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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Competitive Bid Law - Fire
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County

A written proposal on the outside of
a sealed bid made prior to the bid
opening can be considered part of
the bid proposal.

Dear Mr. Nix:

This opinion of the Attorney General is issued in response to your
request on behalf of the Huguley Water, Sewer, and Fire Protection
Authority.

QUESTIONS

May a written proposal, on the exterior of
an envelope in which a bid is contained, made
prior to the opening of the bid be considered as
part of the bid proposal? Has the Attorney Gen-
eral's former opinion in this regard changed in
the light of the revisions to the Competitive Bid
Law?

FACTS AND ANALYSIS

The Huguley Water, Sewer, and Fire Protection Authority
("Huguley") is in the process of building a new fire station. At a recent

bid opening for the construction of this facility, one of the bidders submitted a sealed bid. On the exterior of the envelope were handwritten the words "[d]educt \$10,000.00 from the base bid." There was a question of whether such notation could rightfully be considered in calculating the bid contained in the envelope. The other bidders present questioned whether such a notation could be considered. The contractor whose envelope contained the handwritten notation is the apparent low bidder (after taking into consideration the proposed \$10,000 deduction), but a contract has not yet been awarded to the successful bidder.

In an opinion of the Attorney General to Honorable Thomas M. Galloway, this Office stated that a comprehensive study had been made, pursuant to the request of the building trades and the Alabama State Building Commission, on whether a written proposal on the outside of a sealed envelope in which a bid is contained, made prior to opening of the bid, may be considered as part of the bid proposal. The opinion stated that such a procedure had been acceptable over a long period of time by the Alabama State Building Commission, the federal authorities, and by the Associated General Contractors of America, and it seemed to be a standard procedure in the construction trade. *See* Opinion of the Attorney General to Honorable Thomas M. Galloway, Mobile, Alabama, dated May 2, 1974, File No. 294.

The *Galloway* opinion further stated that a failure to recognize such a procedure would, in all probability, give rise to a conflict with the federal procedures where federal funds are available for bid projects. The opinion concluded that the procedure of writing a proposal on the outside of a sealed envelope in which a bid is contained made prior to opening of the bid is acceptable and comes within the meaning of the term "sealed bid." The opinion concluded that such a bid should receive the same consideration as other acceptable bids.

The *Galloway* opinion has not been modified or overruled by subsequent opinions of the Attorney General's Office. The interpretation of law in the opinion has not been altered by any amendments to the Competitive Bid Law.

CONCLUSION

A written proposal on the outside of a sealed bid made prior to the bid opening may be considered as part of the bid proposal. Such a bid should receive the same consideration as other acceptable bids.

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

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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