

LSFM Program
School Law – Contracts/Purchasing

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Contracts and Purchasing

Official interpretation of particular questions or situations should be obtained through the board's legal council, the Alabama Department of Education, or the Examiners of Public Accounts.

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Contracts and Purchasing

Competitive Bid Law
Public Works Law
Public Contracts

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Contracts and Purchasing

State laws relating to school finance

- Alabama Code
- SDE Administrative Code
- AG Opinions

Local board policies/procedures

- Rules and regulations

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Alabama Competitive Bid Law

Legal Authority

Code of Alabama 1975, Section 16-13B
 Applies to County and City Boards of Education

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Code of Alabama Title 16 EDUCATION

Chapter 13B COMPETITIVE BIDDING FOR CERTAIN CONTRACTS OF COUNTY AND CITY BOARDS OF EDUCATION

- [Section 16-13B-1](#) Applicability; local preference zone; joint agreement; bid bond.
- [Section 16-13B-2](#) Exceptions to competitive bidding requirements.
- [Section 16-13B-3](#) Emergency action.
- [Section 16-13B-4](#) Notice of proposed purchase; bids; reverse auction procedures.
- [Section 16-13B-5](#) Collusive agreements.
- [Section 16-13B-6](#) Advance disclosure of bid terms.
- [Section 16-13B-7](#) Defaulting bidder; award to second lowest responsible bidder; preferences; sole source specification; life cycle costs; rejection of bids; lease-purchase contracts.
- [Section 16-13B-8](#) Bond requirement.
- [Section 16-13B-9](#) Assignment of contract.
- [Section 16-13B-10](#) Conflict of interests; violations.
- [Section 16-13B-11](#) Action to enjoin execution of contract

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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

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Alabama Competitive Bid Law

Individual purchases less than \$15,000 may be subject to competitive bidding if a school board can reasonably expect to purchase more than \$15,000 for like items during the year.

School districts may have local policies and procedures more restrictive than bid law.

School systems may purchase items without bidding by purchasing from the state bid list; however, a school system may not purchase items without bidding on the grounds that a vendor's price is less than the state bid list.

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Legal Requirement

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



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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

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Advertising Requirements

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

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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

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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

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Rejection of a Bid

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

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Documentation of Results

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

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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)

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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.

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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

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Provisions for Mistakes by Vendors

There are no provisions in the law for mathematical mistakes by vendors.

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Joint Purchasing

16-13-B-1

- Governing bodies of two or more boards (or county commission/municipality) may purchase jointly.
- Each governing body must approve joint purchasing agreement and details by resolution.
- A Joint Purchasing Agent may be designated.

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Items Exempt from Requirements

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

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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.

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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
- Existing contracts for renewal of sanitation or solid waste collection, recycling, or disposal and those providing the service

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Items Exempt from Requirements (cont.)

- Computer hardware which is only type compatible with hardware already owned/Custom software
- Security related services/products which impact upon the security of persons, structures, facilities or infrastructures.
- Service or commodity for which there is only one vendor or supplier
- Product whose price is regulated and established by state law

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Items Exempt from Requirements (cont.)

- ❑ Purchases made by individual schools of county or city schools systems from moneys other than those raised by taxation or received through appropriations.
 - ❑ Purchases of unprocessed agricultural products as defined in subsection b of Section 16-1-46.
- *Act 2017-421 Any federal funds received for school nutrition programs may be used for purchases pursuant to subdivision (14) of Section 16-13B-2

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Items Exempt from Requirements (cont.)

Purchases of goods or services, other than voice or data wireless communication services, made as a part of any purchasing program only if all of the following occur: (Act 2016-298)

- a) The goods or services are available as a result of a competitive bid process approved by the Examiners of Public Accounts.
- b) The goods or services are either not available to local boards of education on the state purchasing program or are available at a price equal to or less than that on the state purchasing program.
- c) The purchase is made through a participating Alabama vendor holding an Alabama business license.

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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

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Public Works and Co-ops

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

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Section 16-1-8.1

Classroom instructional support.

(a) For purposes of this section, classroom instructional support means all elements of classroom instructional support as provided in the Foundation Program, with the exception of textbook funds, as specified in Sections 16-6B-10 and 16-13-231, including, but not limited to, library enhancement, student materials, professional development, technology, common purchases, and other classroom instructional support approved by the State Board of Education.

All funds allocated in the Foundation Program for library enhancement, student materials, technology, professional development, and common purchases shall be spent only for the purpose for which they were allocated. Library media specialists shall be consulted in budgeting all library enhancement funds.

(b) The procedures for ordering, and the regulations applying to, classroom instructional support shall be as follows:

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(1) BUDGET COMMITTEE.

(2) APPROVAL BY TEACHERS.

(3) DUTIES OF LOCAL SUPERINTENDENT

(4) TIMELINESS.

(5) PERMISSIBLE EXPENDITURES. Monies allocated for classroom instructional support may be spent for classroom instructional support purposes only, to be used either by classroom teachers or students in each teacher's respective classes. It shall be permissible to expend these monies on instructional equipment and electrical equipment which is actually utilized with students in the teacher's classroom. Funds provided per school for common purchases shall be expended according to the decisions of the local school budget committee.

All monies allocated and expended shall be consistent with the latest plans for professional development and technology developed at the local school level by the principal and the faculty and submitted by the local board of education to the State Superintendent of Education pursuant to Section 16-13-231(b)(1)e.

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(6) COMPETITIVE BIDS AND VOUCHERS. Each local board of education may purchase classroom instructional support in bulk pursuant to the state competitive bid law. The board may also authorize each school or individual teachers to purchase materials and supplies, instructional equipment, and electrical equipment for classroom instruction by the voucher system, with no one item exceeding the sum of seven thousand five hundred dollars (\$7,500). The local board shall establish and require proper accounting procedures and safeguards for purchases by the voucher system.

(7) POLICIES AND PROCEDURES. Policies and procedures shall be developed and implemented to insure that each teacher receives his or her full allocated amount for classroom instructional support in conjunction with the approved budget in a timely manner after each order is placed. Procedures and policies utilized and adopted to implement this section shall be established and determined prior to the beginning of the school year by each local board with recommendations from the organization representing the majority of employees as provided in Section 16-1-30.

Legislative Monies

Must be used for an educational purposes
 Competitive Bid Law does apply
 Are considered PUBLIC funds
 Records of expenditures should be maintained at local schools (should be handled at system level)

Competitive Bid Law

Questions ???

When faced with questions- Seek advice

- Legal Counsel
- Examiners of Public Accounts
- Alabama Department of Education

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Public Works Law Title 39 Code of Alabama

- Applies to any governmental board, commission, agency, body, authority, instrumentality, department, or subdivision of the state, its counties and municipalities.

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Title 39 PUBLIC WORKS

- [Chapter 1](#) GENERAL PROVISIONS.
- [Chapter 2](#) LETTING, EXECUTION, AND ADMINISTRATION OF PUBLIC IMPROVEMENTS CONTRACTS BY STATE AGENCIES GENERALLY.
- [Chapter 3](#) USE OF DOMESTIC PRODUCTS AND RESIDENT WORKMEN FOR PUBLIC WORKS, IMPROVEMENTS, ETC.
- [Chapter 4](#) ACTIONS OR PROCEEDINGS UPON PUBLIC WORKS OR IMPROVEMENTS CONTRACTS IMPROPERLY LET OR EXECUTED.
- [Chapter 6](#) CONSTRUCTION OF PUBLIC BUILDINGS WITH RADIOACTIVE FALLOUT PROTECTION.
- [Chapter 7](#) IMPROVEMENT AUTHORITIES.
- [Chapter 8](#) FAIR AND OPEN COMPETITION IN GOVERNMENTAL CONSTRUCTION ACT

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Public Works (cont.)

- 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.

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Expenditure Threshold

- \$50,000
- Section 39-2-2 (a) – “No public work...involving a sum in excess of \$50,000 shall be split into parts involving sums of \$50,000 or less for the purposes of evading the requirements of this section.”

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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 (additional) newspapers of general circulation throughout the state



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Emergencies

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

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Sole Source

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



The screenshot shows the Alabama Building Commission website. The header includes the state seal and the text "STATE OF ALABAMA BUILDING COMMISSION". A navigation menu on the left lists various services. The main content area is titled "Welcome to the Alabama Building Commission" and contains several bullet points and links regarding the commission's functions, such as "The Commission's primary function involves promulgating and enforcing the State Building Code through plan review, inspection and issuing the final certificate of occupancy for legal finished construction." and "The State Building Code applies to the following: State Buildings and Construction, Schools (Public and Private), Manufactured Homes, Mobile Home Trailers, and Movers or Collection of Construction Industry Craft Training Fees (Act 2010-200)." There are also links for "Click here to pay fees online" and "Additional Guidance on Storm Shutters Required by the 2015 International Building Code".

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School Construction Projects

- Board Approval
- The Awarding Authority of a public construction or improvement project that is to be supervised and administered by the ABC shall employ the services of registered architects and engineers in accordance with Title 34, Chapter 2
- Plan design approval
- Inspections


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Self Work Projects


- ❑ An organization cannot build a structure on Board property without Board approval
- ❑ Self-Performed
 - District Employees
 - Parent Support Organization
- ❑ Organization provides funding for project
 - In whole or partial

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Self Work Projects



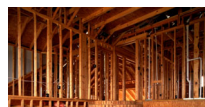
- ❑ Procedures for capital projects
 - Any building, building/land improvement on a school district campus should be approved by the board of education.
 - Board employee should be in charge of project.
 - Must follow federal, state and local laws, codes, procedures and guidelines.
 - Should follow same process on all projects regardless of funding.



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Self-Performed Work

- ❑ Must comply with Building Commission requirements
 - Full professional design team required
 - Plan review and approval required
 - Architect required to perform inspections
 - Building Commission will conduct required inspections including Final Inspection
 - Compliance with *PublicWorks Law* or *Competitive Bid Law* will be applicable in most situations



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Contracts

- Personnel/Employment
- General Operations
- Bid Contracts/Agreements
- Construction
- Professional Services
- Statement of Work
- Others

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Contracts

- By law, the Board has the authority to contract
- Should have a contract review process in place for district and local school

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Contracts and Public Works

Questions ???

- When faced with questions- Seek advice
 - Legal Counsel
 - Examiners of Public Accounts
 - Alabama Department of Education

1) The expenditure threshold for the competitive bid law is:

- a. \$7,500
- b. \$15,000
- c. \$5,000
- d. \$20,000

2) Purchase or service contracts are limited under the Alabama Competitive Bid Law for schools to :

- a. 3 years
- b. 5 years
- c. 1 year
- d. 10 years

3) BOE are required to advertise in the local newspaper for any contracts under the Competitive Bid Law

- a. True
- b. False

4) Which of the following services/goods is not exempt under the Competitive Bid Law:

- a. Accountants
- b. Textbooks
- c. Security Products
- d. Legislative Monies

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5) The expenditure threshold for the Alabama Public Works Law is"

- a. \$50,000
- b. \$75,000
- c. \$10,000
- d. \$25,000

6) Lease of copiers is subject to the Competitive Bid Law

- a. True
- b. False

7) Parent organization can build baseball concession/press box on campus without board approval/state inspections:

- a. True
- b. False

8) Any compensation paid to an existing employee should be paid through payroll:

- a. True
- b. False

9) Which of the following services/goods is exempt under the Competitive Bid Law:

- a. Emergency repair of HVAC in school
- b. Local school fundraiser
- c. Monies from the county commission for athletics

10) I can now advise my principal on financial matters related to contracts and purchasing at the local school level.

- a. True
- b. False

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