2010-048

STATE OF ALABAMA
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March 4, 2010

Honorable Barry Mask
Member, House of Representatives
1860 Emerald Mountain Parkway
Wetumpka, Alabama 36093

Public Works – Municipalities – Competitive Bid Law – Parks and Recreation – Elmore County

The purchase and placement of sod by a contractor for the construction of a softball complex is a public works project.

Dear Representative Mask:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Would the purchase and placement of sod by a contractor for the City of Wetumpka be a public works project?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the City of Wetumpka is in the process of building a new girl's softball complex. The city council has determined that sod is needed for these fields. Your question contemplates whether this purchase and work would be considered a public works project.

Section 39-2-1(5) of the Code of Alabama defines "public works" as follows:

> ***The* 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 in part, with public funds*** or with financing to be retired with public funds in the form of lease payments or otherwise.

ALA. CODE §39-2-1(5) (Supp. 2009) (emphasis added).

The Public Works Law is applicable to public works contracts in excess of $50,000. ALA. CODE § 39-2-2 (Supp. 2009). This Office has previously determined that the construction of a municipal golf course is subject to the Public Works Law and not the Competitive Bid Law. Opinion to Honorable Timothy D. Littrell, Attorney, Town of Courtland, dated December 8, 1998, A.G. No. 99-00056. This Office has also determined that the purchase of lights for a ballpark as a part of a contract for the construction or renovation of the ballpark is subject to the Public Works Law, but the sole purchase of lights for a ballpark would be the purchase of goods or equipment subject to the Competitive Bid Law. Opinion to Honorable Phil Crigler, Member, House of Representatives, dated February 28, 2000, A.G. No. 2000-099.

This Office has noted that "maintenance" under the Public Works Law is "'[t]he care and work put into property to keep it operating and productive; general repair and upkeep.'" Opinion to Honorable E. Shane Black, Attorney, City of Pinson, dated January 22, 2009, A.G. No. 2009-033, *citing* opinion to Honorable Renee Culverhouse, Interim Chancellor, Alabama Department of Postsecondary Education, dated May 3, 2007, A.G. No. 2007-089, at 3 (*quoting Black's Law Dictionary* 973 (1999)).

Based on the facts as presented, it is the opinion of this Office that the purchase and placement of sod as part of the construction or renovation of public property being styled to accommodate a softball complex is a public works project. Projects of this nature that are $50,000 or less may be let with or without advertising or sealed bids. *Culverhouse* at 1.

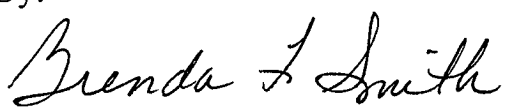
CONCLUSION

The purchase and placement of sod by a contractor for the construction of a softball complex is a public works project.

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

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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