
Coates' Canons Blog: Local Preferences in Public Contracting, Part 5

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This is the fifth installment in a series of posts discussing the efforts of the City Council of Emerald City, North Carolina, to support its local businesses by adopting a local preference policy. (You can find the earlier installments **here**, **here**, **here**, and **here**.) In the last post, City Attorney Tin Man explained the constitutional issues involved in local preferences to the City Council. As we rejoin the Emerald City Council meeting, a short man in a bright green suit has asked Chairwoman Glinda if he can make some remarks to the Council.

“You have 5 minutes,” says the Chairwoman. The man approaches the podium in the center of the room, produces a step stool, steps up on the stool, and pulls the microphone down to bring it closer to his mouth.

“Thank you, Chairwoman Glinda, and thank you, Council, for addressing this very important topic,” says the man. “My name is Green Apple, and I represent the Lollipop Guild. We are against local preferences, and I’d like to explain why.”

“The Lollipop Guild?” interrupts Cowardly Lion. “What are you doing here in Emerald City? I thought the Lollipop Guild was based in Munchkinland!”

“Yes, sir,” replies Green Apple, “but we have chapters in every state throughout the United States, and I represent the North Carolina chapter of the Lollipop Guild. We have one member right here in Emerald City, Ms. Blue Raspberry, and I’m here this evening on her behalf.” He gestures to a petite woman in a bright blue hat sitting in the front row, who smiles cheerily and waves at the council members.

“Fine, fine,” says Cowardly Lion. “Carry on.”

“Thank you, sir,” continues Green Apple. “Now you all know that the Lollipop Guild represents manufacturers of lollipops. However, you may not know that our members are also involved in construction—specifically, the construction of gingerbread houses. This means that our members are affected by all three of the types of preferences that have been discussed here: hiring preferences, contract award preferences, and purchasing preferences.

“Take Ms. Raspberry here—the owner of one of the local businesses you want to help. She’s thrilled when the City buys its lollipops from her. But Emerald City and its contractors are only a small—although important—part of Ms. Raspberry’s business. She also sells to nearby cities and counties, and she’s worried that if Emerald City implements a local preference, many of her other customers will, too. That will mean that she’ll have the advantage when bidding on Emerald City’s contracts, but she’ll be at a disadvantage when bidding on contracts everywhere else.”

“What do you mean?” asks Chairwoman Glinda.

“Ms. Raspberry’s business is an Emerald City business,” responds Green Apple. “So if the Town of Poppy Fields adopts a local preference, they’ll favor their own businesses over Ms. Raspberry’s. And if Munchkinland adopts a local preference, they’ll favor their own businesses over Ms. Raspberry’s. And so on. So even if Ms. Raspberry is offering the best prices for her lollipops, she could end up losing lots of business.”

Ms. Raspberry nods her head emphatically from the front row.

“Not only that,” continues Green Apple, “but Ms. Raspberry also has concerns about this preference from her perspective as an Emerald City taxpayer. She’s worried that a local preference policy will mean that the City will end up paying higher prices for goods, services, and construction.”

“Why?” Cowardly Lion asks, indignantly.

“If non-local companies realize that they’re at a disadvantage when they compete for Emerald City business, they may stop bidding. It only makes sense to put time and effort into putting a bid together—especially when you’re talking about a large, complicated project—if you know you’re competing on a level playing field. If the odds are stacked against you, and if you know that City policy is actually hostile to non-local businesses, why waste your time? This means that local companies won’t face as much competition, so they’ll be able to win contracts with higher bids. And who will pay for those higher prices? Your taxpayers. Sure, it may only be a couple hundred bucks here, and a couple hundred bucks there, but those hundreds add up.”

Chairwoman Glinda, looking thoughtful, breaks in. “Mr. Apple,” she says, “I can see why you and Ms. Raspberry are concerned about contract award preferences—that is, a preference to local companies bidding on Emerald City purchases or projects. But what about purchasing preferences or hiring preferences?”

Green Apple nods. “The relationship between contract award preferences and the two issues I’ve mentioned—retaliatory preferences and decreased competition—is certainly a more direct relationship. But purchasing preferences and hiring preferences have the same issues. If you require all of your contractors to buy only Emerald City products, then that means neighboring cities and counties may implement a similar policy, and, again, business owners like Ms. Raspberry won’t be able to supply contractors doing work for those cities or counties. At the same time, local businesses owners will be able to build more profit into their bids, knowing that Emerald City contractors are restricted from purchasing from non-local businesses.

“For hiring preferences, the issue of retaliatory preferences can be even more serious,” continues Green Apple. “Local workers won’t be able to work on Emerald City projects year round—they’ll need to be able to find work elsewhere, and if other cities and counties adopt hiring preferences, your Emerald City workers will be in trouble. At the same time, the administrative hassle of verifying residency for all workers will cost the contractors time and money—and they’ll pass those costs along to you.

“I hope you’ll consider what I’ve said before you decide to implement a local preference policy,” concludes Green Apple. “And I thank you for your time.”

“Thank you, Sir,” replied Chairwoman Glinda. “You’ve given us a lot to think about. Purchasing Officer Scarecrow is next on the agenda, and we’ll ask him for his thoughts on this, too.”

[Green Apple’s arguments were adapted from a publication issued in February of this year by the United States Chamber of Commerce, titled “The Cost of Buy American Mandates on American Jobs: Reviewing the ‘Buy American’ Requirement on the Recovery Act’s Anniversary.” You can find it [here](#).]