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STATE OF ALABAMA
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Honorable E. Shane Black
Attorney, Board of Commissioners
Limestone County Communications District 911
Hand Arendall, LLC
102 South Jefferson Street
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Emergency Management Communications –
Districts – Competitive Bid Law – Contracts
– Exemptions

If the Limestone County Communications District 911 (“District”) determines that the purchase of a computer-aided dispatch (“CAD”) system with a mapping component would impact the safety or security of persons and structures within the E-911 system, then it is the opinion of this Office that such a purchase would be exempt from the Competitive Bid Law pursuant to section 41-16-51(a)(15) of the Code of Alabama.

Dear Mr. Black:

This opinion of the Attorney General is issued in response to your request on behalf of the Limestone County Communications District 911.

QUESTION

Does the District’s purchase of a new computer-aided dispatch software system (with mapping component) fall within the bid law exception set forth in section 41-16-51(a)(15) for the “purchases of products related to, or having an impact upon, . . . the security or safety of persons, structures, facilities or infrastructures?”

FACTS AND ANALYSIS

The Limestone County Communications District 911 is an emergency communications district, typically referred to as an “E-911 district,” created and operating pursuant to sections 11-98-1 through 11-98-15 of the Code of Alabama. ALA. CODE § 11-98-1 to § 11-98-15 (2008, Supp. 2013). In your letter of request, you informed this Office that part of the function of the District necessarily includes its ability to quickly and accurately track the precise location of a call, collect information about the call, and relay that information to emergency responders. The District’s ability to quickly and effectively perform these tasks is frequently essential to the security and safety of the emergency caller. Currently, the District uses a computer-aided dispatch (“CAD”) software system and a mapping software that works with the CAD software. In your letter of request, you credit the CAD and mapping software for giving the District the ability to effectively execute the key functions previously referenced.

The District seeks to purchase a new CAD system and questions whether the purchase of this software would fit within the bid law exception found in section 41-16-51(a)(15) of the Code. Section 41-16-51(a)(15) states as follows: “Contractual services and purchases of products related to, or having an impact upon, security plans, procedures, assessments, measures, or systems, **or the security or safety of persons, structures, facilities, or infrastructures.**” ALA. CODE § 41-16-51(a)(15) (Supp. 2013).

This particular exception was added pursuant to Act 2004-487. This act also added similar exceptions to the Public Records Law, Public Works Law, and the Open Meetings Act. Research reveals no case law interpreting these exceptions.

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997). This provision exempts from competitive bidding contractual services and purchases of products that are related to or have an impact on the safety or security of persons or structures. The term “related” is defined as “having relationship: connected by reason of an established or discoverable relation: having similar properties.” WEBSTER’S THIRD INTERNATIONAL DICTIONARY 1916 (2002). The term “impact” is defined as “an impelling or compelling effect.” *Id.* at 1131.

Accordingly, although the routine purchase of office supplies by a public safety entity would not be related to or have an impact upon the safety of persons, the purchase of software that locates emergency callers with pinpoint accuracy may have an impact upon public safety. This, however, is a factual determination that the awarding authority must make. In doing so, the awarding authority should consider these definitions and be mindful that such a determination is reviewable

by the courts and may not be arbitrary, unreasonable, or capricious. *See Anderson v. Fayette Cnty. Bd. of Educ.*, 738 So. 2d 854, 857 (Ala. 1999), quoting *Union Springs Tel. Co. v. Rowell*, 623 So. 2d 732 (Ala. 1993).

The foregoing notwithstanding, the purchase of the software may also be exempt from the bid law requirements if such software is considered custom as expressed in section 41-16-51(a)(11) of the Code of Alabama. *See, generally*, opinion to Honorable R.L. Campbell, Chairman, Morgan County Emergency Management Communications District, dated December 6, 1994, A.G. No. 95-00046. This provision states the following: “**Purchases of** computer and word processing hardware when the hardware is the only type that is compatible with hardware already owned by the entity taking bids and **custom software.**” ALA. CODE § 41-16-51(a)(11) (Supp. 2013).

Although these provisions may provide a method by which the Limestone County E-911 System may avoid the competitive bidding process, this Office has historically taken the position that it is better to follow the competitive bidding process in acquiring goods and services, even if the acquisition can be found to fall within the purview of one of the exemptions. *Campbell* at 4.

CONCLUSION

If the District determines that the purchase of a CAD system with a mapping component would impact the safety or security of persons and structures within the E-911 system, then it is the opinion of this Office that such a purchase would be exempt from the Competitive Bid Law pursuant to section 41-16-51(a)(15) of the Code.

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

Sincerely,

LUTHER STRANGE
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division