
Coates' Canons Blog: Signed, Sealed, Delivered: When Sealed Bids Are Required

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Your school system is bidding out a \$1.2 million school construction project.

Because the total cost of the project will exceed the formal bidding threshold for construction and repair (\$500,000), you've advertised for formal bids. The bids are due tomorrow at 2 p.m. Right before you leave the office for the day, your phone rings. It's an out-of-state contractor with a great reputation, who tells you that she's just realized that there is a serious mistake in the bid you received from her earlier in the day. She wants to know if she can email her corrected bid form to you, because she can't get a paper bid to you in time for tomorrow's deadline. Can you accept the bid by email?

The answer is no. The formal bidding statute, **G.S. 143-129**, is very clear on this point: formal bids must be "sealed." (In fact, if you open a sealed bid before the bid opening—knowing that there is a bid inside, and without the bidder's permission—you've committed a Class 1 misdemeanor.) And, because an emailed—or faxed or phoned-in—bid can't be "sealed" like a paper bid, you can't accept it in place of a sealed paper bid. In other words, a formal bid that's submitted by email, phone, or fax must be rejected as non-responsive. If this contractor can't find a way to get a corrected sealed bid to you, she can ask you not to open her bid, or she can choose to let the bid stand as it is. (Note that if she asks you not to open the bid, that will not count as a bid withdrawal under **G.S. 143-129.1**, because the procedures and requirements in that statute apply only once the bids are opened.)

That's not to suggest that local governments can never accept bids by email. Bids below the **formal bidding threshold** below do not have to be sealed, so you can choose to accept them by fax, phone, and email as well as by mail. When you solicit these bids, you should inform potential bidders if you will require them to submit bids in a specific form, and if a bidder chooses not to submit a bid in that specific form, you should reject it as non-responsive.

Local governments are also authorized to accept some bids using electronic bidding software. While construction or repair contracts in the formal bidding range—such as this \$1.2 million school construction project—may only be submitted as sealed paper bids, other types of bids (including purchase contracts, and construction and repair contracts below the formal bidding threshold) may be accepted through electronic bidding. The statute that authorizes electronic bidding, **G.S. 143-129.9**, mandates that procedures for the acceptance of *formal* bids received electronically "shall be designed to ensure the security, authenticity, and confidentiality of the bids to at least the same extent as is provided for with sealed paper bids." There is software available that can provide this type of security for electronic bidding—such as DemandStar and BidExpress—but an email or fax or over-the-phone bid will not satisfy the standard in G.S. 143-129.9 for security, authenticity, or confidentiality.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-129.html



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- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-129.1.html
 - www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-129.9.html