
Coates' Canons Blog: Executive Order 50 and Local Governments

By Eileen R Youens

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Many of you are aware that Governor Bev Purdue recently signed an executive order to give North Carolina businesses the opportunity to match the lowest bid when bidding on state contracts for the purchase of goods. You can find Executive Order 50 [here](#). This post addresses the questions that I've received about this Order.

Who does the Order cover?

It covers state agencies. The Order does **not** apply to municipalities, counties, schools, water and sewer authorities, hospital authorities, or other local governments. Remember that, as local governments, you are required to award contracts for the purchase of apparatus, supplies, materials, and equipment costing \$30,000 or more (or an amount less than \$30,000, if you have a local policy that requires it) to the lowest responsive, responsible bidder. **G.S. 143-129(b)** (formal bidding), **G.S. 143-131(a)** (informal bidding). And local governments only have the authority to negotiate with bidders on such contracts if the lowest responsive, responsible bid comes in higher than "the funds available for the ... purchase." **G.S. 143-129(b)**.

What does the Order do?

The key provision of the Order directs the Secretary of Administration to "develop a price-matching preference for North Carolina resident bidders on contracts for the purchase of goods so that qualified North Carolina companies whose price is within five percent (5%) or \$10,000.00 of the lowest bid, whichever is less, may be awarded contracts with the State of North Carolina." The North Carolina Division of Purchase and Contract (a division of the Department of Administration) has developed such a preference, and they've created a list of frequently asked questions regarding the program, which you can read [here](#).

Does the Order give local governments the authority to implement local preferences?

No. As stated above, local governments must comply with the bidding statutes, and may not copy the price-matching preference established by the Executive Order.

I'm currently working on a bulletin about local preferences, focusing on the issue of whether local governments may legally give a preference to local businesses on contracts that are not covered by the bidding statutes (e.g. purchases and construction projects costing less than \$30,000, and service contracts). I hope to have it finished within the next month or so, and I'll be sure to blog about it once it's finished!

Links

- www.governor.state.nc.us/NewsItems/UploadedFiles/d132dbc6-bca4-4a6f-ae10-3f27e2e53e01.pdf
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-129.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-131.html
- www.doa.state.nc.us/pandc/Documents/NC-Preference-FAQs.pdf