should be performed as follows:

- (1) Contracts expected to involve between \$1,000,000 and \$5,000,000 may be reviewed by any attorney approved by the Attorney General's Office, including agency in-house counsel and private counsel retained by a state entity. If the contracting agency or entity does not have the services of an attorney approved to conduct the review, the contract will be reviewed by an attorney assigned from the Attorney General's Office.

- (2) Contracts expected to exceed \$5,000,000 must also be reviewed by an attorney in the Attorney General's Office. This second review will usually be conducted by an attorney normally assigned to represent that agency or other state entity.
- (3) Contracts expected to exceed \$15,000,000 must be reviewed by an attorney in the Property Control Section of the Attorney General's Office, or the Transportation Section in the case of contracts proposed by the Department of Transportation. This review will be in addition to any initial review performed by a designated attorney outside the Attorney General's Office or by an attorney in the Attorney General's Office.

The Attorney General's Office has also drafted the attached Recommended Questions To Be Considered By Contract Administrators. Although not specifically required by G.S. §114-8.3, it is recommended that the reviewing attorney or agency counsel discuss with agency officials the questions listed. This review may be in regard to a specific contract or as related to procurement practices in general.