



# 2015-044

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Roy W. Williams, Jr.  
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for Cullman County  
Jackson and Williams  
416 First Avenue, Southeast  
Cullman, Alabama 35055

Competitive Bid Law – Emergency  
Management Communications –  
Computer Equipment – Exemptions –  
Districts

The 911 Board of Commissioners for Cullman County (“Board”) may enter a contract for software, hardware, and training to enhance its existing mapping system without competitive bidding if the Board determines that the purchase is for custom software; hardware that is the only type compatible with the existing system; contractual services that are impossible to award by competitive bidding; or contractual services having an impact on the security or safety of persons, structures, facilities, or infrastructures.

Dear Mr. Williams:

This opinion of the Attorney General is issued in response to your request on behalf of the 911 Board of Commissioners for Cullman County.

QUESTION

Must the 911 Board of Commissioners for Cullman County competitively bid software,

hardware, and training necessary to enhance its existing mapping system?

### FACTS AND ANALYSIS

The Board has determined that new technology exists that would enable the Board to upgrade its current mapping system. These upgrades would improve public safety by reducing response time for emergency services. The current system was originally written for the Board by its current software servicer and has been continuously maintained by that vendor. A new company, working in partnership with the current servicer, has developed software that is compatible with the current mapping system. The new software is an extensive custom map-data conversion tailored to be compatible with the current system. It will basically overlay the current system with minimum need for new hardware. The cost, however, of the software, hardware, installation, training, and maintenance exceeds the \$15,000 threshold required for competitive bidding. The cost includes less than 20 percent for new hardware, but more than 30 percent for training.

Generally, purchases made by emergency 911 boards that exceed \$15,000 are required to be competitively bid. ALA. CODE § 41-16-50 (2013). Section 41-16-51 of the Code, however, enumerates several exceptions from the bidding requirement. ALA. CODE § 41-16-51 (2013). In a previous opinion to Honorable Mark D. Ryan, this Office summarized, as follows, the exceptions that may be applicable to a purchase made by an emergency 911 board:

(1) Contracts for professional services are exempt from competitive bidding pursuant to section 41-16-51(a)(3).

(2) Custom software, i.e., software that requires substantial creative work by a professional to comply with unique specifications or software built to the specifications of the buyer, is exempt from the Competitive Bid Law pursuant to section 41-16-51(a)(11), if the local entity determines that the software is custom.

(3) Contractual services and purchases that, by their very nature, are impossible to

award by competitive bidding pursuant to section 41-16-51(a)(13).

(4) Contractual services related to the security plans or having an impact on the safety and security of persons are exempt from competitive bidding pursuant to section 41-16-51(a)(15).

Opinion to Honorable Mark D. Ryan, Attorney, Crenshaw County 911 Board of Directors, dated April 10, 2014, A.G. No. 2014-053 at 6. (internal citations omitted).

Purchases of computer hardware that are the only type compatible with the current hardware of an entity are also exempt from competitive bidding. ALA. CODE § 41-16-51(a)(11) (2013). Furthermore, this Office has previously explained that professional services, as contemplated by section 41-16-51(a)(3), includes contracts for training or maintenance where there is particularized expertise that is “inextricably intertwined” with the purchase of equipment and software otherwise exempt from competitive bidding. Opinion to Honorable Thomas T. Gallion, III, Attorney, Montgomery County Commission, dated September 23, 2005, A.G. No. 2005-197.

Accordingly, if the Board determines that the proposed contract involves custom software; hardware that is the only type compatible with the existing system; contractual services that, by their nature, are impossible to award by competitive bidding; or contractual services and purchases of products that have an impact on the security or safety of persons, structures, facilities, or infrastructures, then the purchase may be made without competitive bidding. Moreover, if the Board determines that the training and maintenance to be performed by the vendor is inextricably intertwined with the system being purchased, then the purchase of the entire system, including training and maintenance, is also exempt from competitive bidding. *Id.*; opinion to Honorable Guy F. Gunter, III, Attorney, City of Opelika, dated September 9, 2005, A.G. No. 2005-192; opinion to Honorable Michael W. Haley, Commissioner, Alabama Department of Corrections, dated February 1, 2001, A.G. No. 2001-089; opinion to Dr. Richard Morison, President, Alabama A&M University, dated April 30, 1984, A.G. No. 84-00263.

CONCLUSION

The 911 Board of Commissioners for Cullman County may enter a contract for software, hardware, and training to enhance its existing mapping system without competitive bidding if the Board determines that the purchase is for custom software; hardware that is the only type compatible with the existing system; contractual services that are impossible to award by competitive bidding; or contractual services having an impact on the security or safety of persons, structures, facilities, or infrastructures.

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  
Chief, Opinions Division