

83-00172

OFFICE OF THE ATTORNEY GENERAL



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STATE OF ALABAMA

FEB 3 1983

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Honorable G. William Noble
Mayor
City of Gardendale
Post Office Box 889
Gardendale, Alabama 35071

Municipalities - Competitive
Bid Law

1. Specifically enumerated goods and services are subject to the competitive bid requirement if the purchase is for an amount in excess of \$2,000.00.

2. An Attorney General's Opinion protects from liability only the official to whom it is directed.

Dear Mayor Noble:

This is in answer to your request of January 10, 1983, for an Attorney General's opinion. In your request, your first question was whether or not competitive bids are required on the following items:

- a. Prisoner meals
- b. Police uniforms
- c. Gasoline and diesel fuel
- d. Asphalt
- e. Uniform rental service
- f. Concrete and Pipe
- g. Slag
- h. Tires

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Your second question was whether the opinions of the Attorney General apply equally to all cities or are they limited to the city or individual making the request.

In order to answer your first question, Code of Alabama 1975, §41-16-50, et seq., must be examined. The pertinent part of §41-16-50 is as follows:

All expenditures of funds of whatever nature for labor, services or work, or for the purchase or lease of materials, equipment, supplies or other personal property involving \$2,000.00 or more, made by or on behalf of...the governing bodies of the municipalities of the state...shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids...

Section 41-16-51 enumerates the type purchases to which the competitive bid law does not apply. Since none of the goods or services listed in your question are excepted from the competitive bid law by §41-16-51, all the items listed must be purchased through competitive bids when the amount involved exceeds \$2,000.00.

It should be noted that §41-16-54(d) prohibits the division of purchases or contracts involving amounts in excess of \$2,000.00 into parts involving amounts of \$2,000.00 or less for the purpose of avoiding the competitive bid law. In an Opinion to the Honorable Charles Sprayberry, Ed.D., Superintendent of Education, Tuscaloosa County Board of Education, under date of May 18, 1982, this office further explained the §41-16-54(d) prohibition of the division of purchases or contracts. A copy of that opinion is enclosed for your convenience.

As to your second question, Code of Alabama 1975, §36-15-19 provides as follows:

The written opinion of the attorney general, heretofore or hereafter secured by any officer, board, local governing body or agency legally entitled to secure such opinion, shall protect such officer and the members of such board, local

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governing body or agency to whom it is
directed or for whom the same is secured
from liability to either the state,
county or other municipal subdivisions of
the state because of any official act or
acts heretofore or hereafter performed as
directed or advised in such opinion.

(Emphasis added).

Hence, an opinion issued by this office serves to
protect from liability only the official or governing body to
whom it is directed.

We hope this response sufficiently answers your
questions. If we may be of further assistance, please do not
hesitate to contact us.

Very truly yours,

CHARLES A. GRADDICK
Attorney General

By-



LEURA J. GARRETT
Assistant Attorney General

CAG/LJG/db

OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
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STATE OF ALABAMA

MAY 18 1982

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Honorable Charles Sprayberry, Ed. D.
Superintendent of Education
Tuscaloosa County Board of Education
Post Office Box 2568
Tuscaloosa, AL 35403

Contracts - Competitive Bid Law -
Boards of Education

No purchase or contract involving an amount in excess of \$2,000.00 shall be divided into parts involving amounts of \$2,000.00 or less for the purpose of avoiding the requirements of this article. All such partial contracts involving \$2,000.00 or less shall be void. See § 41-16-54(d), infra.

Dear Mr. Sprayberry:

In a recent letter addressed to this office you made the following request:

"R E S O L U T I O N

"WHEREAS the Tuscaloosa County Board of Education was cited in its last audit, October 1, 1977 through September 30, 1980, by the Department of Examiners of Public Accounts for purchases of like items from a vendor within a period of one year, and

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Superintendent of Education
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"WHEREAS the Tuscaloosa County Board of Education has and continues to shop prudently for such items as are necessary for the daily operation of the school system, and

"WHEREAS the Tuscaloosa County Board of Education feels that it is impractical to solicit bids on such items as maintenance and operational materials that vary in cost from day to day, and there is extreme difficulty in knowing what quantity will be needed for the entire year, and

"WHEREAS it is extremely difficult to plan purchases for such materials that span a full year and store them because of a lack of warehousing, and

"WHEREAS the bid process requires a definite amount of time to be implemented, and

"WHEREAS vendors must build into a bid that spans a great length of time charges that are sufficient to cover cost increases thus raising their bids to protect themselves against inflation

"THEREFORE BE IT RESOLVED that the Tuscaloosa County Board of Education, meeting in regular session on April 12, 1982, voted unanimously to request the Attorney General's opinion on the time frame for purchases of materials and supplies for the normal day to day operation of this school system without taking bids.

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Superintendent of Education
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"How much time must expire between purchases of like maintenance items of less than \$2,000 before the bid law takes effect, or must we take bids on all items whose composite cost over the entire year will exceed \$2,000?"

Code of Alabama 1975, § 41-16-54, reads in pertinent part as follows:

"(d) No purchase or contract involving an amount in excess of \$2,000.00 shall be divided into parts involving amounts of \$2,000.00 or less for the purpose of avoiding the requirements of this article. All such partial contracts involving \$2,000.00 or less shall be void."

There is no specific time frame in which purchases of like items must be made pursuant to competitive bid. The test is whether or not the purchases are split in order to avoid taking bids and not whether a certain number of days has lapsed between purchases. However, the time period between purchases is a circumstance, but not the only circumstance, which may be considered in an effort to determine if purchases were split in order to avoid taking bids. It is not possible to delineate all possible situations which might arise but perhaps the following two hypothetical situations might be instructive:

- 1.) On October 1, 1982, the purchaser is aware that he will need an item costing \$1700.00. The purchaser has no knowledge that he will need additional like items. He purchases the \$1700.00 item on November 1, 1982.

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Superintendent of Education
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Subsequent to the purchase unforeseen circumstances dictate the purchase of another like item. There is no legal requirement that bids be taken on either purchase regardless of whether the second purchase is made on November 7, 1982 or May 7, 1983. The reason is that the purchases were not split in order to avoid taking bids.

- 2.) On October 1, 1982, the purchaser is aware that he will need like items costing in excess of \$2000.00 during the school year. The purchaser knows these are items which could easily be bought on November 1, 1982, and stored. However, the purchaser does not wish to solicit bids and therefore makes purchases of the items on a monthly basis. In my opinion these monthly purchases are made in violation of § 41-16-54(d), supra.

In the final analysis each purchase must stand on its own set of facts when deciding if the purchase was split into parts in order to avoid taking bids.

Some of the circumstances which you mentioned in your request, namely, difficulty in knowing what quantity will be needed for an entire year, difficulty storing items, and the fact that vendors figure inflation costs into bids that span a great length of time, are certainly relevant. In my opinion such circumstances are arguments for the need to take bids on a quarterly basis rather than arguments for alleviating the necessity for bids altogether. Items such as janitorial supplies, automotive parts, paper products and some petroleum products are probably more suitable for quarterly bids.

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Superintendent of Education
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The competitive bid law has two primary purposes. First to obtain quality products and services at the lowest possible price. Second to give all vendors an equal opportunity to do business with public agencies. As a general matter of good business practice all purchases, regardless of price, should be made pursuant to competitive bid where practical. However, there may be instances where purchases of like items exceeding \$2000.00 within one year cannot with any reasonable effort be made pursuant to competitive bid. If you feel that some of your purchases fall into this category you should contact the appropriate officials with the Department of Examiners of Public Accounts for their advice and fully document your reasons for not soliciting bids.

If I may be of any further assistance to you regarding this matter, please do not hesitate to contact me.

Very truly yours,

CHARLES A. GRADDICK
Attorney General

By-

Patrick L. Robinson

PATRICK L. ROBINSON
Assistant Attorney General

PLR:db