

decision, however, may be used as evidence of arbitrariness or may leave the awarding authority open to allegations of fraud or abuse of discretion.

An important way to obtain the necessary information to evaluate bidders is to require the bidders themselves to demonstrate their qualifications as part of the bidding process. Appropriate questions can be included in the specifications so that bidders will have the responsibility to provide documentation of their qualifications, or of the adequate performance of their products. This provides a good starting point for the analysis and evaluation of bids for award. As noted earlier, the *Kinsey* case makes clear that failure to provide this information when it is requested as part of the bidding process is grounds for rejection of the bid. (See Question 117.)

Preferences

121. Can a local government establish a preference for local bidders?

Local governments have no statutory authority to establish preferences of any kind and are bound by the “lowest responsible bidder” standard when awarding contracts that are subject to the bidding requirements. (See Question 117.) The fact that a bidder is local cannot, by itself, be a basis for awarding a contract to a higher bidder. Some argue that doing business with local companies will help build and maintain the local government’s tax base. (This of course depends on how “local” is defined and whether such a policy stirs other jurisdictions to adopt similar policies, which might ultimately cause losses for local companies.) Local governments do have authority to engage in local economic development,⁸⁹ but this authorization does not include the use of the contracting function to provide what amounts to a subsidy to a local company that is not otherwise the lowest responsible bid.

In some cases, local companies may provide better, more cost-effective, or more timely service. These factors can legally be considered under the lowest responsible bidder standard, which explicitly allows consideration of quality, performance, and time. Local governments are not, however, entitled to *assume* that a local company will be superior in these areas and should be careful to document the basis for a decision based on these factors. (See Question 120.)

Local governments can promote local businesses by making sure they are given notice of opportunities to bid and can use local businesses for convenience when purchasing small items or obtaining quotes for informal bids. The governing board could legally adopt a policy of sending individual notice of bidding opportunities only to local bidders, since the statute does not require such notice in the first place and local governments may have authority to establish a local preference for contracts that are not subject to the competitive bidding requirements. (See Question 33.) Boards considering this option should evaluate whether the loss of competition and potential cost savings is outweighed by the benefit to be gained from promoting local businesses in this way.

89. G.S. 158-7.1.