

OFFICE OF THE ATTORNEY GENERAL



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STATE OF ALABAMA

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Honorable Maxey J. Roberts
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Colleges and Universities -
Competitive Bid Law - Contracts -
Engineers

The University of South Alabama
should not award the job of
installing the air conditioning
system to the company of which
the consulting engineer for the
job, serves as president.

Dear Ms. Roberts:

Reference is made to your request on the behalf of the University of South Alabama for an opinion from the Attorney General regarding a certain bid for the installment of an air conditioning system at the University of South Alabama Medical Center.

The following facts are gathered from your request: After determining that the air conditioning system in the operating room of the Medical Center was inadequate, the University requested a local consulting engineer to provide plans and specifications for work in contemplation of bids. Although there was no written agreement, the consulting engineer is usually paid a percentage of the cost of the job. After the specifications and plans were drawn by the consulting engineer, bids were requested for the project. When the bids were received, the lowest bid came from the company whose president is the same individual who served as the consulting engineer for the job.

The following question was then presented for consideration by the Attorney General:

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"Because the individual who had developed the plans and specifications for the work was the low bidder on the job, and because of the potential questions relating to collusion and/or conflict of interest or other general violations of the bid law, we have requested your opinion as to whether the bid can, under the laws of the State of Alabama, be awarded to the low bidder, although the low bidder did prepare the plans and specifications."

Your question is to be answered in the negative. It is the opinion of the Attorney General if the consulting engineer for the project in question is awarded the job, there would be an inherent conflict of interest present. The consulting engineer in making a bid and being awarded the job of installing the air conditioning system would have an undue advantage over the other bidders. The engineer in designing the system and drawing up the specifications and plans could design the system so that he would be in an advantageous and favorable position to obtain the job. Natural rivalry and competition among the bidders would be restrained in violation of public policy. Furthermore, as stated in your request, part of the job of the consulting engineer includes serving in that capacity while the system is being installed. The consulting engineer in most cases supervises the installation of the system and approves it after it has been installed. For the engineer to do so when his company is installing the system could produce a situation which would be disadvantageous to the University. Therefore, the Attorney General concludes that the University of South Alabama should not award the job of installing the air conditioning system to the company of which the consulting engineer for the job serves as president.

If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By:



LYNDA K. OSWALD
Assistant Attorney General