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STATE OF ALABAMA

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Honorable Ellie B. Glasscox
Superintendent
Shelby County Board of Education
410 East College Street
Columbiana, Alabama 35051

Boards of Education - Competitive
Bid Law - Contracts

Contractual service contracts of
local governing bodies are limited
to three (3) years pursuant to Code
of Alabama 1975, Section
41-16-57(e).

Dear Sir:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

Under the provision of Section 41-16-57, Code of
Alabama, may a board of education enter into a
multi-year performance contract which extends
beyond a three (3) year period of time?

FACTS AND ANALYSIS

Code of Alabama 1975, Section 41-16-57(e), 1988 Cumulative
Supplement, states:

"Contracts for the purchase of personal property
shall be let for periods not greater than one
year, and contracts for the purchase of contrac-
tual services shall be let for periods of not
greater than three years. Lease-purchase
contracts shall let for periods of not greater
than five years."

The Shelby County Board of Education desires to solicit proposals for a multi-year performance contract for the acquisition and installation of certain equipment that will modify their building envelopes to effect savings in energy operation cost in the county school system. The "work project" consists of the implementation of twenty-six (26) energy conservation measures in seventeen (17) buildings located at nine (9) campus facilities.

The request for proposal is structured to utilize grants received from the Department of Energy and administered by the Alabama Department of Economic and Community Affairs. These grants will be used as a partial or down payment to the contractor, with the balance of the total project cost to be paid over "some period of time" from savings realized by the implementation of the specific energy conservation measures. Savings are to be computed periodically and payments to the contractor, based on savings, will be made no more frequently than savings are calculated.

In your specifications and project manual dated September 15, 1988, it is provided in Section 00060, 3.02, A, 1, that "the percentage share of savings paid to the contractor may vary during the term of the agreement, but shall not be greater than 80%. The term of the shared savings agreement shall not exceed seven (7) years or eighty-four (84) months." Section 00060, 4.11, A, provides that "shared savings payments shall continue until a) the paid-from-savings maximum has been fully paid to the contractor, b) until the end of the term of the energy services contract, or c) the owner buys-out the balance of the energy services contract, whichever event comes first.

The "term" of the initial implementation contract is to extend through acceptance of the "work", final payment to the contractor, or expiration of the one (1) year warranty period on any component of the work, whichever shall last occur. The energy services contract term shall commence at signature of the contract by both parties and continue for a period of years or months measured from the date of acceptance of the work.

From the foregoing information pertaining to the length of your multi-year performance contract, it is apparent that the total time envisioned for this contract will far exceed the limitation of three years imposed by Section 41-16-57(e), supra, and you wish to know if the limitation of three years can be exceeded. It is my opinion that the limitation of three years for contractual service contracts for the Shelby County Board of Education cannot be exceeded.

In a discussion of the limitation period of one-year for contracts of contractual services by state departments, in an opinion dated August 3, 1984, to Honorable Henry B. Steagall, II, Director of Finance, this office stated:

"In an opinion of the Attorney General to the Honorable Bruce Gargis, Chairman of the Colbert County Commission dated September 14, 1976, it

was concluded that a personal service contract for that county was limited to a period of three (3) years. Three years is the time limitation for contracts for the purchase of contractual services by local governing bodies found at Code of Alabama 1975, Section 41-16-57(e). This conclusion can be compared to the question at hand in that the time period for contractual service contracts of the State and state departments is limited to one (1) year as set out by Section 41-16-27(d) just as the time period for contractual service contracts of local governing bodies is limited to three (3) years by Section 41-16-57(e)."

CONCLUSION

Three years is the time limitation for contracts for the purchase of contractual services by local governing bodies in accordance with Code of Alabama 1975, Section 41-16-57(e).

I hope that this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By:



BRUCE CYR
Assistant Attorney General

DS/BC/dh