



State of Alabama  
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**Examiners of Public Accounts**

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To whom it may concern:

This letter serves as an addendum to the *Alabama Competitive Bid and Public Works Laws* booklet, dated December 14, 2014, issued by the Department of Examiners of Public Accounts. Acts 2016-260, 2016-298, 2017-279, 2017-402, 2017-421 and 2017-466, Acts of Alabama, amended Sections 16-13B-2, 16-13B-7, 39-2-4, 41-16-51, 41-16-52 and 41-16-57 of the *Code of Alabama, 1975*. Any references to these Code sections in the *Alabama Competitive Bid and Public Works Laws* should be read in light of the changes indicated below.

The Alabama Public Works Law was amended during the 2016 and 2017 Regular Legislative Sessions by the passage of [Act 2016-260](#) and [Act 2017-279](#), Acts of Alabama. The provisions of the *Code of Alabama 1975*, Section 39-2-4, which were affected as a result of this legislation are listed below, with the **changes noted in red.**

**§39-2-4(a)** The bidder shall be required to file with his or her bid either a cashier's check drawn on an Alabama bank or a bid bond executed by a surety company duly authorized and qualified to make such bonds in the State of Alabama, payable to the awarding authority for an amount not less than five percent of the awarding authority's estimated cost or of the contractor's bid, but in no event more than **ten thousand dollars (\$10,000), except if the awarding authority is the Department of Transportation, then the bid guarantee shall not be more than fifty thousand dollars (\$50,000).** The bid guaranties as provided in this section shall constitute all of the qualifications or guaranty to be required of contractors as prerequisites to bidding for public works, except as required by the State Licensing Board for General Contractors and the prequalification as required by the Department of Transportation, the Building Commission, or any other awarding authority.

The Alabama Competitive Bid Law was amended during the 2016 and 2017 Regular Legislative Sessions by the passage of [Act 2016-298](#), [Act 2017-402](#), [Act 2017-421](#) and [Act 2017-466](#), Acts of Alabama. The provisions of the *Code of Alabama 1975*, Sections 16-13B-2, 16-13B-7, 41-16-51, 41-16-52 and 41-16-57, which were affected as a result of this legislation are listed below, with the **changes noted in red.**

**§16-13B-2(a)(13)** Purchases of goods **or services, other than voice or data wireless communication services**, made as a part of any purchasing cooperative sponsored by the National Association of Counties, its successor organization, or any other national

or regional governmental cooperative purchasing program. Such 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 approved by the Department of Examiners of Public Accounts for each bid.
- b. 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.

**§16-13B-2(a)(14)** Purchases of unprocessed agricultural products as defined in subsection (b) of Section 16-1-46 and the cost of the food purchased is equal to or less than the federal simplified acquisition threshold set in 2 C.F.R §200.88.

**§16-13B-2(a)(15)** Purchase of goods or services, other than voice or data wireless communication services, from vendors that have been awarded a current and valid general services administration contract. Prices paid for the goods or services may not exceed the lowest competitively bid price for these goods or services, other than voice or data wireless communication services, and may not exceed the price on an existing state purchasing program.

**§16-13B-7(b)** The awarding authority in the purchase of or contract for personal property or contractual services shall give preference, provided there is no sacrifice or loss in price or quality, to commodities produced in Alabama or sold by Alabama persons, firms, or corporations. Notwithstanding the foregoing, no county or city board of education may specify the purchase of goods or services from a sole source, unless:

- (1) The board of education can document that the sole source product or service is of an indispensable nature, no other product or service can meet its needs, all other viable alternatives have been explored, and it has been determined that only this product or service will fulfill the function for which the product is needed. Frivolous features will not be considered.
- (2) No other vendor offers substantially equivalent goods or services that can accomplish the purpose for which the goods or services are required.

**§16-13B-7(f)** Contracts for the purchase of personal property or contractual services shall be let for periods not greater than five years. 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 periods not greater than 10 years.

**§41-16-51(a)** Competitive bids for entities subject to this article shall not be required for utility services, the rates for which are fixed by law, regulation, or ordinance, and the competitive bidding requirements of this article shall not apply to:

**§41-16-51(a)(8)** Purchases of manuscripts, books, maps, pamphlets, periodicals, and library/research electronic data bases of manuscripts, books, maps, pamphlets, or periodicals.

**§41-16-51(a)(16)** Subject to the limitations in this subdivision, 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 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 is made through a participating Alabama vendor holding an Alabama business license if such a vendor exists.
- d. The entity 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.

**§41-16-52(a)** All expenditures of funds of whatever nature for repair parts and the repair of heavy duty off-highway construction equipment or of any 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 twenty-two thousand five hundred dollars (\$22,500) made by or on behalf of any county commissions and the governing bodies of the municipalities of the state, and the governing bodies of instrumentalities, including waterworks boards, sewer boards, gas boards, and other like utility boards and commissions, shall be made, at the option of the governing boards, bodies, instrumentalities, and commissions, without regard to this article. The foregoing exemption from this article shall apply to each incident of repair as to any repair parts, equipment, vehicles, or machinery. The amount of the exempted expenditure shall not be construed to be an aggregate of all the expenditures per fiscal year as to any individual vehicle or piece of equipment or machinery.

(b) The option provided by subsection (a) may be exercised by the governing boards, bodies, instrumentalities, and commissions by specific reference to this section on any and all purchase orders and purchase commitments executed by the governing boards, bodies, instrumentalities, and commissions; provided, however the option shall not be exercised by any employee, agent, or servant unless done so after having received

official prior approval of the respective governing board, body, instrumentality or commission or unless exercised pursuant to a formal policy adopted by the governing board, body, instrumentality, or commission setting out conditions and restrictions under which the option shall be exercised.

(c) 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, drainage, road construction, and compaction for exclusive use of county and municipalities, highway, street, and sanitation departments, involving a monthly rental of not more than five thousand dollars (\$5,000.00) per month per vehicle or piece of equipment or machinery but not to exceed fifteen thousand dollars (\$15,000.00) per month for all such vehicles and pieces of equipment made by or on behalf of any county commissions and the governing boards of municipalities of the state and the governing bodies of instrumentalities, including waterworks boards, sewer boards, gas boards, and other like utility boards and commissions shall be made, at the option of the governing boards, bodies, instrumentalities, and commissions, without regard to the provisions of this article.

**§41-16-57(b)** The awarding authority in the purchase of or contract for goods or services shall give preference, provided there is no sacrifice or loss in price or quality, to commodities produced in Alabama or sold by Alabama persons, firms, or corporations. Notwithstanding the foregoing, no county official, county commission, city council or city councilmen, or other public official charged with the letting of contracts or purchase of goods or services may specify the use of materials or systems by a sole source, unless:

- (1) The governmental body can document that the sole source goods or services are of an indispensable nature, 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 product is needed. Frivolous features will not be considered.
- (2) No other vendor offers substantially equivalent goods or services that can accomplish the purpose for which the goods or services are required.

Please contact us if you need additional information.

Sincerely,



Ronald L. Jones  
CHIEF EXAMINER

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