
Competitive Bid Law-BOE: An Overview

November 4, 2024



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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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Legal Authority and Application

- Question 1: What type of governmental entity?
 - § 16-13B-1, et seq., Ala. Code 1975
 - Applies to County and City 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



Consumer Price Index-Bid Limit

- § 16-13B-1, et seq., Ala. Code 1975.
 - Beginning October 1, 2027, and every three years thereafter, all minimum dollar amounts used in this **chapter** shall be subject to a cost adjustment based on the following procedure: The Chief Examiner of the Department of Examiners of Public Accounts may submit to the Chair of the Legislative Council a recommendation that the amount be increased based on the percentage increase in the Consumer Price Index for the immediately preceding three-year period, rounded down to the nearest thousand dollars. The recommendation shall be subject to the approval of the Legislative Council. In the event the recommendation is not disapproved by the Legislative Council by the end of April following the submission of the recommendation, the recommendation shall be deemed to be approved. Upon approval, the Chief Examiner shall notify the public of the adjusted dollar amounts by July 1 before the fiscal year in which the changes are to take effect. **The increase may not exceed three percent.**



Splitting of Contracts

- § 16-13B-4(e), Ala. Code 1975.
 - No purchase or contract in excess of \$40,000 shall be divided into parts involving amounts of \$40,000 or less for the purpose of avoiding the requirements of the competitive bid law
 - Any such contracts shall be void



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.



Advertising Requirements

- § 16-13B-4(a), Ala. Code 1975.
 - Post notice on bulletin board maintained outside the purchasing office and in any other manner and for any length of time as may be determined.
 - Can do more...BUT not required.



Bid Lists: Notice

- § 16-13B-4(a), Ala. Code 1975.
 - Sealed bids shall also be solicited by sending notice by mail or other electronic means to all person, firms, or corporations who have filed a request in writing that they be listed for solicitation on bids list for the particular items that are set forth in the request.
 - If a person, firm, or corporation whose name is listed fails to respond to any solicitation after the receipt of three, they may be removed from the bid listing.



Local Preference Zone:

- § 16-13B-1(b), Ala. Code 1975.
- Must establish the local preference zone PRIOR to advertising for bids.
- If awarding authority is silent on the local preference zone, it is deemed to be the legal boundaries or the jurisdiction of the awarding authority.
- Bid can be no more than 3% greater than the bid of the lowest responsible bidder.



Bonds:

- §§ 16-13B-1(d) and 16-13B-8, Ala. Code 1975.
- Bid Bond: The awarding authority may require bidders to furnish a bid bond for a particular bid solicitation if:
 - the bonding requirement applies to all bidders;
 - is included in the written bid specifications; and
 - if bonding is available for the services, equipment, or materials.
- Performance Bond: A responsible sum for faithful performance of the contract, with adequate surety, may be required in an amount specified in the advertisement for bids.



Sealed Bids & Docs:

- § 16-13B-4(b) and (d), Ala. Code 1975.
 - Bids must be sealed when received
 - Opened in public at the hour stated in the notice
 - All original bids and documents pertaining to the award of the contract shall be retained for a period of 7 years from the date the bids are opened and shall be open to public inspection
 - Retention period is est. by the Local Government Records Commission



Other Items to Considered:

- § 16-13B-7(a), Ala. Code 1975.
 - Qualities of the commodities proposed to be supplied
 - Conformity with specifications
 - Purposes for which required
 - Terms of delivery
 - Transportation charges
 - Dates of delivery



Rejection of a Bid:

- § 16-13B-7(d), Ala. Code 1975.
 - Awarding authority may reject any bid if the price is deemed excessive or quality of product is inferior.



Only One Bid Received:

- § 16-13B-1(b), Ala. Code 1975.
 - May accept bid;
 - Re-advertise for and seek other competitive bids; or
 - *May reject* the bid and negotiate the purchase or contract, provided the negotiated price is lower than the original bid price.



Provision for Mistakes by Vendor?

- There are no provisions in the law for mathematical mistakes by vendors.



Length of Contract Terms:

- § 16-13B-7(f), Ala. Code 1975.
 - Personal property or service contracts are limited to 5 years.
 - Lease-purchase contracts for capital improvements and repairs to real property and other lease-purchase contracts are limited to 10 years.



Documentation of Results:

- § 16-13B-7(e), Ala. Code 1975.
 - To whom bid was awarded
 - Reasons for not awarding to the lowest bidder (if applicable)
 - Bid file shall be open for public inspection



Defaulting Bidder:

- § 16-13B-7(a), Ala. Code 1975.
 - “If at any time after the award has been made the lowest responsible bidder notifies the awarding authority in writing that the bidder will no longer comply with the terms of the award to provide the goods or services to the awarding authority under the terms and conditions of the original award, or the awarding authority documents that the lowest responsible bidder defaults under the terms of the original award the awarding authority may terminate the award to the defaulting bidder and make an award to the second lowest responsible bidder for the remainder of the award period without rebidding, provided the award to the second lowest responsible bidder is in all respects made under the terms and conditions contained in the original bid specifications and is for the same or a lower price than the bid originally submitted to the awarding authority by the second lowest responsible bidder.”



Assignment of Contract:

- § 16-13B-9, Ala. Code 1975.
 - No contract awarded to the lowest responsible bidder shall be assignable by the successful bidder without written consent of the awarding authority, and in no event shall a contract be assigned to an unsuccessful bidder whose bid was rejected because he or she was not a 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
- Current approval is through December 31, 2024



Emergencies:

- § 16-13B-3, Ala. Code 1975
 - Must affect public health, safety, or convenience, be declared in writing by the awarding authority, and such action and reasons should be immediately made public by the awarding authority.
 - No advertising required.
 - Must still follow other bid law requirements - per ruling by the *Ala. Supreme Court. General Electric Co. vs. City of Mobile*, 585 So.2d 1311 (Ala. 1991)



Questions?

