Discussion of the Alabama Competitive Bid Law and Public Works Law

PRESENTED BY: JAMES HALL
DIRECTOR COUNTY AUDIT DIVISION
EXAMINERS OF PUBLIC ACCOUNTS
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DISCLAIMER

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INFORMATION

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Objectives/Overview
- Bid Law
- Public Works Law
- Questions

Alabama Competitive Bid Law

Legal Authority

*Code of Alabama 1975, Section 16-13B*
- Applies to County and City Boards of Education
To What It Applies...

- Applies to the expenditure of funds for labor, services and work involving $15,000 or more
- Applies to the purchase or lease of materials, equipment, supplies or other personal property involving $15,000 or more

Legal Requirement

- Requires a contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.

Length of Contract Terms

- Purchase or Service Contracts - limited to 5 years
- Lease-Purchase Contracts for capital improvements, repairs to real property and other lease-purchase contracts - limited to 10 years
Advertising Requirements

- Post notice on bulletin board outside purchasing department
- Can do more...but not required!

Sealed Bids and Documentation

- Must be sealed when received
- Opened in public at the hour stated in the notice
- All original bids and documents pertaining to the award of the contract shall be retained for a period of seven years from the date the bids are opened and shall be open to public inspection

Local Preference Zone

- Must establish the local preference zone PRIOR to advertising for bids.
- If awarding authority is silent on the local preference zone, it is deemed to be the legal boundaries or the jurisdiction of the awarding authority.
- Bid can be no more than 3% greater than the bid of the lowest responsible bidder.
Bid Lists

- Sealed bids shall also be solicited by sending notice by mail to all vendors who have filed a request in writing that they be listed on the bid list for the particular items being bid.
- If a vendor fails to respond to any solicitation after the receipt of three, the vendor may be removed from the bid listing.

Bonds

- **Bid Bonds** - The awarding authority may require bidders to furnish a bid bond for a particular bid solicitation if the bonding requirement applies to all bidders, is included in the written bid specifications, and if bonding is available for the services, equipment, or materials.
- **Performance Bonds** - a bond in a responsible sum for faithful performance of the contract, with adequate surety, may be required in an amount specified in the advertisement for bids.

Items to be considered when determining the lowest RESPONSIBLE bidder...

- Qualities of the goods proposed to be supplied
- Conformity with specifications
- Purposes for which required
- Terms of delivery
- Transportation charges
- Dates of delivery
Rejection of a Bid

Awarding authority may reject a bid when the price is deemed excessive or the quality of product is inferior.

Documentation of Results

- To whom bid was awarded
- Reasons for not awarding to the lowest bidder
- Bid file shall be open for public inspection

Emergencies

- Must affect public health, safety or convenience, be declared in writing by the awarding authority, and such action and reasons should be immediately made public by the awarding authority.
- No advertising required
- Must still follow other bid law requirements - per ruling by the State Supreme Court (General Electric Co vs. City of Mobile 1991)
Only One Bid Received

- May accept bid or
- May reject the bid and negotiate the purchase or contract, provided the negotiated price is lower than the bid price.

Splitting of Contracts

No purchase or contract in excess of $15,000 shall be divided into parts involving amounts of $15,000 or less for the purpose of avoiding the requirements of the competitive bid law.

Provisions for Mistakes by Vendors

There are no provisions in the law for mathematical mistakes by vendors.
Items Exempt from Requirements

- Utility Service (rates fixed by law, regulation, or ordinance)
- Insurance

Items Exempt from Requirements (cont.)

Professional Services:
- Attorneys
- Physicians
- Architects
- Teachers
- Superintendents of Construction
- Artists
- Appraisers
- Engineers
- Consultants
- Certified Public Accountants
- Public Accountants
- Others possessing a high degree of professional skill where the personality of the individual plays a decisive part.

Items Exempt from Requirements (cont.)

- Regular Civil Service employment contracts
- Fiscal or Financial Advice or Services
- Products made by Alabama Inst. For Deaf and Blind
- Maps/Photographs from any federal agency
- Manuscripts, Books, Maps, Pamphlets, or Periodicals
- Paying Agents/Trustees
<table>
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<tr>
<th>Items Exempt from Requirements (cont.)</th>
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<tr>
<td>- Computer hardware which is only type compatible with hardware already owned/Custom software</td>
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<td>- Service or commodity for which there is only one vendor or supplier</td>
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<td>- Product whose price is regulated and established by state law</td>
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<th>Items Exempt from Requirements (cont.)</th>
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<td>- Security Related Services/Products</td>
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<td>- Which impact upon the security of persons, structures, facilities or infrastructures.</td>
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<th>Items Exempt from Requirements (cont.)</th>
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<tr>
<td>- Purchases made by individual schools of county or city schools systems from moneys other than those raised by taxation or received through appropriations.</td>
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<tr>
<td>- Purchases of good or services, other than wireless communication services, from vendors awarded a current and valid Government Services Administration (GSA) contract.</td>
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<td>- Purchases of unprocessed agricultural products with a cost of $100,000 or less.</td>
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Items Exempt from Requirements
(Exemption which may apply)

**Purchases of goods or services, other than voice or data wireless communication services, made as part of the purchasing cooperative sponsored by the National Association of Counties or any other national or regional governmental purchasing program.**

- Competitive bid process of the cooperative must be approved by the Examiners of Public Accounts; has been approved.
- Goods or services are either not available on State contract or are available at a price equal to or less than the price on the State contract.
- Purchase must be made through an Alabama vendor, holding a AL business license, if such a vendor exists.

Purchasing Cooperatives

- The Code of Alabama 1975, Section 16-13B-2
- Cooperatives must be approved by the EPA in advance.
- Written procedures on obtaining approval on the EPA website
- Letters for approved cooperatives on the EPA website
Approved Cooperatives as of May 4, 2017

- U.S. Communities
- The Cooperative Purchasing Network (TCPN)
- National IPA
- National Joint Powers Alliance (NJPA)
- National Cooperative Purchasing Alliance (NCPA)
- Houston-Galveston Area Council (H-GAC)
- E&I Cooperative Services

- Current approval is through November 30, 2017

Public Works and Co-ops

- There is no exception in the Public Works Law for the utilization of Purchasing cooperatives!

Public Works Law
Legal Authority

- Code of Alabama 1975, Section 39-1-1 et seq.
- Applies to any governmental board, commission, agency, body, authority, instrumentality, department, or subdivision of the state, its counties and municipalities.

Legal Authority

Applies to any construction, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, repaired, renovated, or maintained on public property and to be paid, in whole or part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.

Expenditure Threshold

$50,000
Public Works Contracts < $50K
For contracts of less than fifty thousand dollars ($50,000) in amount, the governing body of the contracting agency, to expedite final payment, shall cause notice of final completion of the contract to be published one time in a newspaper of general circulation, published in the county of the contracting agency and shall post notice of final completion on the agency's bulletin board for one week, and shall require the contractor to certify under oath that all bills have been paid in full. Final settlement with the contractor may be made at any time after the notice has been posted for one entire week.

Advertising Requirements
- Advertise in a newspaper of general circulation in the county - once each week for three consecutive weeks
- Additional requirement for contracts over $500,000 - once in 3 newspapers of general circulation throughout the state

Bid Lists
All vendors who have requested to bid
Bid Bonds/Cashier’s Check

- Must be drawn on an Alabama bank or surety company.
- At least 5% of bid, not to exceed $10,000

Performance Bonds

A bond equal to 100% of the contract must be furnished within 15 days of the contract being presented to the bidder for signature.

Payment Bond

A bond equal to 50% of the contract plus reasonable estimate of attorney’s fees.
Only One Bid Received
May negotiate downward

Length of Contract Terms
No term limits

Provision for In-County Vendors
No provision
Provisions for Mistakes by Vendors

- Clerical or calculation errors - low bidder must provide written notice of withdrawals within 3 days
- Awarding entity has 10 days after receipt to reach decision
- Withdrawing bidder cannot work on project in any way

Project Completion

- Contractor must give notice of project completion by advertising 4 successive weeks in a newspaper of general circulation published in the county
- A final settlement shall not be made with the contractor until the expiration of 30 days after the completion of the notice.
- The contractor is to provide proof of publication of the notice was made by affidavit of the publisher and a printed copy of the notice published.
- If no newspaper is published in the county in which the work is done, the notice may be given by posting at the courthouse for 30 days, and proof of same shall be made by the judge of probate, sheriff, and the contractor.

Provisions for Retainage

- No more than 5% of estimated work done and value of materials shall be retained up to 50% of work completed
- No additional retainage withheld after 50% of work completed
- Retainage held until project completion and acceptance
Professional Services

Architects, Engineering, Project Management Services - exempted from the bid process

Emergencies

- No advertising required
- Must still follow other requirements - per Code 39-2-2(e)

Sole Source

- Satisfaction of State Building Commission
- Recommended by Architect or Engineer
- Maintain documentation for public inspection
Force Account

If awarding entity uses own labor and equipment, materials and supplies fall under regular bid law.

Questions

Contacting the Department

- Located in the Gordon Persons Administrative Building at 50 North Ripley Street, Room 3201 in Montgomery, AL
- Mailing Address – P. O. Box 30225
  Montgomery, AL 36130-2251
- Phone – (334) 242-9200
- Fax – (334) 242-1775
- Email – info@examiners.alabama.gov
- Website – www.examiners.alabama.gov
The End

That's all Folks!