
Competitive Bid and Public Works Law-BOEs: Use of National and Regional Cooperatives

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Alabama Department of Examiners of Public Accounts

WARNING!!!

- This presentation:
 - CANNOT cover every situation or fact pattern you will encounter
 - Is NOT all inclusive of every aspect of the law
 - Is a general overview
- If you have a question...
 - Seek Advice from your Legal Counsel
 - Seek Advice or an Opinion from the Attorney General's Office or the Alabama Ethics Commission
 - www.alabamaag.gov
 - www.ethics.alabama.gov
 - Contact the Department of Examiners' Legal Counsel



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- Report Fraud, Waste, and Abuse on Hotline: 1-844-56-FRAUD or Department's website reporting form



CB and PW Law-Cooperatives

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Legal Authority and Application: Q's

- Question 1: What type of governmental entity?
 - § 16-13B-1, et seq., Ala. Code 1975
 - Applies to City and County Boards of Education.
- Question 2: What type of contract or expenditure?
 - Public Works contract v. Comp Bid contract?
 - Good or Non-Professional Service?
 - Professional Service?



Legal Authority and Application

- § 16-13B-1, et seq., Ala. Code 1975.
 - Applies to County and City Boards of Education
 - Bid provisions apply to all expenditures of funds of whatever nature for labor, services, and work involving \$40,000 or more
 - Bid provisions apply to all expenditures of funds for the purchase or lease of materials, equipment, supplies, or other personal property involving \$40,000 or more



Legal Requirement

- § 16-13B-1(a)(1), Ala. Code 1975.
 - If expenditure is **\$40,000 or more**, the law requires a contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.



Bid Exemptions:

- § 16-13B-2(a), Ala. Code 1975.
 - Utility Services (rates fixed by law, regulation, or ordinance)
 - Purchase of Insurance
 - Professional Services
 - Attorneys
 - Physicians
 - Architects
 - Teachers
 - Superintendents of Construction
 - Artists
 - Appraisers
 - Engineers
 - Consultants



Bid Exemptions Cont:

- Certified Public Accountants
- Public Accountants
- Others possessing a high degree of professional skill where the personality of the individual plays a decisive part.
- Regular Civil Service employment contracts
- Fiscal or Financial Advice or Services
- Products made by Alabama Inst. For Deaf and Blind
- Maps/Photographs from any federal agency
- Purchases of manuscripts, books, instructional materials, maps, pamphlets, or periodicals, or the electronic version thereof. The exemption for the purchase of instructional materials shall only include those purchases from a current vetted and approved list published by the State Department of Education See Act 2022-80
- Paying Agents/Trustees for any security issued by a public body
- Existing contracts for renewal of sanitation or solid waste
- Computer hardware which is only type compatible with hardware already owned or Custom software



Bid Exemptions Cont:

- Service or commodity for which there is only one vendor or supplier
- Services or purchases of personal property which by their very nature are impossible to award by competitive bidding
- Security Related Services/Products related to, or having an impact upon, security plans, procedures, assessments, measures, or systems, or the security of persons, structures, facilities or infrastructures
- Product whose price is regulated and established by state law
- Purchases made by individual schools of county or city schools systems from moneys other than those raised by taxation or received through appropriations.
- Purchases of good or services, other than wireless communication services, from vendors awarded a current and valid Government Services Administration (GSA) contract.
- Purchases of unprocessed agricultural products with a cost of \$100,000 or less.



Bid Exemptions that may apply:

- § 16-13B-2(a)(13), Ala. Code 1975
 - Purchase, lease, or lease/purchase of goods or services, other than voice or data wireless communication services, made as part of the purchasing cooperative sponsored by the National Association of Counties, its successor organization, or any other national or regional governmental purchasing program. The purchases, leases, or lease/purchases may only be made if all of the following occur:
 - The goods or services being purchased, including those purchased through a lease/purchase agreement, or leased are available as a result of a competitive bid process approved by the Department of Examiners of Public Accounts for each bid.
 - The goods or services are either not at the time available to local boards of education on the state purchasing program or are available at a price equal to or less than that on the state purchasing program.
 - The purchase, lease, or lease/purchase is made through a participating Alabama vendor holding an Alabama business license if such a vendor exists.



Approved Purchasing Cooperatives:

- Omnia Partners Public Sector
 - Sourcewell
 - NCPA Cooperative
 - H-GAC
 - E & I Cooperative Services (Bd. Of Edu. Only)
 - TIPS Cooperative
 - NPP
 - Buyboard
 - NASPO
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- Current approval is through December 31, 2024



Public Works Law: Coop Exemption

- § 39-2-2(d)(2), Ala. Code 1975
- Excluded from operation of the bidding requirements in this title are contracts for the purchase of any heating or air conditioning units or systems by any awarding authority subject to Chapter 13B of Title 16, or Article 3, commencing with Section 41-16-50, of Chapter 16 of Title 41, or Article 5, commencing with Section 41-4-110, of Chapter 4 of Title 41 provided the contract is entered into with an Alabama vendor who has been granted approved vendor status for the sale of heating or air conditioning units or systems as a part of a purchasing cooperative, and each of the following occur:
 - The heating or air conditioning unit or system being purchased is available as a result of a competitive bid process conducted by a governmental entity which has been approved by the Department of Examiners of Public Accounts.
 - The purchase of the heating or air conditioning unit or system is not available on the state purchasing program at the time or the purchase under the purchasing cooperative is available at a price that is equal to or less than that available through the state purchasing program.
 - The entity entering into the contract for the purchase of the heating or air conditioning unit or system has been notified by the Department of Examiners of Public Accounts that the competitive bid process utilized by the cooperative program offering the goods complies with this subdivision.
 - Upon request, the vendor has provided the purchasing entity with a report of sales made under this subdivision during the previous 12-month period, to include a general description of the heating or air conditioning units and systems sold, the number of units sold per entity, and the purchase price of the units.
 - The exemption from the requirement to utilize sealed bids for the purchase of heating or air conditioning units or systems authorized by this section shall not serve to exempt any public works project from the remaining provisions of this article, including, but not limited to, design, installation, and review requirements, compliance with all applicable codes, laws, specifications, and standards, and the compensation of engineers, architects, or others as mandated by state law or rule.



PW Exemption: NOT for BOEs

- § 39-2-2(l)(1) and (2), Ala. Code 1975
- Notwithstanding any other provision of the law, any entity subject to this chapter that is an awarding authority of a contract for public works, by resolution or board action, may purchase materials or equipment pursuant to subdivisions (14), (16), (17), (18), or (19) of Section 41-16-51(a), even when those materials or equipment are otherwise part of the contract for public works subject to the requirements of this title.
- Except for those materials or equipment described [above], the remaining portion of the public works project shall be subject to the requirements of [Title 39], even if the remaining portion would involve an amount less than \$100,000 as a result of the exclusion of the purchase of the materials or equipment as described [above].
- § 41-16-51(a)
 - (14)- Purchases of dirt, sand, or gravel by a county governing body from in-county property owners in order to supply a county project in which the materials will be used.
 - (16)- Purchases, leases, or lease/purchases of goods or services, other than voice or data wireless communication services, from an approved national or regional coop...
 - (17)- Purchases of goods or services, other than wireless communication services, whether voice or data, from vendors that have been awarded a current and valid Government Services Administration contract.
 - (18)- Purchases of goods or services from vendors that have been awarded a current and valid statewide contract listed on the Alabama Buys e-procurement system...
 - (19)- Purchases of goods or services between governmental entities of the state, as authorized by Section 11-1-10



Questions?

