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Honorable Bernard H. Eichold II
Health Officer
Mobile County Health Department
251 North Bayou Street
Post Office Box 2867
Mobile, Alabama 36652-2867

Health, County Boards of – Competitive Bid Law – Disclosure Act – Vendors – Mobile County

A single disclosure statement filed each fiscal year by a vendor awarded multiple contracts, grants, or purchase orders does not satisfy the requirements of section 41-16-82 of the Code of Alabama.

Dear Dr. Eichold:

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

QUESTION

Does a single disclosure statement filed each fiscal year by a vendor awarded multiple contracts, grants, or purchase orders satisfy the requirements of section 41-16-82 of the Code of Alabama?

FACTS AND ANALYSIS

According to your request, the Mobile County Health Department ("Department") is an agency of the State of Alabama with over 400 employees, nine clinical locations, a budget in excess of $30,000,000, and does repetitive business with many vendors throughout the year. Currently, each vendor is required to submit a disclosure statement for every single proposed contract, grant, or purchase order awarded that is over $5000. You state that this requirement is burdensome, and you inquire as to whether a single disclosure

statement filed each year by a vendor receiving multiple contracts, grants, or purchase orders satisfies the requirements of section 41-16-82 of the Code.

Section 41-16-82 of the Code was originally enacted as part of Act 2001-955, wherein the Legislature found and declared "that information currently available to the public does not include the disclosure of all persons who for the purpose of financial gain submit a proposal, bid, contract, or grant proposal to the State of Alabama." ALA. CODE § 41-16-80 (Supp. 2013). To address this issue, the Legislature included section 41-16-82, which states as follows:

> (a) This article shall only apply in cases where the proposed grant or proposed contract at issue exceeds five thousand dollars ($5,000).
>
> (b) All persons who, for the purpose of direct financial gain, submit a proposal, bid, contract, or grant proposal to the State of Alabama, shall include a disclosure statement developed by the Attorney General and approved by the Legislative Council. The disclosure statement shall not be required for contracts for gas, water, and electric services where no competition exists, or where rates are fixed by law or ordinance. In circumstances where a contract is awarded by competitive bid, the disclosure statement shall be required only from the person receiving the contract and shall be submitted within 10 days of the award.

ALA. CODE § 41-16-82 (Supp. 2013).

This Office finds no authority in section 41-16-82 or the rest of the Code that permits the Department to accept a single disclosure statement for multiple contracts, grants, or purchase orders. To the contrary, section 41-16-82 of the Code specifically mandates that, in the case of a contract awarded by competitive bidding, the disclosure statement "shall be submitted ***within 10 days of the award***." *Id.* (emphasis added).

Additionally, section 41-16-83 of the Code sets forth the information required on the disclosure statement. ALA. CODE § 41-16-83 (Supp. 2013). The information required is extensive and includes the names, addresses, and family members of public officials and public employees who have a family relationship with the vendor, or his or her employees, "who may directly personally benefit from the contract, proposal, request for proposal, invitation to bid, or grant proposal." *Id.* The Code further requires a "description of any financial benefit that may be knowingly gained" and "the names and address of any paid consultant or lobbyist" for the award. *Id.*

The disclosure statements are required to be made under oath and subject to penalty of up to $10,000. ALA. CODE § 41-16-86 (Supp. 2013). The disclosure statements are public records and a copy thereof must be provided to the Department of Examiners of Public Accounts. ALA. CODE § 41-16-85 (Supp. 2013). If the disclosure statement pertains to a state contract, it must also be submitted to the Contract Review Permanent Oversight Committee. *Id.*

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex parte Ala. Dep't of Mental Health & Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002). Over the course of a fiscal year, the information required to be included in a disclosure statement may change dramatically such that a disclosure statement filed at the beginning of a given fiscal year would be materially different from a disclosure statement filed at the end of that same fiscal year. Such a result would defeat the stated purpose of the Legislature to accurately disclose persons who may benefit from state contracts.

CONCLUSION

A single disclosure statement filed each fiscal year by a vendor awarded multiple contracts, grants, or purchase orders does not satisfy the requirements of section 41-16-82 of the Code of Alabama.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
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