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The Competitive Bid Law

The competitive bid law is codified at Sections 41-16-50 through 41-16-63, Code of Alabama 1975. This article summarizes the major portions of the competitive bid law and incorporates the interpretations and constructions given the law by the courts and the Attorney General. In addition, Chapter 1, Title 39, Code of Alabama 1975, governing contracts related to public buildings, streets or public works, is discussed. For detailed information on the public works bid process, see the article entitled "Public Works Bidding" found on the League legal team's Selected Readings page, here: *https://almonline.org/SelectedReadingsfortheMunicipalOfficial.aspx*.

This article will not address federal statutes, rules or regulations that apply to the use of federal funds. When receiving federal funds, always consult with the federal awarding agency regarding which federal laws apply.

At the outset, it is important to note that Alabama law requires governing bodies of municipalities and the instrumentalities and boards of such municipalities to establish and maintain such purchasing facilities and procedures as may be necessary to carry out the intent and purpose of the competitive bid law. For a sample purchasing procedure please contact the League.

DOES THE BID LAW APPLY?

The competitive bid law provides that all expenditures of funds for labor services, work, or for the purchase or lease of materials, equipment, supplies or other personal property, involving $30,000 or more, or for the lease of materials, equipment, supplies or other personal property where the lessee is or becomes legally and contractually bound under the terms of the lease, to pay a total amount of $30,000 or more, made by or on behalf of ... the governing bodies of municipalities of the state and the governing boards of instrumentalities of municipalities ... including waterworks boards, sewer boards, gas boards and other like utility boards and commissions, except as otherwise provided, shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible and responsive bidder. Section 41-16-50, Code of Alabama 1975.

Beginning October 1, 2027, and every three years thereafter, the competitive bid law threshold amount will be subject to adjustment based on the percentage increase in the Consumer Price Index for the immediately preceding three-year period. Upon approval by the Legislative Council, the Department of Examiners of Public Accounts shall notify the public of the adjusted dollar amounts by July 1 before the fiscal year in which the changes will take effect. Section 41-16-50(g), Code of Alabama 1975.

Section 39-2-2, Code of Alabama 1975 specifies that contracts for the purchase, design, and installation of playground equipment fall under the competitive bid law and are explicitly excluded from the public works bid law. Playground equipment is defined as any structure or apparatus intended for children's recreational use and play in a public area, including a public park, public school, or other public property. The term includes slides, swings, climbing equipment, seesaws, and splash pads. The term also includes purchases ancillary to the use of a playground, including safety surfacing, fencing, signage, and shade structures.

Cannot Divide Up Contract to Avoid Bid Law

The law forbids the division of a purchase or contract of $30,000 or more into parts to avoid competitive bidding. Such partial contracts are declared to be void. Section 41-16-54(f), Code of Alabama 1975. Further, according to the Attorney General, a local government may not be broken into districts, divisions or otherwise to evade competitive bidding. 128 Quarterly Report of the Attorney General 15.

Joint Purchasing

Section 41-16-50, Code of Alabama 1975, states that two or more contracting agencies may provide, by joint agreement, for the purchase of labor, services, work, or for the purchase or lease of materials, equipment, supplies or other personal property,

for use by the respective agencies. Such agreement shall be entered into by similar ordinances, in the case of municipalities or by resolutions, in the case of other contracting agencies, adopted by each of the participating governing bodies, which shall set forth the categories of labor, services or work or for the purchase or lease of materials, equipment, supplies or other personal property to be purchased, the manner of advertising for bids and of awarding of contracts, the method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of the agreement.

This section further provides that each contracting agency's share of expenditures for purchases under any such agreement shall be appropriated and paid for in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency.

Contracting agencies entering into such an agreement may designate a joint purchasing agent. Any purchases made pursuant to such an agreement are subject to the bid law.

Reverse Auctions

Rather than using traditional competitive bid procedures when the bid law applies, Section 41-16-54 provides that local awarding authorities can use reverse auction procedures. A reverse auction procedure includes either of the following:

1. A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.
2. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services

The Department of Examiners of Public Accounts has established procedures for letting contracts through a reverse auction. *https://alison.legislature.state.al.us/files/pdf/eopa/guides/RAP.pdf*

Items can be purchased through the use of a reverse auction only if either 1) the item is not available through the state purchasing program for the same terms and conditions, or 2) if the item is purchased for a price equal to or less than that available on the state bid list under the same terms and conditions.

EXEMPTIONS FROM THE COMPETITIVE BID LAW

Section 41-16-51, Code of Alabama 1975, provides for specific exemptions from the bid law. Specifically, it provides that competitive bids shall not be required for utility services, the rates for which are fixed by law, regulation, or ordinance.

It further provides that bid law requirements shall not apply to:

1. The purchase of insurance.
2. The purchase of ballots and supplies for conducting any primary, general, special, or municipal election.
3. Contracts for securing services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants, public accountants, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part.
4. Contracts of employment in the regular civil service.
5. Contracts for fiscal or financial advice or services.
6. Purchases of products made or manufactured by the blind or visually handicapped under the direction or supervision of the Alabama Institute for Deaf and Blind in accordance with Chapter 2 of Title 21.
7. Purchases of maps or photographs from any federal agency.
8. Purchases of computer programs, software applications, manuscripts, books, maps, pamphlets, periodicals, and library/research electronic data bases of manuscripts, books, maps, pamphlets, periodicals and library or research electronic data bases of manuscripts, books, maps, pamphlets, or periodicals.
9. The selection of paying agents and trustees for any security issued by a public body.
10. Existing contracts up for renewal for sanitation or solid waste collection, recycling, and disposal between municipalities or counties, or both, and those providing the service.
11. Purchases of computer and word processing hardware when the hardware is the only type that is compatible with hardware already owned by the entity taking bids and custom software.
12. Professional services contracts for codification and publication of the laws and ordinances of municipalities and counties.

13. Contractual services and purchases of commodities for which there is only one vendor or supplier and contractual services and purchases of personal property which by their very nature are impossible to award by competitive bidding.
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. The material shall be delivered to the project site by county employees and equipment used only on project components conducted exclusively by county employees.
15. Contractual services and purchases of products related to, or having an impact upon, security plans, procedures, assessments, measures, or systems, or the security or safety of persons, structures, facilities, or infrastructures.
16. Subject to the limitations in this subdivision, purchases, leases, or lease/purchases of goods or services, other than voice or data wireless communication services, made as a part of the purchasing cooperative sponsored by the National Association of Counties, its successor organization, or any other national or regional governmental cooperative purchasing program. Such purchases, leases, or lease/purchases may only be made if all of the following occur:
    a. The goods or services being purchased are available as a result of a competitive bid process conducted by a governmental entity and approved by the Alabama Department of Examiners of Public Accounts for each bid.
    b. The goods or services are either not at the time available to counties on the state purchasing program or are available at a price equal to or less than that on the state purchasing program.
    c. The purchase, lease, or lease/purchase is made through a participating Alabama vendor holding an Alabama business license if such a vendor exists.
    d. The entity purchasing, leasing, or lease/purchasing goods or services under this subdivision 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. In addition, upon request, a vendor shall provide the entity purchasing, leasing, or lease/purchasing thirty thousand dollars ($30,000) or more made under this subdivision during the previous 12 months a report of the sales, leases, and lease/purchases. The report shall include a general description of the goods or services; the number of units sold, leased, and leased/purchased per entity; and the price of units purchased, leased, or leased/purchased.
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. Any purchase made pursuant to this subdivision shall be under the same terms and conditions as provided in the Government Services Administration contract. Prices paid for such goods and services, other than wireless communication services, whether voice or data, may not exceed the amount provided in the Government Services Administration contract.
18. The Alabama Department of Examiners of Public Accounts maintains a listing of approved purchasing cooperatives which can be accessed at: *https://alison.legislature.state.al.us/epa-purchasing-coops*.
19. 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. Any purchase made pursuant to this subdivision shall be under the same terms and conditions as provided in the statewide contract. Prices paid for such goods and services may not exceed the amount provided in the statewide contract. Note: Some state contracts may not be available to municipalities. Be certain to check the terms of the contract.
20. Purchases of goods or services between governmental entities of the state, as authorized by Section 11-1-10.
21. Purchases of goods or services between a municipality and a governmental entity as defined in Section 8-38-2.

Other exemptions include:

1. Any purchases of products where the price of the products is already regulated and established by state law.
2. Purchases made by individual schools of the county or municipal public-school systems from moneys other than those raised by taxation or received through appropriations from state or county sources.
3. The purchase, lease, sale, construction, installation, acquisition, improvement, enlargement, or expansion of any building or structure or other facility designed or intended for lease or sale by a medical clinic board organized under Chapter 58 of Title 11.
4. The purchase, lease, or other acquisition of machinery, equipment, supplies, and other personal property or services by a medical clinic board organized under Sections 11-58-1 to Chapter 58 of Title 11.

5. Purchases for public hospitals and nursing homes operated by the governing boards of instrumentalities of the state, counties, and municipalities.
6. Contracts for the purchase, lease, sale, construction, installation, acquisition, improvement, enlargement, or extension of any plant, building, structure, or other facility or any machinery, equipment, furniture, or furnishings therefor designed or intended for lease or sale for industrial development, other than public utilities, under Division 1 of Article 4 of Chapter 54 of Title 11, or Article 2 of Chapter 54 of Title 11, or any other statute or amendment to the Constitution of Alabama of 2022 authorizing the construction of plants or other facilities for industrial development or for the construction and equipment of buildings for public building authorities under Chapter of Title 11.
7. The purchase of equipment, supplies, or materials needed, used, and consumed in the normal and routine operation of any waterworks system, sanitary sewer system, gas system, or electric system, or any two or more thereof, that are owned by municipalities, counties, or public corporations, boards, or authorities that are agencies, departments, or instrumentalities of municipalities or counties and no part of the operating expenses of which system or systems have, during the then current fiscal year, been paid from revenues derived from taxes or from appropriations of the state, a county, or a municipality.
8. Purchases made by local housing authorities, organized and existing under Chapter 1 of Title 24, from moneys other than those raised by state, county, or city taxation or received through appropriations from state, county, or city sources.
9. The purchase of services to aid in the prevention and detection of criminal activity by law enforcement agencies and community-oriented policing programs.

Repair and Lease of Heavy-duty, Off-highway Equipment Exempt

All expenditure of funds for repair parts and repair of heavy-duty, off-highway construction equipment and of all vehicles with a gross vehicle weight rating of 25,000 pounds or greater, including machinery used for grading, drainage, road construction and compaction for the exclusive use of county and municipal highway, street and sanitation departments, involving not more than $40,000 made on behalf of the municipality or the governing boards of its instrumentalities shall, at the option of the governing body or board, be exempt from bid law coverage. The foregoing exemption shall apply to each incident of repair as to any such repair parts, equipment, vehicles or machinery. The amount of such exempted expenditure shall not be construed to be an aggregate of all such expenditures per fiscal year as to any individual vehicle or piece of equipment or machinery. This option shall not be exercised by any employee, agent or servant unless done so after having received official prior approval of the respective governing body or board unless exercised pursuant to a formal policy adopted by such governing body or board setting out conditions and restrictions under which such option shall be exercised.

All expenditures of funds of whatever nature for the leasing of heavy-duty, off-highway construction equipment and all vehicles with a gross vehicle weight rating of 25,000 pounds or greater, including machinery for grading, draining, road construction and compaction, for the exclusive use of counties and municipalities, highway, street and sanitation departments, involving a monthly rental of not more than $10,000 per month per vehicle or piece of equipment or machinery but not exceeding $30,000 per month for all such vehicles and equipment, made by or on behalf of any municipality or the governing boards of its instrumentalities shall be made, at the option of the governing body or board, without regard to the provisions of the bid law. Section 41-16-52, Code of Alabama 1975.

Repair and Purchase of Repair Parts for Certain Vehicles

All expenditures of funds, made by or on behalf of any governing body of a municipality, for repair parts and the repair of vehicles shall be made at the option of the awarding authority without regard to the provisions of the bid law when the following conditions are met:

1. The vehicle has a gross vehicle weight rating of 12,000 pounds or less.
2. The incident of repair does not involve more than fifteen thousand dollars ($15,000)
3. The awarding authority solicits and documents price estimates from at least two different vendors prior to awarding the contract.

The option may be exercised by the awarding authority by specific reference to Section 41-16-52.1 on any purchase orders and purchase commitments executed by the awarding authority. The option shall not be exercised by any employee, agent, or servant unless done after having received official prior approval of the respective awarding authority, or unless exercised pursuant to a formal policy adopted by the awarding authority setting out conditions and restrictions under which the option shall be exercised. The exemption provided under Section 41-16-52.1 shall apply to each vehicle repaired, and

the exempted expenditure shall not be aggregated with the expenditures of any other incidents of repair. Section 41-16-52.1, Code of Alabama 1975.

The State Bid List and GSA Contracts

State contracts made for the benefit of counties, school boards and municipalities may be utilized by such agencies without further bidding. These state contracts are maintained on what is known as the "State Bid List" and can be accessed through the Alabama Department of Finance's purchasing division at *purchasing.alabama.gov*. However, if the state has awarded a contract to a vendor strictly for its own needs and not for the benefit of a county or a municipality, then the municipality or county would be bound to purchase pursuant to the competitive bid law. Most state contracts are currently let for the benefit of municipalities and counties.

The state bid should state in writing that the contract was let for the benefit of counties and municipalities as well as the state. AGO to Hon. Barry McCrary, April 23, 1974. Local governments cannot use the state bid price where the amount to be purchased as set out in the bid specifications has been fulfilled. AGO to Hon. Jesse J. Lewis, July 8, 1976.

In addition to the state bid price considerations discussed, Section 41-16-51.1 provides that if there is a state contract for services let by a non-statewide agency, a municipality may contract for those same services for an amount not exceeding the non-statewide agency's contract amount. A city is not required to use the same vendor as the non-statewide agency.

Municipalities may also make certain purchases off a Government Services Administration (GSA) contract. Prior to 2016 there was no authority to avoid bid law procedures by purchasing goods or services from vendors with valid GSA contracts. When the bid law was amended in 2016 it specifically authorized the purchase of goods and services, other than wireless communication services, whether voice or data, from vendors having current and valid GSA contracts.

Sales of Municipal Property – No Requirement to Competitively Bid

The competitive bid law only applies to the purchase of goods and services, it DOES NOT apply to the sale of municipal property – real or personal. Nothing, however, prohibits a municipality from using a bid process for the sale of unneeded municipal property and many municipalities do utilize a sealed bid process for selling municipal property. For more information on selling or leasing municipal property, see the article titled "Sale or Lease of Unneeded Municipal Property" in this publication.

Emergency Purchasing

Act 2023-135 exempts contracts from the requirements of the competitive bid law if entered to address circumstances that would ***likely cause harm to an individual or public property***. Such contracts can only be let to the extent necessary to mitigate the harm threatened by the emergency circumstances. In essence, the expenditure made must directly remedy the emergency. Prior to entering into the contract, the municipality must (1) document two or more price quotations or price estimates and (2) adopt a resolution declaring the nature of the circumstances, the action to be taken, and the reasons for taking the action. Section 41-16-53, Code of Alabama 1975.

The municipal council may not declare an emergency after the work has been performed by the contractor. However, after the contract has been performed, the council may provide funds to pay the contractor if the purchasing officer properly authorized the contract to be made on a negotiated basis because of an emergency. AGO to Hon. Carl H. Kilgore, May 12, 1975.

SOLICITING BIDS Notice Requirements and Specifications

Unlike the public works bid law under Title 39, the competitive bid law does not require notice or advertisement in a newspaper. All proposed purchases in excess of $30,000 shall be advertised by posting notice thereof on a bulletin board maintained outside the purchasing office and in any other manner and for such lengths of time as may be determined, provided however, that sealed bids shall also be solicited by sending notice by mail to all persons, firms or corporations who have filed a request in writing that they be listed for solicitation on bids for such particular items as set forth in such request. The law does not specify the length of time a bid has to be advertised by posting or any other way. Failure of a firm or person to submit a bid after three solicitations shall be reason for discontinuing special notice to such person or firm.

For advertising requirements on public improvement contracts, *see* Section 39-2-2, Code of Alabama 1975.

Restrictive specifications and brand names should be reasonably related to the work or job to be performed and the quality or purpose of the product to be obtained and may not be used to prevent or restrict full and free competition on the open market. Specifications contained in bids written around a certain product must be justified prior to taking bids. Other bidders must be permitted to submit bids with their own specifications showing that their products are equal to those requested by the awarding authority. AGO 1988-0001. *See also*, AGO 2006-098. It is no objection that the material required can be

furnished by one party provided it is readily obtainable on the open market. 130 Quarterly Report of the Attorney General 15. *See also*, *White v. McDonald Ford Tractor Co.*, 287 Ala. 77, 248 So. 2d 121 (Ala. 1971).

Bonds

The law provides that faithful performance bonds may be required by the awarding authority from all bidders. Whether to require a bid bond is optional on the part of the awarding authority, provided that 1) bonding is available, 2) the requirement applies to all bidders, and 3) is included in the written specifications for the bid.

The bid bond required by Section 41-16-50(c), Code of Alabama 1975, should be for an amount which would protect the municipality against a change of status involving substantial damages, loss or detriment. A bid bond remains in effect until the contract is made. AGO 1982-0220 (to Hon. Herman Cobb, March 3, 1982).

According to the Attorney General, irrevocable letters of credit may be accepted instead of a bid bond. AGO 1992-0053.

If required, bid bonds must be properly executed before a bid can be considered. AGO 1990-140.

For bonding requirements on public works contracts, *see* Section 39-1-1, Code of Alabama 1975.

Life Cycle Costs

Section 41-16-57 permits local awarding authorities to take life cycle issues into consideration when letting bids, if these standards can be acquired from industry recognized and accepted sources. Life cycle costs are costs associated with acquisition, use, maintenance and other costs associated with ownership or use of the product being let over the expected life cycle of the product. The awarding authority must notify potential bidders at the time of issuing specifications that it will consider life cycle costs when letting the bid. The awarding authority must identify which sources it is using in making this determination. The Department of Examiners of Public Accounts has established procedures for using life cycle costs. *https://alison.legislature.state.al.us/epa-life-cycle-guide*

OPENING AND AWARDING BIDS

Bids are to be opened at the time stated in the request for bids by the person or persons designated by the awarding authority. The law requires that all bids must be sealed and must be opened in public at the hour stated in the notice. Section 41-16-54(b), Code of Alabama 1975.

Bids may be requested by telephone but they cannot be accepted or received by telephone. AGO to Hon. Charles C. Rowe, October 8, 1975, and AGO 1983-0199 (to Hon. F. R. Albritton, Jr., February 22, 1983). Further, bids submitted by fax are not to be accepted. AGO 1991-0016. However, a written proposal on the outside of a sealed envelope, in which a bid is contained, made prior to the opening of the bid may be considered as a part of the bid proposal. AGO to Hon. Thomas M. Galloway, May 2, 1974; AGO 2005-0160.

The person or persons responsible for opening the bids shall tabulate the bids and present the results to the awarding authority at its next meeting. AGO 1980-495 (to Hon. A. R. McVay, August 6, 1980). The law does not require that the bids be opened at a meeting of the entity asking for bids. However, acceptance of a bid can only be made by the adoption of a resolution by the entity that asked for bids at a public meeting of that entity. While some municipalities choose to open bids at a council meeting, it is worth noting that the competitive bid law does not require that bids be opened at a council meeting but merely that they be opened publicly. There may be practical reasons why its better to open bids outside of a council meeting. If there are problems with a bid, or if there is a concern about whether the low bidder is a responsible bidder, the city employee charged with opening, tabulating and presenting the bids may need time to prepare information for the city council so that it can make an informed decision about who the lowest responsible bidder is before formally awarding the bid.

Awarding the Contract – Basis of Decision

Awards shall be made to the lowest responsible bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges and the dates of delivery. Provided there is no loss of price or quality, a preference shall be given to commodities produced in Alabama or sold by an Alabama bidder. However, preference may not be given to American products where foreign products of the same quality may be purchased at a lower price. 128 Quarterly Report of the Attorney General 14.

A "low bid" is the lowest unit price of an article. Warranty and repurchasing agreements should not be used in computation of a low bid, but these items may be used in determining the lowest responsible bidder, as these terms affect quality. 141 Quarterly Report of the Attorney General 8.

If the low bid does not meet specifications, the awarding authority may award the contract to the next lowest bidder. *White v. McDonald Ford Tractor Co.*, 287 Ala. 77, 248 So. 2d 121 (Ala. 1971). The reasons for not awarding the contract

to the lowest bidder must be stated on the successful award and left open to public inspection. AGO to Hon. Douglas Rudd, November 4, 1976.

Public agencies have discretion to determine which bidder is the lowest responsible bidder. A court will not interfere in that discretion unless it is exercised arbitrarily or capriciously or unless it is based on a misconception of the law or is the result of improper influence. *Crest Construction Corporation v. Shelby County Board of Education*, 612 So. 2d 425 (Ala. 1992). In determining whether the low bidder is a responsible bidder, the council can consider factors such as whether or not they've had problems with the bidder on previous contracts, can they deliver the goods promised in a reasonable period of time and is the council aware that other entities that have had problems with this bidder in the past. The fact that a bidder has not qualified to do business in Alabama is sufficient to support a determination that the bidder is not a responsible bidder. AGO to Hon. Fred Collins, August 20, 1976. Further, under the Competitive Bid and Public Works Laws, a conviction and debarment by a federal agency are factors that a local government may use to determine if a bidder is responsible, including in the prequalification procedure. AGO 2007-0063.

When determining that the low bidder is not a responsible bidder, the key is to document the reasons for making the determination that the low bidder is not the lowest responsible bidder.

Alternative Bidding

Section 41-16-57 provides a procedure for awarding a contract to the second lowest bidder when the lowest bidder defaults. This provision allows the municipality to cancel the contract following a default by the lowest bidder and award it to the second lowest bidder. The contract with the second lowest bidder must be let on the same terms and conditions contained in the original bid specifications and must be awarded for no more than the second lowest bidder originally bid.

Rejection of Bids

The awarding authority may reject any bid if the price is deemed excessive or if the quality of the product is inferior. Each record, with the successful bid indicated thereon and with the reasons for the award, if not awarded to the lowest bidder, shall be open to public inspection. In the event both or all bids exceed the awarding authority's anticipated budget, the awarding authority may negotiate with the lowest responsible and responsive bidder, provided the negotiated price is lower than the bid price. Section 41-16-50(b)(5). In the event all bids are equal in price and the quality of the products is the same, the awarding authority may reject all bids and negotiate for price, or reject and solicit new bids or contract with any low bidder of its choice. 128 Quarterly Report of the Attorney General 40. In such circumstances, negotiations may be with any provider of such product or service. In the event all bids are rejected on a project, the project must be re-bid. AGO 1980-0047 (to Ralph Smith, Jr., October 29, 1979).

An awarding authority may negotiate a lower contract amount with the successful bidder provided there is no change in the specifications. AGO 1995-0002.

Preference Allowed for a Resident Bidder

If a contract is for the purchase of an item of personal property and the municipality or a board of the municipality receives a bid from a person, firm or corporation deemed to be a responsible bidder and having a place of business in the county or the Core Based Statistical Area (CBSA) and the bid is no more than five percent greater than the bid of the lowest responsible bidder, the municipality or municipal board may award the contract to such resident responsible bidder. Section 41-16-50, Code of Alabama 1975. In the event the lowest bid for an item of personal property or services to be purchased or contracted for is received from a foreign entity, where the county, a municipality, or an instrumentality thereof is the awarding authority, the awarding authority may award the contract to a responsible bidder whose bid is no more than 10 percent greater than the foreign entity if the bidder has a place of business within the local preference zone or is a responsible bidder from a business within the state that is a woman-owned enterprise, an enterprise of small business, as defined in Section 25-10-3, Code of Alabama 1975, a minority-owned business enterprise, a veteran-owned business enterprise, or a disadvantaged—owned business enterprise. "Foreign entity" means a business entity that does not have a place of business within the state of Alabama.

Other Preference Statutes

Section 41-16-57, Code of Alabama 1975, provides that in the purchase of or contract for personal property or contractual services, the awarding authority shall give a preference to commodities produced in Alabama or sold by Alabama persons, firms or corporations, provided there is no sacrifice or loss in price or quality. However, no awarding authority may specify the use of materials or systems by a **sole source** unless:

- The governmental body can document that the sole-source goods or services are indispensable and that all other viable

alternatives have been explored and it has been determined that only these goods or services will fulfill the function for which the goods or services are needed. Frivolous features will not be considered;

- No other vendor offers substantially equivalent goods or services that can accomplish the purpose for which the goods or services are required; and
- All information substantiating the use of the sole-source product or service is documented in writing and is filed into the project file.

Where One or Less Bids Are Received

Where there are no bids or only one bidder responds to the invitation to bid, Act 2023-135 provides a few options. First, the municipality can choose to go through the process of advertising and seeking competitive bids again. Second, the municipality may negotiate through the receipt of informal bids not subject to the strictures of the competitive bid law. When only one responsible and responsive bid has been received, the negotiation cannot result in a contract with a different entity with a higher price than the first bid received. Any bid accepted must be lower than the bid price previously received. Section 41-16-50(b)(4), Code of Alabama 1975.

VIOLATIONS & PENALTIES

Conflicts of Interest - Municipal Officers or Board Members

Section 41-16-60, Code of Alabama 1975, declares that no member or officer of a municipal governing body or municipal board shall be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of or contract for, any personal property or contractual services. It further provides that a violation of this section shall be deemed a misdemeanor and any person who violates this section shall, upon conviction, be imprisoned for not more than 12 months or fined not more than $500 or both. Further, upon conviction, any person who willfully makes any purchase or awards any contract in violation of this section shall be removed from office.

Notwithstanding any statute or law to the contrary, any municipality in Class 7 or Class 8 (under 12,000 inhabitants) may legally purchase from any of the elected officials, employees or board members of such municipality, any personal service or personal property under the competitive bid law procedures established by Article 3, Chapter 16, Title 41, Code of Alabama 1975. Such elected officials, employees or board members may legally sell such personal service or personal property to such municipality under the procedures of said statutes.

If an elected official proposes to bid, the official shall not participate in the decision-making process determining the need for, or the purchase of, such personal service or personal property or in the determination of the successful bidder. The governing body shall affirmatively find that the elected official, employee or board member, from which the purchase is to be made, is the lowest responsible bidder as required by said statutes. It shall be the duty and responsibility of the municipality to file a copy of any contract awarded to any of its elected officials with the State Ethics Commission and all awards shall be as a result of original bid takings.

Advance Disclosure of Terms of Bid Submitted Renders Proceeding Void

Section 41-16-56, Code of Alabama 1975, declares that any advance disclosure of the terms of a bid submitted in response to an advertisement for bids shall render the proceedings void and re-advertisement shall be required.

Collusive Bidding

Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition, by agreement to bid at a fixed price, to refrain from bidding or otherwise, shall render the bids of such bidder void and shall cause such bidders to be disqualified from submitting further bids to the awarding authority on future purchases. Whoever knowingly participates in a collusive agreement in violation of this law involving bids of $30,000 or less shall be guilty of a Class A misdemeanor. Whoever knowingly and intentionally participates in a collusive agreement in violation of this law involving bids of more than $30,000 shall be guilty of a Class C felony. Section 41-16-55, Code of Alabama 1975, as amended.

Statute of Limitations on Competitive Bid Law Violations

A prosecution for any offense in violation of the competitive bid law must be commenced within six years after the commission of the offense. Section 41-16-2, Code of Alabama 1975.

Contracts in Violation of the Act Declared Void

The bid law states that contracts entered into in violation of its provisions shall be void. Anyone who violates the provisions of the bid law shall be guilty of a Class C felony. Section 41-16-51(d), Code of Alabama 1975. Class C felonies are punishable by a prison sentence of not more than 10 years or less than one year and one day.

Contract Not Bid When Reasonably Belief that Contract Value Would not Exceed Threshold Amount

Act 2023-135 provides a procedure for when an awarding authority reasonably believes a contract did not need to be bid when it actually should have been. First, the municipality must document its reasonable belief, based on expenditures in previous years, that the expenditure would not meet the dollar threshold requiring public notice and bidding and that based on the belief the expenditure was made. Any subsequent expenditure must be competitively bid. Section 41-16-50(f)(2), Code of Alabama 1975.

MISCELLANEOUS PROVISIONS

Maintaining Records Open to Public Inspection

All documents pertaining to the award of a contract by a public agency are public records. AGO 1995-0010. All original bids together with all documents pertaining to the award of the contract shall be retained for a period of seven years from the date the bids are opened and shall remain open to public inspection. Section 41-16-54(e), Code of Alabama 1975.

In 2004, the Legislature amended several Sections 13A-14-2, 36-12-40, 39-2-2, and 41-16-51, Code of Alabama 1975, relating to the Open Records Law, the Sunshine Law, the Competitive Bid Law, and the Public Works Law, to codify existing case law and to exempt records, information, or discussions concerning security plans, procedures, or other security related information from the purview of those laws.

Section 36-12-47, Code of Alabama 1975, requires the record custodian of any records related to a public contract for goods or services to redact account numbers, tax identification numbers, routing numbers, employee identification numbers, sensitive personally identifying information as defined in *Section 8-38-2, Code of Alabama 1975*, and similar information that may be used to initiate a financial transaction when those records are requested pursuant to a public records request.

Contracts Limited

Contracts for the purchase of personal property or contractual services shall be let for periods not greater than three years. Contracts for the collection and disposal of residential solid waste, other than those contracts in Class 1 municipalities, shall be let for periods not greater than five years. Section 41-16-57(f), Code of Alabama 1975. “Lease purchase” contracts for capital improvements and repairs to real property shall be let for periods not greater than 10 years and all other lease purchase contracts shall be let for a period not greater than 10 years. *Section 41-16-58, Code of Alabama 1975*. A contract that is exempt from the competitive bid law is not subject to the three-year limitation on public contracts for purchases of personal property or contractual services in Section 41-16-57(e) of the Code. AGO 2000-0152.

Note: Act 2016-298 amended section 16-13B-7, relating to school boards, to increase the allowable length of contracts for goods and services from 3 to 5 years. **Act 2021-485** amended section 16-13B-2, relating to school boards, to specify that the exclusion for the purchases or lease of goods and services made through national or regional cooperative purchasing agreements includes leases and lease/purchase agreements.

Contracts Not Assignable Without Consent of Awarding Authority

No contract awarded to the lowest responsible bidder shall be assignable by such successful bidder without written consent of the awarding authority. In no event may a contract be assigned to an unsuccessful bidder who was rejected because he or she was not a responsible bidder. Section 41-16-59, Code of Alabama 1975.

Economic Boycotts

Act 2023-409 prohibits municipalities from entering into contracts with a company for goods or services unless the contract contains written verification from the company that does not and will not, during the term of the contract, engage in economic boycotts. This provision only applies to contracts between a governmental entity and a company with 10 or more full-time employees and the contract amounts to at least fifteen thousand dollars ($15,000) over the term of the contract. Section 41-16161(b), Code of Alabama 1975. This does not apply to a contract related to the issuance, incurrence, or management of debt obligations, to the deposit, custody, management, borrowing, or investment of funds, or to the procurement of insurance or other financial products, or financial advisory services, or a contract that would prevent the governmental entity from obtaining the supplies or services to be provided in an economically practicable manner. Section 41-16-161(c), Code of Alabama 1975.

If a governmental entity is unable to comply without significantly increasing costs or limiting the quality of options or services available, it may waive the requirements by posting on its publicly available website that:

1. The governmental entity has made reasonable and good faith efforts to obtain services meeting state law requirements and has included the requirements in the governmental entity's minimum selection criteria.
2. Based on objective information available to the governmental entity, the cost appears significantly higher than the services available to similarly oriented governmental entities not subject to similar requirements, or the quality of services or options appears significantly lower than the quality of services available to similarly oriented governmental entities not subject to similar requirements, or both.

The governmental entity determines that a waiver is clearly in the best interest of the public. Section 41-16-161(d), Code of Alabama 1975.

SELECTED CASES AND ATTORNEY GENERAL OPINIONS

Contracts Covered and Who Must Comply:

- The purchase of used equipment is subject to the competitive bid law. AGO 1981-0481 (to Hon. Ted Boyette, July 30, 1981), and AGO 1989-0185.
- Lease-purchase arrangements are also subject to the bid law. AGO 1982-0051 (to Hon. W. W. Burns, October 29, 1981), and AGO 1982-474 (to Hon. William C. Gullahorn, July 26, 1982). A good rule to follow in determining whether or not lease arrangements must be bid is to bid any lease arrangement the terms of which bind the governmental entity to spend $7,500 (now $30,000) or more.
- The purchase of gasoline is subject to the bid law. AGO 1982-0526 (to Mr. G. R. Craft, August 30, 1982).
- Municipal and county airport authorities created under the provisions of Sections 4-3-1 through 4-3-24, Code of Alabama 1975, are subject to the provisions of the competitive bid law. AGO to Hon. Edward Jackson, May 22, 1975.
- Bids are required on a contract for janitorial services. AGO 1980-0392 (to Hon. Brady Baccus, June 11, 1980).
- A local governing body must comply with the bid law in letting contracts for the installation of data processing programs. AGO to Hon. Charles Boswell, January 22, 1976.
- Although a city's mechanics are trained only to work on a particular brand of vehicle, such training and past purchases from that vendor cannot justify a failure to take bids on future purchases. AGO to Hon. Fred Collins, March 14, 1978.
- Contracts for the purchase of voting machines are subject to the competitive bid law. Counties having only one type of machine may restrict purchase to the type possessed, but counties having none or more than one type of voting machine must accept bids from all voting machine manufacturers bidding. 130 Quarterly Report of the Attorney General 57.
- A contract for services to publish a list of qualified voters as required by law **must** be let on a competitive bid basis. 138 Quarterly Report of the Attorney General 36.
- Water authorities created pursuant to Section 11-81-1, et seq., Code of Alabama 1975, are subject to the bid law. AGO 1991-159. Hospital boards organized under Section 22-21-1, Code of Alabama 1975, are also subject to the bid law (AGO 1991-0344) as are E-911 Boards (AGO 1991-0171).
- A municipality may solicit bids for the purchase of an indefinite number of an item based on unit prices, provided the contract will be limited to a definite period of time. AGO 1993-0123.
- The bid law does not apply to purchases from other governmental agencies. AGO 1991-0131 and AGO 1994-0183.
- The three-year limit found in Section 41-16-57(e) of the Code of Alabama on public contracts for contractual services applies only to contracts that are competitively bid. AGO 2001-0048.
- If payment for emergency medical services by a nonprofit ambulance service exceeds $7,500 (now $30,000) annually, the Competitive Bid Law applies. AGO 2002-0086.
- A mental health board incorporated pursuant to Section 22-51-2 of the Code of Alabama 1975, is a public corporation subject to the Competitive Bid Law and the Public Works Law. AGO 2003-0017.
- An E-911 board must comply with the Competitive Bid Law when determining which ambulance providers receive dispatch calls. Such boards should work with municipalities and ambulance service providers to ensure the most efficient service to persons in their districts. AGO 2004-0009.

- Mental Health Authorities created pursuant to Section 22-51-1 et seq. of the Code of Alabama 1975, are not exempt from the Competitive Bid Law. AGO 2006-0004.
- Section 11-89A-5 of the Code of Alabama allows a county solid waste disposal authority to amend its certificate of incorporation to become a municipal solid waste disposal authority that would qualify for the exemption from the Competitive Bid Law found in section 11-89A-18. AGO 2007-0059.
- Volunteer fire departments and organized rescue squads are public entities. A contract between a municipality and nonprofit volunteer fire departments and/ or organized rescue squads is not subject to the Competitive Bid Law. AGO 2012-0040.
- Any modification of a renewable contract for residential solid waste collection, transfer, and disposal that includes an increase in the amount charged for services, beyond that contemplated by the original contract, requires competitive bidding. AGO 2015-0032.
- A backhoe is not a piece of equipment that is needed, used, and consumed in the normal and routine operation of a utility system. Thus, the purchase of a backhoe, even a used one, is subject to the Competitive Bid Law. AGO 2016-0009.

Division of Contracts

- The law does not require a municipality to contract for the construction of a new building in a single contract. Separate contracts may be awarded for plumbing, heating, electricity and similar portions of the building process as long as the contract is not divided merely to avoid the law. AGO to Hon. J. W. Oakley, Sr., November 22, 1967.
- Payment of monthly bills for ambulance services are not subject to the competitive bid law if the monthly bills are under the amount subject to the bid law. AGO to Hon. B. R. Winstead, Jr., October 25, 1967.
- Although the competitive bid law prevents division of purchase orders into parts to avoid the law, it does not prevent the division of invitations to bid. AGO to Hon. Thomas A. Dujanovic, September 13, 1973.

Exemptions to the Bid Law:

- The Attorney General has issued the following rulings related to bid law exemptions:
- The purchase of insurance is exempt from the bid law. AGO to Hon. Thomas R. Bell, February 7, 1975.
- Contracts for the purchase of personal property for a community mental health center are exempt from the bid law. 130 Quarterly Report of the Attorney General 17.
- Contracts for the design, operation and supervision of a sanitary landfill are exempt from the bid law. 136 Quarterly Report of the Attorney General 47.
- Contracts with fiscal agents who represent investment banks are exempt from the bid law. 128 Quarterly Report of the Attorney General 29.
- Investment of surplus funds in certificates of deposit are exempt from the bid law. AGO to Hon. John M. Crane, May 11, 1970.
- Contractual services rendered by one state political subdivision to another or by the state to a political subdivision are exempt from the bid law. AGO's to Hon. Maury Friedlander, June 4, 1969; Hon. Lloyd Tippett, March 15, 1968; Hon. A. A. Chandler, May 28, 1969; Hon. Leonard E. Clements, Jr., April 6, 1973; 1982-174 (to Hon. William C. Gullahorn, Jr., February 5, 1982).
- Purchases of compatible computer equipment are exempt from the bid law. AGO to Hon. Gary L. Rigney, February 12, 1976; AGO 1982-0143 (to Hon. Steve Means, January 19, 1982).
- A contract with an engineering consultant firm for aerial maps is exempt from the bid law. AGO to Hon. Cliff Evans, September 26, 1973.
- A contract with a golf professional for a municipal golf course is exempt from the bid law. AGO to Ms. Mary Nell Baxter, May 6, 1974.
- Contracts for antique furniture restoration are exempt from the bid law. AGO to Mr. Warner Floyd, August 21, 1975.
- Contracts for the rebuilding and restoring of a musical instrument are exempt from the bid law. AGO to Dr. Kermit A. Johnson, November 19, 1975.
- Construction of buildings by a medical clinic board is not subject to the bid law. AGO to Mr. John E. Adams, November 21, 1979.

- If the purchase of equipment is incidental to the provision of professional services which are exempt from the bid law, the equipment purchase is exempt as well. However, if the services which will be rendered are incidental to the purchase of equipment, the bid law applies. AGO 1996-0046.
- Contracts for fiscal advice, including advice and assistance in the collection of local taxes, are exempt from the bid law. AGO 1994-0076.
- A criminal investigator is a professional for purposes of the competitive bid law; therefore, the procurement of the services of an investigator need not be competitively bid. AGO 2002-0164.
- When it is known or contemplated that like item purchases, including automotive parts not exempted by Section 4-1652(a) of the Code of Alabama 1975, involving $7,500 (now $30,000) or more will be made during a fiscal year, these items must be procured through competitive bid. The responsibility for determining which items are like or similar in nature rests with the municipality. AGO 2003-0098.
- Purchases of custom software as well as purchases of computer and word processing hardware when the hardware is the only type compatible with hardware already owned by the entity taking bids. Custom software is software that requires substantial creative work by a professional/vendor to comply with the unique specifications required by the entity making the purchase. AGO 1994-0023.
- Purchases made by individual city or county schools from moneys other than those raised by taxation or received through appropriations from state or county sources.
- The purchase, lease or other acquisition of machinery, equipment, supplies and other personal property or services by a medical clinic board organized under the provisions of Sections 11-58-1 through 11-58-14, Code of Alabama 1975.
- The purchase, lease, sale, construction, installation, acquisition, improvement, enlargement or expansion of any building or structure or other facility designed or intended for lease or sale by a medical clinic board organized under Sections 11-58-1 through 11-58-14, Code of Alabama 1975.

Contracts relating to industrial development.

- The purchase of equipment, supplies or materials needed, used and consumed in the normal and routine operation of any waterworks system, sanitary sewer system, gas system or electric system or any two or more thereof, that are owned by municipalities, counties or public corporations, board of authorities that are agencies, departments or instrumentalities of municipalities or counties and no part of the operating expenses of which system or systems have, during the then current fiscal year, been paid from revenues derived from taxes or from appropriations of the state, a county or a municipality. The requirements of the Competitive Bid Law do not apply to purchases of equipment, supplies or materials needed, used and consumed in the normal and routine operation of the county water and sewer authority. However, if the authority's purchase of equipment, supplies or materials exceeds $50,000 and is included in a contract for the construction, renovation, repair or maintenance of the sewer and waterworks, it is subject to the provisions of the Public Works Law. AGO 2001-0139 and AGO 2002-0152.
- Purchases made by local housing authorities from moneys other than those raised by state, county or municipal taxation or received through appropriations from state, county or municipal resources.
- Alternative bidding does not violate the bid law. *Ericsson GE Mobile Communications, Inc. v. Motorola Communications, Inc.*, 657 So. 2d 857 (Ala. 1995).
- A school board may enter into a joint commercial venture with a company that will provide and maintain a profit-making website with profits to be realized through the sale of advertisement space on the website whereby students would offer the ads for purchase to local businesses, create the ads and place them on the website and as a result the students would gain experience with computers and web design and a large portion of the revenue would be returned to the school; provided, however, that if the proposed project amounts to an exclusive franchise, it must be competitively bid. AGO 2005-0017.
- A contract proposed by a city for engineering and professional management services is exempt from the competitive bid law if the non-professional services included in the contract are incidental to and integrated with the professional services. AGO 2005-0192.
- The purchase of a voting system and related professional services does not have to be competitively bid if the professional services provided by the vendor are inextricably intertwined with the particular voting system purchased. AGO 2005-0197.

- Based on Section 41-16-50(a) of the Code of Alabama, 1975, the governing bodies of instrumentalities of counties and municipalities must comply with the Competitive Bid Law. Because Section 41-16-51(a)(15) exempts contractual services related to security plans and procedures and the security of individuals from bidding, a board does not have to bid contracts for these services. The purchase of other services that are inextricably intertwined with the security services is also exempt. If not inextricably intertwined, these services are subject to bid. AGO 2009-0081
- An agreement for the naming rights of facilities of a separately incorporated board or authority is not subject to the competitive bid law. The granting of an exclusive contract or a franchise that does not comply with the competitive bid law constitutes an exclusive grant of special privileges in violation of Section 22, Alabama Constitution of 1901, however a separately incorporated board is a "separate entity from the state and from any local political subdivision, including a city or county within which it is organized" and therefore, it is "not one of the governmental entities within the contemplation of the prohibition of Section 22 of our State Constitution." AGO 2010-0054
- A public corporation, such as a municipal water board, may make purchases from the state bid list without further bidding if the purchase is made from the vendor to whom the state awarded the contract and the state bid included political subdivisions and instrumentalities of political subdivisions on the state bid. AGO 2011-0011.
- Contracts between public entities are not required to be competitively bid. Solid waste disposal contracts between the County and municipalities are not required to be let by competitive bidding. AGO 2008-0093.
- The city waterworks and sewer board may purchase equipment through the National Joint Powers Alliance ("NJPA") without violating the competitive bidding requirement of section 41-16-50 of the Code of Alabama, provided the board complies with all of the requirements of section 41-16-51(a)(16) of the Code. AGO 2014-0050.
- The County 911 Board of Commissioners may enter a contract for software, hardware, and training to enhance its existing mapping system without competitive bidding if the Board determines that the purchase is for custom software; hardware that is the only type compatible with the existing system; contractual services that are impossible to award by competitive bidding; or contractual services having an impact on the security or safety of person, structures, facilities, or infrastructures. AGO 2015-0044.
- A proposed contract with a vendor that will provide software development, installation, project management, equipment, information security, testing support, resources, supplies, and delivery and maintenance service to comprehensively manage/operate a county Board of School Commissioners may be exempt from requirements of the Competitive Bid Law if the Board determines the contract fits within an exemption found in Section 16-13B-2 of the Code of Alabama. AGO 2016-015. (NOTE: this opinion is specific to the competitive bid law for certain boards of education, however, the exemption at issue is also found in Section 41-16-51(a)(3) of the Code of Alabama.).
- A contract between a public agency and a professional services company is exempt from the competitive bid law. If the professional services are merely incidental to the purchase of equipment, the purchase must be bid. AGO 2000-0152.
- The professional services exemption in the Competitive Bid Law does not apply to consultants providing administrative, secretarial, accounting and clerical services. AGO 2002-0078.The purchase of services to convert records from the Banner/Oracle database to the Alliant Microsoft/SQL platform base, and the purchase and installation of the custom Campus Key ERP software, would be exempt from the Competitive Bid Law if the services involve a high degree of professional skill, custom software, or there is only one vendor for the software. AGO 2016-0052.
- The purchase of electronic poll books is exempt from the requirements of the Competitive Bid law pursuant to sections 4l-16-51(a)(3) and (a)(13) of the Code of Alabama. AGO 2017-0044.
- Changing the consumer price index for a renewal term of a waste disposal contract constitutes a material change rendering the exemption in section 41-16-51(a)(10) of the Code of Alabama inapplicable. AGO 2018-0054.
- The Department of Examiners of Public Accounts ("Examiners") may approve any competitive bid process, related to goods and services, that is utilized by a cooperative of the National Association of Counties, its successor organization, or any other national or regional governmental cooperative, as long as the process complies with the bid law requirements applicable to the governmental entity conducting the process. Examiners may only approve a cooperative's bid process, related to heating and air conditioning units or systems, if the process complies with the provisions of Alabama's bid law. AGO 2019-0038.

Emergency Purchasing

- When a county jail has been severely damaged by fire, there is an emergency which could affect public health, safety or convenience. Therefore, the county governing body can award a contract for repairs without public advertisement under the authority of Section 41-16-53, Code of Alabama 1975. AGO to Hon. Dave Headrick, October 30, 1975.
- In certain limited circumstances such as those that existed during the energy crisis of the mid-1970s, emergency procedures may be employed to purchase critical materials. *See,* AGO's to Howard L. White, November 29, 1973; James T. Sowell, January 11, 1974; and Hon. William Roy Williard, February 7, 1974.
- A purchase previously made by a city cannot be treated as an emergency purchase at the present time in order to save a contract which would be void for non-compliance with the bid law. AGO 1983-0426 (to Hon. Frank A. Hickman, August 10, 1983).
- A municipality need not seek bids on a garbage truck if an emergency situation is declared and the provisions of Section 41-16-53 of the Code are complied with. AGO to Hon. Frank T. Ferrire, February 14, 1974.
- A municipal council is given authority to let contracts without advertisement in emergency situations when public health, safety or convenience is involved in the delay of acquiring needed equipment. AGO to Hon. Frank T. Ferrire, February 14, 1974.

Sales of Municipal Property – No Bid Required

- A municipality may sell real estate when it is no longer needed for public purposes. Such a sale is not required to be made under the competitive bid law. 143 Quarterly Report of the Attorney General 21.
- City automobiles may be sold without competitive bid. AGO to Hon. John Starnes, April 3, 1975.
- Pursuant to Section 11-14-2 of the Code of Alabama, a County does not have to use the bid process when selling real estate that is owned by the county that may be lawfully disposed. AGO 2009-0031.

Contracts by Municipal Officers or Board Members – Conflicts of Interest

- This section does not prohibit a municipality or county from dealing with incorporated firms which have as their officers or shareholders officials of the local government. 128 Quarterly Report of the Attorney General 30.
- This section does not prohibit a municipal official from bidding on real property being sold by the municipality. 129 Quarterly Report of the Attorney General 48.
- A councilmember may bid for the rights to construct a building for the city. However, if the bid is accepted, the councilmember must resign from office. AGO to Hon. William H. Tuck, January 30, 1968.
- A municipality may deal with a corporation in which a councilmember owns an interest as long as he does not own controlling interest in the corporation. AGO to Hon. Wayne Harrison, December 6, 1973.
- A councilmember may be an employee of a corporation which sells automobiles to the municipality on a competitive bid basis. AGO to Hon. Robert S. Milner, April 4, 1975.
- Section 41-16-60, Code of Alabama 1975, prohibits the awarding of a contract on a water works project to the water works superintendent. AGO to Hon. George W. Gibbs, September 30, 1975.
- A municipal official's son is not prohibited from bidding on a municipal contract because of kinship, as long as the father has no financial interest in his son's business. AGO to Hon. James C. Wood, September 10, 1975.
- A municipal employee may not enter into a contract with the municipality he works for even though the contract is won, under competitive bid, by a firm he owns. AGO to Hon. Fred G. Collins, May 8, 1975.
- A municipality may not deal with a family-held corporation where a member of the municipal governing body is also a member of the family that owns the corporation. AGO to Hon. Hubert G. Hughes, August 9, 1968.
- A company owned by the son or daughter of a council member can contract with the city if the son or daughter is the apparent low bidder, provided the council member does not reside in the same household as his or her child and is not financially dependent on the son or daughter. If a council member abstains from voting on a matter in which he or she previously had a financial interest, and in which his or her child now has a financial interest, there is no violation of Sections 11-43-12, 11-43-53, and 11-43-54 of the Code of Alabama. AGO 2000-0215.

- A city council member may not successfully bid, under the Competitive Bid Law, for any contract or service with the city he or she represents if he or she has any direct financial interest in the company bidding. AGO 2002-0065.
- Under Section 11-43-12.1 of the Code of Alabama 1975, a class 8 municipality may do business with a company owned by a municipal officer when that company is the only domiciled vendor of that personal property or service within the municipality and the cost of the personal property or service does not exceed $3000 annually. AGO 2005-0118.
- Section 11-43-12.1, Code of Alabama 1975, provides that a Class 7 or 8 municipality may enter into a contract with a business owned by a municipal officer or employee if the officer or employee is the only domiciled vendor of the personal property or service within the municipality, the officer or employee does not participate in the decision-making process, and the cost does not exceed $3000. If the cost exceeds $3000, the municipality may contract with the municipal officer or employee under the Competitive Bid Law, provided the official or employee does not participate in the decisionmaking process, is the lowest responsible bidder, and makes a full disclosure of the extent of his or her ownership in the business. *See* Section 11-43-12.1, Code of Alabama 1975. The municipal officer or employee may act as a subcontractor on city work exceeding $3000 if the official or employee does not participate in the decision-making process and makes a full disclosure of the extent of his or her ownership in the business. AGO 2008-0092.
- Members and officers of a separately incorporated municipal board are no longer specifically prohibited by the competitive bid law from submitting a bid or contract on a board project in which the board member has a financial interest. Whether such action may be prohibited pursuant to the State Ethics Law is a matter that should be submitted to the Ethics Commission. AGO 2011-0081
- Pursuant to section 41-16-60 of the Code of Alabama, a member of a city or county board of education may contract with the board of education for personal property or services if: (1) the contemplated contract was in existence before a person was elected or appointed to the board, or (2) the individual does not participate in the deliberation or vote on the proposed contract. Section 41-16-60 is not applicable to contracts subject to the Public Works Law. Members of city and county boards of education may be subject to the Ethics Law and should submit these questions directly to the Ethics Commission. AGO 2012-017 and AGO 2012-0018. Section 11-43-12, Code of Alabama 1975, prohibits a city council member from engaging in business contracts with the municipality for which the council member serves. Section 11-4312.1(a) authorizes a council member of a Class 7 or 8 municipality to contract with the municipality that council member serves when the council member's business is the only domiciled vendor of that personal property or service within the municipality and the amount to be expended does not exceed $3000. This provision is inapplicable when the business is located outside of the municipality. Pursuant to section 11-43-12.1(b) and (c) of the Code, the business of a council member of a Class 7 or 8 municipality may contract with the municipality if the council member fully discloses his or her relationship in the business, the council member does not participate in the decision-making process, the municipality uses the Competitive Bid process, and the council member is the lowest responsible bidder. AGO 2013-0028.
- A town may sell real property to a company that has a councilman as a member of that company, if the councilman does not participate in the discussion of the consideration of the sale by the town council, for an amount determined by the council to be adequate consideration. The best public policy is to sell such property by competitive bidding. AGO 2014-0076.
- Section 11-43-12.1 of the Code of Alabama permits Class 8 municipality to do business with a shop owned by a municipal officer when that shop or vendor is the only domiciled vendor within the municipality and the cost of the personal property or service offered by the vendor does not exceed $3000 yearly. If the vendor is not the only one of its kind domiciled within the town limits, or the service will exceed $3000 yearly, the elected official or municipal employee may bid on providing service to the town pursuant to Section 11-43-12.1(b) and in accordance with Section 41-16-50 of the Code. AGO 2015-0051.
- A contract to provide an inmate telephone system for prisoners of the county jail must be competitively bid. The sheriff and the county commission should cooperate on the bidding process and when entering into a contract with a vendor. AGO 2020-0012.
- A contract to overhaul a city's computer systems may be exempt from the Competitive Bid Law if it requires a computer engineer to perform a complex computer service or if the maintenance to be performed is inextricably intertwined with the systems purchased. Attorney General Opinion No. 2016-015 does not apply to municipalities. AGO 2022-0004.
- Language contained within a renewal clause of a contract for solid waste collection which includes an upward adjustment to the monthly collection fee does not constitute a material change to the contract in violation of the Competitive Bid Law so long as the formula used for calculating an adjustment to the monthly collection fee upon renewal was contemplated under the original contract. AGO 2022-0006.

- County's annual ambulance-services contracts concerned services and purchases of products having an impact upon the safety of persons, and thus the contracts were not subject to the Competitive Bid Law. Despite the argument that services provided under the contract were those done after a dangerous incident or condition had arisen, services also included performing certain functions during such incidents or conditions to prevent people from being further harmed. *Newman's Medical Services, Inc. v. Mobile County*, 370 So. 3d 228 (Ala.2022).
- The purchase of power from a public utility with a market-based rate regulated under the Federal Power Act is exempt from the competitive bid law pursuant to section 41-16-51(a) of the Code of Alabama. AGO 2022-0021.
- The Legislature intended to repeal section 16-13B-10 of the Code of Alabama when it adopted section 41-16-60 of the Code in 2011. Pursuant to section 41-16-60 of the Code, members and officers of the city and county boards of education may be financially interested in or have any personal beneficial interest, either directly or indirectly, in a contract with the board of education for personal property or personal services if the contemplated contract was in existence before a person was elected or appointed to the board or the individual does not participate in the deliberation or vote on the proposed contract. The superintendent of a county board of education is an "officer" of the board as the term is used in section 41-16-60 of the Code. AGO 2023-0028.

Contracts Limited

- The three-year limit found in Section 41-16-57(e) of the Code of Alabama on public contracts for contractual services applies only to contracts that are competitively bid. AGO 2001-0048.
- The three-year limitation on public contracts for the purchase of personal property or contractual services, found in Section 41-16-57(e) of the Code of Alabama 1975, applies only to contracts that are competitively bid. AGO 2005-0192.