



# 2015-008

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
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November 3, 2014

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Honorable James A. Patton  
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201 North Main Street  
Tuscumbia, Alabama 35674

County Commissions – Public Works –  
Contracts – Renewals

A project for maintenance of multiple water tanks that exceeds \$50,000 is subject to the Public Works Law. The project may not be divided into parts.

The tank maintenance contract cannot be renewed without competitive bidding.

Dear Mr. Patton:

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

### QUESTIONS

(1) Would multiple contracts between the Colbert County Commission and one service provider for tank maintenance to be provided on a custom maintenance program per tank be subject to the Public Works Law if each individual contract was less than \$50,000 per year?

(2) Would such a contract that contains an automatic annual renewal for a fixed number of years violate the Public Works Law?

### FACTS AND ANALYSIS

Your request states as follows:

Colbert County has seven water storage tanks across the county. Each tank has a customized maintenance plan for its age, condition, and style. The county desires to enter into seven individual contracts with the same service provider for the maintenance and regular oversight for each tank. Each tank would have a customized maintenance schedule and plan. The proposed schedule would contemplate regular maintenance over a number of years, with certain services to be provided each year per each contract. No individual contract would exceed \$50,000 per year, and each contract would be renewable annually unless cancelled by the county.

The Public Works Law, codified at section 39-2-1, *et seq.*, of the Code of Alabama, controls all public works contracts that exceed \$50,000 and requires that such contracts be competitively bid. ALA. CODE §§ 39-2-1 to 39-2-14 (2012 & Supp. 2014). A tank maintenance contract that is in excess of \$50,000 is subject to the Public Works Law. Opinions to Honorable Fred O. Ferguson, Chairman, Stewartville Water Authority, dated August 25, 2009, A.G. No. 2009-100; Honorable Craig L. Williams, Attorney, Parrish Water and Sewer Board, dated November 29, 2001, A.G. No. 2002-072.

No public works contract may be split into parts involving sums of \$50,000 or less for the purpose of evading the Public Works Law. ALA. CODE § 39-2-2(a) (Supp. 2014). Previous opinions of this Office considering section 39-2-2(a) and its companion provisions in the Competitive Bid Law for state agencies [ALA. CODE § 41-16-24(e) (Supp. 2014)], and the Competitive Bid Law for local agencies [ALA. CODE § 41-16-54(f) (Supp. 2014)], are instructive.

In addressing maintenance projects for interior and exterior painting for the facilities of the various campuses of the two-year colleges in Alabama, this Office cautioned that the Alabama Department of Postsecondary Education “should not enter into multiple \$50,000 contracts with a single entity or person.” Opinion to Honorable Renee Culverhouse, Interim Chancellor, Alabama Department of Postsecondary Education, dated May 3, 2007, A.G. No. 2007-089 at 4. This Office has also advised that the ability to foresee the need to purchase like items exceeding the threshold for bidding is an important factor. Opinions to Honorable Iva Nelson, City Clerk/Treasurer, City of Gadsden, dated March 11, 2003, A.G. No. 2003-098; Honorable Charles Sprayberry, Superintendent of Education, Tuscaloosa County Board of Education, dated May 18, 1982, A.G. No. 82-00343. “In the final analysis each purchase must stand on its own set of facts when deciding if the purchase was split into parts in order to avoid taking bids.” *Sprayberry* at 4.

Your request shows that the county is well aware of the ongoing annual maintenance needs of the county's water tanks. Moreover, you present no facts indicating, and the county engineer informed this Office that there is no reason why, the maintenance of the various tanks cannot be combined into a single contract. Therefore, this project may not be divided into parts. If the total cost of the annual maintenance for all of the tanks exceeds \$50,000, the project must be competitively bid under the Public Works Law.

Regarding your second question, the Competitive Bid Law for local agencies also exempts solid waste renewal contracts from its provisions. ALA. CODE § 41-16-51(a)(10) (2013). This Office has observed that there is no comparable statute in the Public Works Law authorizing the renewals of contracts. Opinion to Honorable V. Edward Freeman, II, Attorney, Warrior River Water Authority, dated February 8, 2000, A.G. No. 2000-078. Thus, that opinion concluded that, "[a]bsent statutory authority, construction contracts cannot be renewed without compliance with . . . the public works law." *Id.* at 2. It is noted, however, that the tank maintenance contract need not be just an annual contract. Unlike the Competitive Bid Law for local agencies, which imposes a three-year limit on contracts [ALA. CODE § 41-16-57(f) (2013)], "[a] public works contract is not subject to a limitation on the length of the contract term." *Williams* at 5.

#### CONCLUSION

A project for maintenance of multiple water tanks that exceeds \$50,000 is subject to the Public Works Law. The project may not be divided into parts.

The tank maintenance contract cannot be renewed without competitive bidding.

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

Sincerely,

LUTHER STRANGE  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division