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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Public Works Law - Newspapers -
Notices - Municipalities - Contracts -
St. Clair County

If the Town of Argo obtained a good-faith estimate that the project was less than \$500,000, it was not required to advertise in three newspapers of general circulation throughout the state. Even if this requirement applied, under the facts outlined, the town substantially complied with the Public Works Law and the town may proceed with the executed contract.

Dear Mr. Holladay:

This opinion of the Attorney General is issued in response to your request on behalf of the Town of Argo.

QUESTION

Given the circumstances of letting a contract for construction of a municipal complex, after advertising in one newspaper of general circulation that resulted in Internet publication statewide, has the Town of Argo "substantially complied" with the Public Works Law, and therefore, may it proceed with the executed contract as legally valid and binding?

FACTS AND ANALYSIS

Your request states as follows:

The Town of Argo, Alabama, is a municipality located primarily in St. Clair County and partially in Jefferson County. In the summer of 2007, the town began the process of construction of a municipal complex that would include the town hall, a fire station, and a senior citizen center. It was anticipated this project would cost approximately \$800,000 to complete.

One phase of this construction involved finishing out the interior of the municipal complex building. Anticipating that the cost of this work would be below \$500,000, the Town of Argo posted notice for bids on a bulletin board outside the town clerk's office (the Town of Argo has no purchasing office) and further advertised for bids on this work in *The Birmingham News*. The *News* advertisement ran once, on February 28, 2008, and requested that bids be submitted until March 14, 2008. *The Birmingham News*, *Mobile Press-Register*, and *Huntsville Times* are affiliated with the Internet service al.com, which publishes the content of these newspapers statewide. By advertising in the *News*, the Argo ad was published online statewide by way of al.com.

Consequently, the town received four sealed bids on the project, the lowest being \$553,481.00. The latter bid was accepted, a contract for the work was entered into, and work was begun by the contractor. Upon discovery of the possible failure to properly advertise under section 39-2-2(a) of the Code of Alabama, the Town of Argo stopped work on the now partially completed interior work and has not paid the contractor.

The Public Works Law, codified at section 39-2-1, *et seq.*, of the Code of Alabama, applies to public works contracts for more than \$50,000. ALA. CODE § 39-2-1 to 39-2-14 (1992 & Supp. 2007). Section

39-2-2(a) provides that, “[w]ith the exception of the Department of Transportation, for all public works contracts involving an *estimated amount* in excess of five hundred thousand dollars (\$500,000), awarding authorities shall also advertise for sealed bids at least once in three newspapers of general circulation throughout the state.” ALA. CODE § 39-2-2(a) (Supp. 2007) (emphasis added). This advertising requirement applies to contracts estimated to involve an amount in excess of \$500,000. Your request states that the project was anticipated to be less than that amount. If the town obtained a good-faith estimate to that effect, it did not have to meet the requirement to advertise in three newspapers of general circulation throughout the state.

Even if the requirement did apply, the town met the “substantial compliance standard” applicable to the bid laws. The Alabama Supreme Court has held that a public contract “must *substantially comply* with the requirements of the Competitive Bid Law.” *Beavers v. County of Walker*, 645 So. 2d 1365, 1373 (Ala. 1994); *Kennedy v. City of Prichard*, 484 So. 2d 432, 434 (Ala. 1986) (emphasis added). In *Owens v. Bentley*, 675 So. 2d 476 (Ala. Civ. App. 1996), the Alabama Court of Civil Appeals found substantial compliance, even though the awarding authority did not engage in any statutory advertising for the second request for bids, directing the second request at only the two vendors that responded to the first request for bids.

This Office has applied this line of cases in opinions to Honorable Joe McInnes, Director, Alabama Department of Transportation, dated May 19, 2005, A.G. No. 2005-136 and to Honorable Melba Patton, Mayor, Town of South Vinemont, dated October 31, 2003, A.G. No. 2004-018. The *McInnes* opinion considered the additional requirement in section 39-2-2(a) that the state advertise “once each week for three consecutive weeks in a newspaper of general circulation in the county or counties in which the improvement, or some part thereof, is to be made.” ALA. CODE § 39-2-2(a) (Supp. 2007). Although ads were ordered in newspapers in the two counties where the projects were located, one newspaper misplaced the order. That opinion concluded there was substantial compliance where there were sophisticated methods of notice to potential bidders aimed at the very audience interested in those projects (direct mailings, Internet postings, and Dodge Reports) and three bids were received. The *Patton* opinion concluded there was substantial compliance, despite ads in only two of the requisite three newspapers of general circulation in the state, where there was an ad in a third newspaper, the project was posted locally, on the Internet, and with Data Fax and the Dodge Room, 14 companies requested plans and specifications, and six bids were received.

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Under the circumstances outlined by the town in this case, given the good-faith effort made to advertise for sealed bids and the open and competitive response received by the town (four bona fide sealed bids), it is the opinion of this Office that the town substantially complied with the Public Works Law and that a court could find that the contract is legally valid and binding.

CONCLUSION

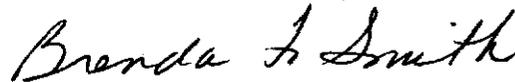
If the Town of Argo obtained a good-faith estimate that the project was less than \$500,000, it was not required to advertise in three newspapers of general circulation throughout the state. Even if this requirement applied, under the facts outlined, the Town of Argo substantially complied with the Public Works Law and the town may proceed with the executed contract.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

TK/GWB

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