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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable James Allen Main  
Director of Finance  
Room N-105  
State Capitol Building  
Montgomery, Alabama 36130

Competitive Bid Law - Exemptions -  
Public Corporations - Health Care  
Authorities Act - State Departments and  
Agencies - Health Care Authorities Act of  
1982

The Alabama Competitive Bid Law, section 41-16-20, *et seq.*, of the Code of Alabama, governs the purchase of goods and services by state entities enumerated therein. A public corporation organized under the provisions of "The Health Care Authorities Act of 1982" is exempt from the Competitive Bid Law under section 22-21-335 when the public corporation purchases goods and services. Even if the public corporation is not subject to the Competitive Bid Law, it must comply with the bid specifications, including any bid bond requirements, to be considered a responsive bidder when the public corporation submits a bid in response to an invitation for bids.

Dear Mr. Main:

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

### QUESTION

Is a public corporation operating a hospital under the provisions of "The Health Care Authorities Act of 1982" exempt from the provisions of the Alabama Competitive Bid Law when it acts as a bidder/seller of goods and services?

### FACTS AND ANALYSIS

Your request includes the following facts:

The awarding authority under the Alabama Competitive Bid Law is the Division of Purchasing of the Department of Finance. A state agency has received responses to an invitation to bid issued pursuant to the Alabama Competitive Bid Law, section 41-16-20, *et seq.*, of the Code of Alabama. The low-dollar bidder is a public corporation operating a hospital under "The Health Care Authorities Act of 1982" ("the Act"), which was enacted by Act 82-418 and codified at section 22-21-310, *et seq.* Among the mandated documents to be submitted by each bidder and to be included in its bid response was a bid bond. The low-dollar bidder failed to include the required bid bond; however, the bidder argues that the Act exempts it from compliance with the Competitive Bid Law. The exemption is found at section 22-21-335 of the Code of Alabama, which provides as follows:

"The provisions of Articles 2 and 3 of Chapter 16 of Title 41 shall not apply to any authority, the members of its board or any of its officers or employees."

Section 41-16-20 of the Code of Alabama defines the types of transactions that require competitive bidding by entities of the State of Alabama. It states, in pertinent part, as follows:

[A]ll contracts of whatever nature for labor, services, work, or for the purchase or lease of materials, equipment, supplies, or other personal property, involving

seven thousand five hundred dollars (\$7,500) or more, made by or on behalf of any state department, board, bureau, commission, committee, institution, corporation, authority, or office shall, except as otherwise provided in this article, be let by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.

ALA. CODE § 41-16-20(a) (2000). Section 41-16-28 of the Code requires that a performance bond must be submitted with the bid in an amount specified in the advertisement for bid. ALA. CODE § 41-16-28 (2000). Your request states that the invitation to bid also required a bid bond to be submitted with the bid. A bid bond essentially guarantees that the bid price will not change. This bond is a different bond than the performance bond required under section 41-16-28 of the Code. The bid bond is specifically required under the bid specifications used by the Division of Purchasing and was stated as a requirement in the invitation for bids.

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); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). The statutory provisions contained in article 2 of chapter 16 of title 41 (containing sections 41-16-20 through 41-16-32 of the Code of Alabama) are, by their clear language, directed to governing the purchase and procurement by covered state entities, including public corporations, of goods and services valued at \$7500 or more.

The only mention of bidders/sellers of goods and services within article 2 of Chapter 16 are restrictive in nature – section 41-16-25 prohibits collusion among bidders; section 41-16-26 prohibits advance disclosure to a bidder or bidders of the terms of a bid; section 41-16-28 requires a bidder to submit a performance bond with its bid response; and section 41-16-29 restricts the assignment of a “contract awarded to the lowest responsible bidder” to a third party. ALA. CODE §§ 41-16-25, 41-16-26, 41-16-28, & 41-16-29 (2000). Section 41-16-31 of the Code provides for a civil action to enjoin the execution of a contract, and section 41-16-32 of the Code provides that article 2 is cumulative and repeals laws in conflict therewith. ALA. CODE §§ 41-16-31, 41-16-32 (2000). All the substantive provisions of article 2 of the Alabama Competitive Bid Law specifically address requirements to be met by State entities in the purchase of goods and services. The law does not address exemptions for entities

responding to invitations to bid or situations where the public entity is a bidder/seller of the goods and services.

Section 22-21-335 expressly exempts public corporations organized under its provisions from the application of the Alabama Competitive Bid Law. This section provides that a public corporation organized under these provisions is not subject to the Competitive Bid Law when the public corporation purchases goods or services. In this circumstance, a state agency that is subject to the Competitive Bid Law sought bids for goods or services to be purchased by that agency. A public corporation operating a hospital under the provisions of "The Health Care Authorities Act of 1982" submitted a bid in response to the invitation to bid. The public corporation is a bidder/seller of goods and services and is not purchasing goods or services. Your request states that the public corporation was the lowest bidder but did not include a bid bond as required in the invitation for bids. The public corporation asserts that it is not required to submit a bond and that it is not subject to the Competitive Bid Law.

The Alabama Competitive Bid Law is intended to allow the State of Alabama to purchase goods and services from the lowest-dollar bidder meeting all the specifications, as well as all terms and conditions of the bid. A "responsive" bidder is not defined in the Competitive Bid Law, but is defined in the Public Works Law as "one who submits a bid that complies with the terms and conditions of the invitation for bids," including any bid bond requirements. ALA. CODE § 39-2-6 (Supp. 2004). When the bid specifications require a bid bond, the bidder must meet those specifications to be considered a responsive bidder. Accordingly, even if the public corporation is not subject to the Competitive Bid Law, it must comply with the bid specifications, including any bid bond requirements, to be considered a responsive bidder under the Competitive Bid Law.

This Office has stated that the Competitive Bid Law is not applicable to a contract for the purchase of goods and services between a state agency and another governmental entity. Opinion to Honorable Tandy D. Little, Jr., Administrator, Alabama Alcoholic Beverage Control Board, dated January 4, 1991, A.G. No. 91-00131. If a state agency, however, chooses to solicit bids, it is the opinion of this Office that a governmental entity that submits a bid in response to that invitation must comply with the bid specifications.

#### CONCLUSION

The Alabama Competitive Bid Law, section 41-16-20, *et seq.*, of the Code of Alabama, governs the purchase of goods and services by state entities

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enumerated therein. A public corporation organized under the provisions of "The Health Care Authorities Act of 1982" is exempt from the Competitive Bid Law under section 22-21-335 when the public corporation purchases goods and services. Even if the public corporation is not subject to the Competitive Bid Law, it must comply with the bid specifications, including any bid bond requirements, to be considered a responsive bidder when the public corporation submits a bid in response to an invitation for bids.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING  
Attorney General

By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/MS

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