

**Requirements For
Alabama School Boards
To Comply With State Bid Laws and
Federal Procurement Regulations**

Alabama ASBO
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Bid Requirements in State Laws

- Alabama Competitive Bid Law §16-13B-1, et.al.
- Information Technology Joint Purchasing Agreements §16-61E-1. et.al.
- Public Works Law §39-1-1, et.al.
Requests For Proposals Not Bids Required for:
- Guaranteed Energy Cost Savings Contracts §41-16-140, et.al.

Public Works

- Contracts for public works projects of less than \$50,000 are **not** subject to competitive bidding under the Public Works Law.
- Purchases for public works projects using school board employees for routine maintenance and repair jobs are subject to the Competitive Bid Law if the purchases exceed \$15,000.

Joint Purchasing of Information Technology

- Each school system's technology coordinator has access to the SDE's web site that contains joint purchasing contracts for Alabama school boards.
- School boards can also enter into joint purchasing agreements with colleges and universities for information technology.

State Bid Law

- For the procurement of goods and services of \$15,000 or more state law requires school boards to select a vendor by a sealed bid process.
- The \$15,000 threshold is not limited to a single purchase but applies to the aggregate purchase of \$15,000 or more of like items over a period of time, generally one year.

State Bid Law

- Purchases can be made from the state bid list without bidding by the school board.
- **NOTE :**
A law passed in 2004 that allows the purchase from a local vendor without bidding if the price is less than the state bid price does **not** apply to school boards.

State Bid Law

- Purchases can be made from specified national purchasing cooperatives without the school board requesting sealed bids.
- The national purchasing cooperatives that are allowable for school boards to use are specifically approved by the State Examiners of Public Accounts.

State Bid Law

- Purchasing from a vendor without competitive bidding is allowable if a school board specifies that the vendor is a sole source of the goods or services and the documentation required by the competitive bid law is maintained.

State Bid Law

- Required sole source documentation:
- Good or services are of an indispensable nature.
 - All other viable alternatives have been explored.
 - Only these will fulfill the purpose. (Not frivolous.)
 - No other vendor can provide substantially equivalent goods or services that will accomplish the purpose for which the goods or services are required.
 - All sole source documentation of sole source determination is maintained.

Federal Procurement Regulations

1. Procurement by micro-purchases.
2. Procurement by small purchase procedures.
3. Procurement by sealed bids.
4. Procurement by competitive proposals.
5. Procurement by sole source procedures.

Federal Procurement Regulations

- Micro-purchase procurement is a single transaction for acquiring supplies or services that does not exceed the **micro-purchase threshold** (currently \$10,000). To the extent practical, the school board must distribute purchases equitably among qualified suppliers.
 - **No quotes or competitive bids unless required by state bid laws. (See Examples 1 and 2.)**

Federal Procurement Regulations

- Small purchase procedures apply to the procurement transactions for materials and supplies that exceed the **micro-purchase threshold** (currently \$10,000) but does not exceed the **simplified acquisition threshold** (currently \$250,000).
 - **Price quotes but no sealed bids required except for purchases by Alabama school boards over state bid threshold of \$15,000. (See Example 3 and 4.)**

Federal Procurement Regulations

- Sealed bids are required for purchases of materials, supplies and equipment that exceed the *simplified acquisition threshold* (currently \$250,000), however:
 - **Alabama school boards must follow the sealed bid procedures contained in the State Competitive Bid Laws for most purchases over \$15,000.**

Federal Procurement Regulations

- Competitive proposals are required for certain transactions that exceed the *simplified acquisition threshold* (currently \$250,000).
 - **Alabama school boards would use their own written competitive proposal procedures for those professional service contracts that are exempt from the State Competitive Bid Law requirements. (See Example 5.)**

Federal Procurement Regulations

- Sole source procurement:
- After solicitation from a number of sources competition is determined inadequate, or
 - Federal agency or pass-through entity approves written request for sole source, or
 - Competition process would delay emergency need, or
 - Item is only available from a single source. (See Example 6.)

Federal Procurement Regulations

- The U.S. Department of Education provided guidance on price quotes for small purchase procedures:
 - School boards can decide the “adequate” number (**more than one**) of documented quotes from qualified sources, as well as the method of obtaining quotes (e.g., it can be in writing, orally, vendor price list on website, or generated online search engine.) No cost or price analysis is required.

Federal Procurement Regulations

- School boards are encouraged to use intergovernmental agreements for procurement.
- In addition to using state and regional bid programs, school boards may use specified national purchasing cooperatives if the vendor contracts comply with the federal procurement requirements.

Federal Procurement Regulations

- Vendors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals are excluded from competing for such procurements.
- Competition cannot be restricted by specifying only a “brand name” product instead of allowing “an equal” product.

Example 1

- 1. A federal program issues a purchase order for \$2800 in copier paper.
 - a) State bid law would apply if school board funds (including the federal funds) will purchase \$15,000 or more in copier paper during the year. The school board could issue requests for sealed bids, purchase from the state bid list approved vendor, utilize a vendor through membership in a regional purchasing cooperative, or use a vendor contract on an approved national purchasing cooperative.

Example 2

- 2. A federal program issues a purchase order for \$1800 to purchase VHS players.
 - a) If no school board funds will be used to purchase additional VHS players (or like items) during the year then no quotes or bid requirements would apply.

Example 3

- 3. A federal program issues a purchase order for \$14,200 to purchase VHS players.
 - a) If no school board funds will be used to purchase additional VHS players (or like items) during the year then no state bid requirements would apply. Two or more price quotes would be obtained to meet the federal requirements.

Example 4

- 4. A federal program issues a purchase order for \$18,600 to purchase VHS players.
- a) State bid threshold requirements would apply. The school board may advertise for sealed bids, use the state bid list, or use one of the allowable purchasing programs.

Example 5

- 5. A federal program plans to contract with consultants for a professional development program for teachers (Estimate-\$280,000).
- a) State bid requirements would not apply. The school board will request proposals for the professional service contract that will be awarded under a technical evaluation process in accordance with federal regulations and written board policies.

Example 6

- 6. A federal program plans purchase a 3-D printer for \$21,500 that, according to the vendor, is only available from that vendor.
- a) If required, the school board must obtain prior approval from the awarding agency. Requirements for sole source purchases in the state bid law would apply.

Example 7

- 7. A federal program approved budget application allows for contracting for the repair of an air conditioning unit that will cost \$32,500.
- a) The state competitive bid law would not apply because the contract is covered by the Public Works Law. Two or more price quotes would be obtained to meet the federal requirements.

State Competitive Bid Law

- Competitive Bidding For Certain Contracts Of County and City Boards of Education §16-13B-1 to §16-13B-11
- Some provisions are different from bid laws for state agencies, colleges, universities, county and city governments.
- The Examiners' web site [Resources-Publications and Other Information] has a manual called *Alabama Competitive Bid and Public Works Laws*.

State Competitive Bid Law

- Covers bid requirements for transactions of \$15,000 or more (excluding public works) for
 - expenditures for labor, services, or work;
 - the purchase or lease* of materials, equipment, supplies, or other personal property.
- *where the school board becomes legally or contractually bound to pay a total of \$15,000 or more.**

State Competitive Bid Law

- A joint purchasing agreement, approved by the governing bodies, may be made by two or more county or city school boards, counties, or municipalities (or county or city instrumentalities) provided the bid requirements for the governing bodies are followed.

State Competitive Bid Law

- The local preference zone allows the school board to award a responsible bid for personal property that is **up to 3%** more than the lowest responsible bid to a local bidder.
- Before advertising for bids, a school board can set the local preference zone that extends beyond the legal boundaries of the school board to include the bidders having a place of business in the core based statistical area (CBSA) of the school board.

State Competitive Bid Law

- The school board has the option to include a requirement in the bid specifications that the bidder is required to provide a bid bond with the bid if available from a surety company.
- The bid bond protects the school board from bidders who decline to contract for the bid price and specifications when bids are opened. (Unless the lowest responsible bidder withdraws prior to bid award due to a mistake in the bid.)

State Competitive Bid Law

- Instead of a bid bond from a surety company, bidders may substitute postal money orders, certified checks, cashier's checks, irrevocable letters of credit, or certain bonds or U. S. treasury notes but **never** a personal check or company check.

State Competitive Bid Law

- A bond for faithful performance of the awarded contract may be required in the bid specifications.
- No contract awarded to the lowest responsible bidder can be assignable by the bidder without written consent of the school board and the contract cannot be assigned to a bidder who was rejected as an irresponsible bidder.

State Competitive Bid Law

- Advertising for bids is not required.
- Two requirements for bid solicitation:
 - Post notice on bulletin board outside purchasing office.
 - Send notice by mail to all vendors who have filed a written request for that they be notified when particular items are being bid. However the vendor can be removed for failing to respond to the previous three notifications.

State Competitive Bid Law

- For emergencies a school board must still follow bid law requirements except public advertisement. (No bulletin board posting.)
- The school board must make a written public declaration that provides the reasons for determining that an emergency exists that affects the public health, safety, or convenience to not advertise for bids.

State Competitive Bid Law

- The school board may provide notice of the bid solicitation for any length of time and by other additional manners including:
 - School board web site.
 - Other web sites.
 - E-mail notifications to potential bidders.
 - Notification by telephone or mail.

State Competitive Bid Law

- A school board can bypass sealed bidding by using a reverse auction procedure under the procedures established by the State Examiners.
- Even though we added this provision in the bid law in 2008, school boards have not been utilizing this bidding procedure.

State Competitive Bid Law

- Bids must be sealed when received.
- Bids must be opened on the date and on the hour stated in the bid notice.
- All original bids and bid documents are open to public inspection.
- All bid documentation (including reasons why the lowest bidder was not awarded a contract) must be retained for seven years after the date of bid opening.

State Competitive Bid Law

- Expenditures subject to the bid law require a contractual agreement entered into by free and open competitive bidding by sealed bids to the lowest responsible bidder.
- Legal decisions generally defer to the awarding agency in the determination of the lowest responsible bidder.

State Competitive Bid Law

- Considerations in determining the lowest responsible bidder include:
 - Conformity with specifications.
 - Quality of goods or services for the intended purpose (including references from other entities).
 - Delivery terms.
 - Dates of delivery.
 - Additional costs associated with the delivery of goods or services.
 - Assessment of bidders ability to meet contract terms for entire contract period.

State Competitive Bid Law

- Splitting contracts that are subject to the bid law into smaller transactions to avoid the competitive bidding requirements is illegal and voids the contracts. (Legal opinions state that a purchase order is a contract.)

State Competitive Bid Law

- If only one responsible bid is received the bid may be accepted or may be rejected and the transaction may be negotiated provided that the negotiated price is lower than the responsible bid amount.
- The bid law and legal opinions do not address the issue of no bids received.

State Competitive Bid Law

- The school board may terminate the contract awarded to the lowest responsible bidder and award the remaining contract term to the next the lowest responsible bidder under certain conditions.

State Competitive Bid Law

- For contracts subject to the Competitive Bid Law, the length of contracts is restricted to:
 - No more than 5 years for the purchase of personal property or contractual services.
 - No more than 10 years for lease-purchase contracts.
- [Length of contracts does not apply to transactions that are made under one of the bid law exemptions.]

State Competitive Bid Law

- Purchases made by utilizing one of the national or regional purchasing cooperatives approved by the State Examiners (or GSA vendors) are exempt from competitive bidding if:
 - The purchase is not a voice or data wireless communications service.
 - The goods or services are not on the state bid list or the cost does not exceed the state bid.
 - The purchase is made through a participating Alabama vendor holding an Alabama business license if such a vendor exists. (Does not apply to GSA vendors.)

State Competitive Bid Law

- The bid law includes an exclusion for purchases made by individual schools from funds other than those raised by taxation or received through appropriations from state and local sources.
- This exclusion includes public and non-public funds received from fundraisers and donations from non-government sources.

State Competitive Bid Law

- Competitive bids are not required for purchases from governmental agencies. and
- There are numerous other exceptions to the state competitive bid law but only a few apply to federal and CNP procurement.

State Competitive Bid Law

- Additional exemptions:
 - Utility Services.
 - Insurance.
 - Fiscal advice or services.
 - Professional services.
 - Manuscripts, books, maps, pamphlets or periodicals.
 - Renewal of existing contracts for sanitation or solid waste.
 - Personal property when the use of competitive bids is impossible.
 - Unprocessed agricultural products under specified conditions.
 - Contractual services or products having an impact upon the security or safety of persons, structures, facilities, or infrastructures. (But not if public works project over \$50,000.)

Legal Issues

- Contracts divided into parts less than \$15,000 in order to avoid competitive bid requirements are void.
- A contract for a beverage vendor to provide a scoreboard in return for an exclusive concessions arrangement must be competitively bid.

Legal Issues

- The purchase of used equipment is subject to the competitive bid law.
- A school board cannot purchase equipment, the cost of which meets the competitive bid requirements, from an auction.

NOTE: Competitive bids are not required for purchases from governmental agencies.

Legal Issues

- The 3% local resident bidder preference applies only to the purchase of personal property.
- There are no provisions in the bid law to allow awarded bidders to increase prices because of mathematical mistakes in the bid or to insert escalation clauses not provided in the bid specifications.

Public Works Law

- The Public Works Law includes provisions not found in the Competitive Bid Law including performance bonds, payment bonds, resident bidders, and advertising in newspapers.
- The law has specific provisions that must be followed so legal counsel is usually required.

Public Works Definition

- *“The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.”*

Public Works Projects

- Contracts for public works projects of less than \$50,000 are **not** subject to competitive bidding under the Public Works Law.
- Public works projects of \$50,000 or more would usually involve an architect.
- Some of the public works projects that may not require an architect include:
 - Security fences.
 - Paving parking lots.
 - Painting contracts.

Public Works Law

- Exceptions in the Competitive Bid Law do not apply to public works projects.
- Under certain conditions there are exceptions for:
 - Security or safety projects approved by the Alabama Homeland Security Department.
 - Contracts for architectural, engineering, construction management, program or project management services.
 - Heating or air conditioning units or systems under approved purchasing cooperatives. (Act No. 2018-413)

**LEA Fiscal Accountability
On the SDE Website**

- *www.alsde.edu*
- Select *Department Offices* tab on the left-hand side near the top of the screen.
- Under Office of Supporting Programs select "*LEA Fiscal Accountability*"
- Select "*Bid Law and Purchasing*"

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