



2011-058

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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May 6, 2011

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Honorable Todd J. Adams
Chairman, Coosa County Commission
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Public Works Law – Newspapers –
Advertising – Competitive Bid Law –
Contracts

Under the facts outlined, the Coosa County Commission substantially complied with the Public Works Law, and the county may enter into the proposed contract.

Dear Mr. Adams:

This opinion of the Attorney General is issued in response to your request on behalf of the Coosa County Commission.

QUESTION

Given that the advertisement for sealed bids ran in two newspapers of general circulation throughout the state, and bids were opened later than advertised, has the Coosa County Commission “substantially complied” with the Public Works Law so that it may award the contract to the lowest responsible bidder?

FACTS AND ANALYSIS

Your request states as follows:

Based upon estimates for completing a courthouse renovation project being in excess of \$500,000, plans were initiated to obtain sealed bids from potential contractors. A bid opening date was selected for April 7, 2011, and this information, along with other required

information, was advertised in a newspaper of general circulation in the county on March 18, March 25, and April 1, 2011. The same information was also advertised in two newspapers of general circulation throughout the state on March 18, 2011. On March 28, 2011, a decision was made to postpone and reschedule the bid opening date to April 12, 2011. This change was made on March 29, 2011, by issuing a written addendum of the plans and specifications to each potential bidder who previously requested plans and specifications for the project.

Based upon the newspaper advertising and contacts made to potential bidders, a total of seven firms obtained plans and specifications. Three of these firms submitted sealed bids on April 12, 2011.

The Coosa County Commission set May 10, 2011, as the date to make its decision to award the contract to the lowest responsible bidder or to proceed otherwise.

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. 2010). Section 39-2-2(a) provides, in part, as follows:

With 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. The advertisements shall briefly*** describe the improvement, state that plans and specifications for the improvement are on file for examination in a designated office of the awarding authority, state the procedure for obtaining plans and specifications, [and] ***state the time and place in which bids shall be received and opened All bids shall be opened publicly at the advertised time and place.***

ALA. CODE § 39-2-2(a) (Supp. 2010) (emphasis added).

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 concluded that there was substantial compliance in a number of public works opinions, despite less than the full advertising required for large contracts such as in this opinion, and less than the full advertising also required by section 39-2-2(a) for all county contracts in a newspaper of general circulation in the county. Opinions to Honorable Hugh E. Holladay, Attorney, Town of Argo, dated July 10, 2008, A.G. No. 2008-106; Honorable Joe McInnes, Director, Alabama Department of Transportation, dated May 19, 2005, A.G. No. 2005-136; and Honorable Melba Patton, Mayor, Town of South Vinemont, dated October 31, 2003, A.G. No. 2004-018.

The county complied with most of the requirements of the statute. It placed ads in two of the requisite three newspapers of general circulation in the state, the ads stated the bid opening date, and the bids were opened publicly. Although the opening date was moved, it was a minor delay of less than one week, and it was merely delayed, not moved forward, which would not have prevented potential bidders responding to the ads from submitting a timely bid. Moreover, the county directly contacted the seven companies that requested plans and specifications, and, similar to *Owens*, the county notified them of the new date.

The purpose of publicly opening the bids at the time and place advertised is to give bidders the opportunity to witness the opening to help reduce the possibility of irregularity. Here, all those who requested bid packages, including the three that submitted bids, were notified of the change, and therefore, the purpose was achieved, and no one was prejudiced by the slight delay.

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

CONCLUSION

Under the facts outlined, the Coosa County Commission substantially complied with the Public Works Law, and the county may enter into the proposed contract.

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

Sincerely,

LUTHER STRANGE
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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