

LEADERSHIP FOR FINANCIAL ACCOUNTABILITY

Understanding the Bid Law

March 2, 2019



ALABAMA
ASSOCIATION OF
SCHOOL BOARDS

Why do School Board Members Need to Understand the Alabama Bid Law?



THE UNITED STATES ATTORNEY'S OFFICE
DISTRICT *of* COLUMBIA

OR IMMEDIATE RELEASE

Monday, November 26, 2018

**Former D.C. Schools Employee and Business
Owner Plead Guilty to Federal Charge in Bid-
Rigging Scheme
Schools Employee Helped Steer Nearly \$300,000
Contract to Her Friend**

Legal Authority

- Alabama Competitive Bid Law

§16-13B-1, et.al.

- Code of Alabama 1975, Section 16-13B
 - *Applies to County and City Boards of Education*
- The legal requirement is a contractual agreement entered into by free and open competitive biddings, on sealed bids to the lowest responsible bidder.

Alabama Bid Law Applies to:

- Expenditures of funds for labor, services, and work costing **\$15,000 or more**
- The purchase or lease of materials, equipment, supplies or other personal property costing **\$15,000 or more**
- The \$15,000 threshold is not limited to a single purchase but applies to the aggregate purchase of \$15,000 or more of like items over a period of time, generally one year.



Alabama Competitive Bid Law

- Competitive Bidding For Certain Contracts Of County and City Boards of Education
§16-13B-1 to §16-13B-11
- Some provisions are different from bid laws for state agencies, colleges, universities, county and city governments.
- The Alabama Examiners of Public Accounts' web site has a manual called *Alabama Competitive Bid and Public Works Laws*.

Alabama Competitive Bid Law

- Advertising for bids is not required.
- Two requirements for bid solicitation:
 - *Post notice on bulletin board outside of Board of Education Purchasing Office.*
 - *Send notice by mail to all vendors who have filed a written request that they be notified when particular items are being bid. However the vendor can be removed for failing to respond to the previous three notifications.*
- Can post notice in other ways – but it is not required.

Alabama Competitive Bid Law

- The school board may provide notice of the bid solicitation for any length of time and by other additional manners including:

School board web site

Other web sites

E-mail notifications to potential bidders

Notification by telephone or mail

Alabama Competitive Bid Law

- Bids must be sealed when received.
- Bids must be 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 seven years from the date the bids are opened and shall be open to public inspection.

Alabama Competitive Bid Law

- Before soliciting for bids, a school board can set the local preference zone that extends beyond the legal boundaries of the school board to include the bidders having a place of business in the core based statistical area (CBSA) of the school board.
- The local preference zone allows the school board to award a responsible bid for personal property that is **up to 3%** more than the lowest responsible bid to a local bidder.
- If the awarding authority is silent on the local preference zone, it is deemed to be the legal boundaries or the jurisdiction of the awarding authority.

Alabama Competitive Bid Law

- The school board **has the option** to include a requirement in the bid specifications that the bidder is required to provide a bid bond with the bid if available from a surety company.
- The bid bond protects the school board from bidders who decline to contract for the bid price and specifications when bids are opened.

Alabama Competitive Bid Law

- Expenditures subject to the bid law require a contractual agreement entered into by free and open competitive bidding by sealed bids to the lowest responsible bidder.
- Legal decisions generally defer to the awarding agency in the determination of the lowest responsible bidder.

Items to Be Considered When Determining the Lowest RESPONSIBLE Bidder

Qualities of
Goods proposed
to be Supplied

Conformity with
Specifications

Purposes for
Which Required

Terms of
Delivery And
Delivery Dates

Transportation
Charges

Alabama Competitive Bid Law

- Splitting contracts that are subject to the bid law into smaller transactions to avoid the competitive bidding requirements is illegal and voids the contracts.
- Legal opinions state that a purchase order is a contract.



Alabama Competitive Bid Law

- If only one responsible bid is received:
 - May accept the bid **or**
 - May reject the bid and negotiate the purchase or contract, provided the negotiated price is lower than the bid price

Alabama Competitive Bid Law



- For contracts subject to the Competitive Bid Law, the length of contracts is restricted to:

Purchase Service Contracts - No more than 5 years

Lease Purchase Contracts - No more than 10 years for capital improvements, repairs to real property and other lease purchase contracts

Alabama Competitive Bid Law

- Rejection of a Bid
- The awarding authority (School Board) may reject a bid when the price is deemed excessive or the quality of product is inferior.

Alabama Competitive Bid Law

Documentation of Bid Results

To Whom the bid was awarded

Reason for not awarding to the lowest bidder

Bid file shall be open for public inspection

Alabama Competitive Bid Law Emergencies

- For emergencies a school board must still follow bid law requirements except public advertisement. (No bulletin board posting.)
- The **school board** must make a written public declaration that provides the reasons for determining that an emergency exists that affects the public health, safety, or convenience to not advertise for bids.

Alabama Competitive Bid Law

Items Exempt from Requirements

- Utility Services (rates fixed by law, regulation or ordinance)
- Insurance

Alabama Competitive Bid Law

Items Exempt from Requirements

■ Professional Services:

- *Attorneys*
- *Physicians*
- *Architects*
- *Teachers*
- *Superintendent of Construction*
- *Artists*
- *Appraisers*

■ Professional Services:

- *Engineers*
- *Consultants*
- *Certified Public Accountants*
- *Public Accountants*
- *Others possessing a high degree of professional skill where the personality of the individual plays decisive part.*

Alabama Competitive Bid Law

Items Exempt from Requirements

- Regular Civil Service employment contracts
- Fiscal or Financial Advice or Services
- Products made by Alabama Institute for Deaf and Blind
- Maps/Photographs from any federal agency

- Manuscripts, Books, Maps, Pamphlets, Periodicals and Library Research electronic data bases or Manuscript Books, Maps, Pamphlets or Periodicals
- Paying Agents/Trustees
- Existing contracts up for renewal for sanitation, solid waste collection, recycling or disposal.

Alabama Competitive Bid Law

Items Exempt from Requirements

- Computer hardware which is only type compatible with hardware already owned/Custom software
- Security related services/products which impact upon the security of persons, structure, facilities or infrastructures.
- Service or Commodity for which there is only one vendor supplier
- Products whose price is regulated and established by state law

- Purchases made by individual schools from moneys other than those raised by taxation or received through appropriations.

Alabama Competitive Bid Law

- Purchasing from a vendor without competitive bidding is allowable if a school board specifies that the vendor is a sole source of the goods or services and the documentation required by the competitive bid law is maintained.

Required sole source documentation:

- Good or services are of an indispensable nature.
- All other viable alternatives have been explored.
- Only these will fulfill the purpose. (Not frivolous.)
- No other vendor can provide substantially equivalent goods or services that will accomplish the purpose for which the goods or services are required.
- All sole source documentation of sole source determination is maintained.

Alabama Competitive Bid Law

- A joint purchasing agreement, approved by the governing bodies, may be made by two or more county or city school boards, counties, or municipalities (or county or city instrumentalities) provided the bid requirements for the governing bodies are followed.

Alabama Competitive Bid Law

- Purchases made by utilizing one of the national or regional purchasing cooperatives approved by the State Examiners (or GSA vendors) are exempt from competitive bidding if:
 - *The purchase is not a voice or data wireless communications service.*
 - *The goods or services are not on the state bid list or the cost does not exceed the state bid.*
 - *The purchase is made through a participating Alabama vendor holding an Alabama business license if such a vendor exists.*

Alabama Competitive Bid Law

- Purchases can be made from specified national purchasing cooperatives without the school board requesting sealed bids.
- The national purchasing cooperatives that are allowable for school boards to use are specifically approved by the State Examiners of Public Accounts.

Purchasing Cooperatives

- The Code of Alabama 1975, Section 16-138-2
- Cooperatives must be approved by the Examiner of Public Accounts in advance

Approved Purchasing Cooperatives as of January 2019

- U.S. Communities
- The Cooperative Purchasing Network (TCPN)
- National IPA Cooperative
- National Joint Power Alliance (NJPA)
- National Cooperative Purchasing Alliance (NCPA)
- H-GAC Cooperative Services
- E & I Cooperative Services
- The Interlocal Purchasing System (TIPS)
- NPP Cooperative
- Public Sourcing Solutions



ALABAMA DEPARTMENT OF
EXAMINERS
OF PUBLIC ACCOUNTS

Joint Purchasing of Information Technology

- Information Technology Joint Purchasing Agreements §16-61E-1. et.al.
- Alabama K-12 Joint Purchasing Agreement
 - *Hardware/Software*
 - *Services*
- Each school system's technology coordinator has access to the SDE's web site that contains joint purchasing contracts for Alabama school boards.
- School boards can also enter into joint purchasing agreements with colleges and universities for information technology.

Public Works Law

- Code of Alabama 1975, Section §39-1-1, et.al.

Expenditure Threshold

\$50,000

Public Works Law

- Contracts for public works projects of less than \$50,000 are **not** subject to competitive bidding under the Public Works Law.
- Purchases for public works projects using school board employees for routine maintenance and repair job are subject to the Competitive Bid Law if the purchases exceed \$15,000.

Public Works Law

- Definition:
- **“The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.”**

Public Works Law

- Public Work Projects
- Contracts for public works projects of less than \$50,000 are **not** subject to competitive bidding under the Public Works Law.
- Public works projects of \$50,000 or more would usually involve an architect.
- Some of the public works projects that may not require an architect include:
 - *Security fences.*
 - *Paving parking lots.*
 - *Painting contracts.*

Alabama Competitive Bid Law

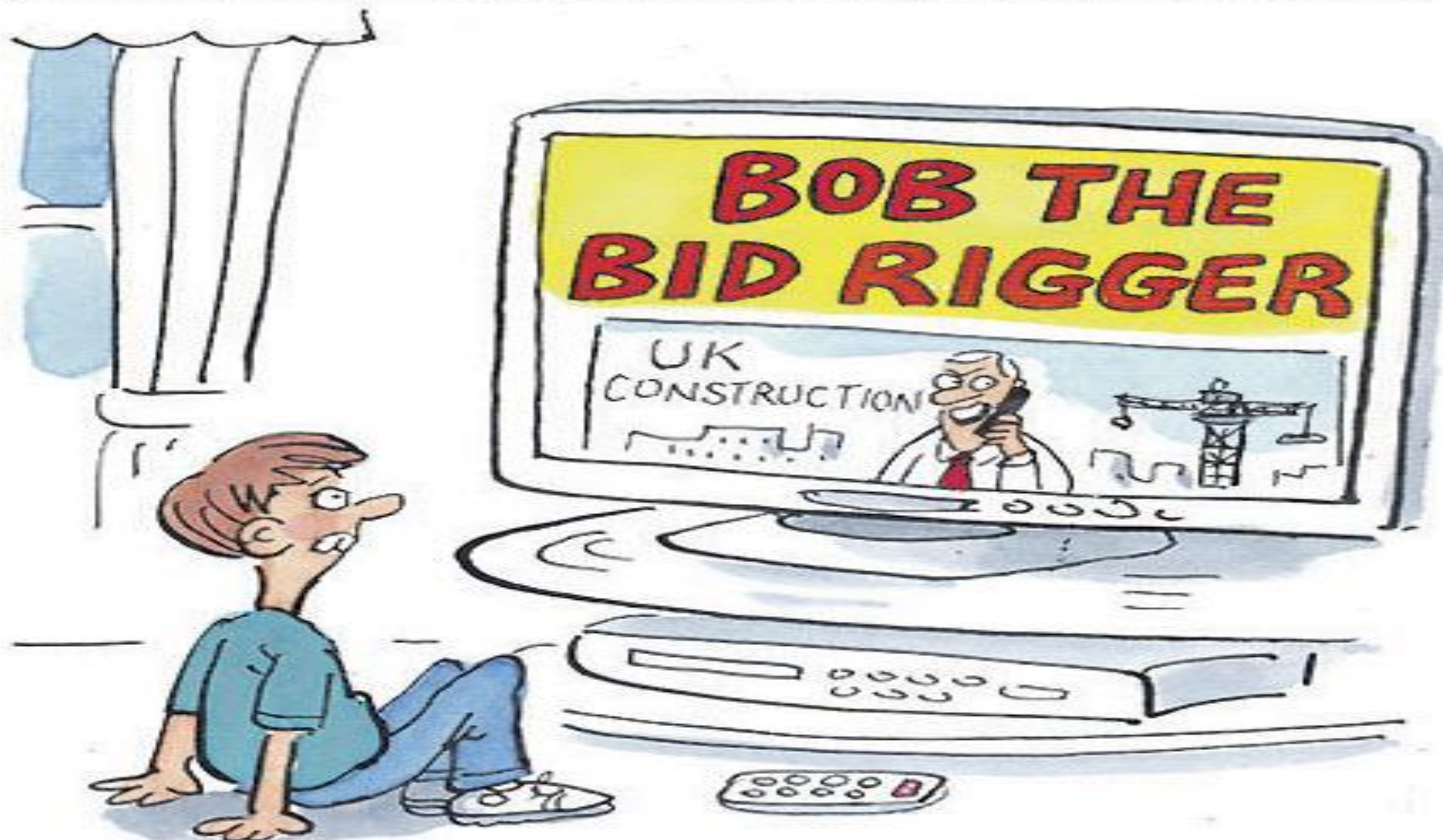
- Alabama Competitive Bid Law §16-13B-1, et.al.
- Purchasing Cooperatives The Code of Alabama 1975,
Section 16-13B-2
- Information Technology Joint Purchasing Agreements §16-61E-1. et.al.
- Public Works Law §39-1-1, et.al.

Competitive Bidding

- “Price-Based” Selection
- Bonded
- Lowest Bid



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