



2009-060

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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April 14, 2009

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Honorable V. Gordon Moulton
President, University of South Alabama
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307 University Boulevard North
Mobile, Alabama 36688-0002

Public Works Law – Construction –
Contracts – Colleges and Universities –
Job Order Contracts

The University of South Alabama may enter into the described unit price contracts or Job Order Contracts if the contracts are executed in compliance with the Public Works Law and are limited to the repair and renovation contracts as described in the opinion request.

Dear President Moulton:

This opinion of the Attorney General is issued in response to your request.

QUESTION

May the University of South Alabama enter into a unit price contract under the Public Works Law?

FACTS AND ANALYSIS

Your request states as follows:

Job Order Contracts (“JOC”) are a common procurement method used to provide a competitively selected source for many similar, small construction projects. The successful contractor bids a unit price for different components of the construction process.

Following award of the contract to the lowest responsible bidder, the agency develops construction scopes of work, and the unit prices are applied from which a delivery order is issued. There is no guaranteed minimum amount of work ordered. The contract specifies a maximum amount of work that may be ordered under the contract and in any single delivery order.

The advantages to the University are: (1) each small project does not require the preparation of a full bidding specification and drawings, (2) the contractor, through multiple projects, develops an excellent working knowledge of the University's policies and schedules, (3) continued orders are dependent upon acceptable past performance, (4) the bidding process ensures that the price for the work is the best possible value, and (5) the University and the contractor are free to completely discuss, for mutual understanding, the scope project before award of a delivery order. The mutual understanding of the project will significantly reduce the potential for change orders or claims during the construction. These advantages yield a savings in costs to develop the scope of work (plans) and time to initiate work for each small project. In addition, the better understanding of the scope and the potential for follow-up on delivery orders will result in a generally higher level of quality.

Unit price contracts are relatively common for standard operations like light bulb replacement, grass cutting, HVAC filter changes, and trash collection. The myriad of different items that can be included in even a small construction project make it very difficult to prepare a comprehensive list of unit prices for the contractors to bid. Fortunately, construction-cost estimating is a very mature field with several commercially available sources. The commercially available estimating services include nearly every aspect of construction anticipated by an agency for small projects. The estimating services will include factors for the locality, as well as the year of construction. The University proposes to bid the JOC by listing a specific nationally recognized estimating service and require the bidders to propose their factor to apply to the estimating service.

This Office understands that unit price contracts will not be used for stand-alone construction and will be limited to repair/renovation projects. You further provide the following specific examples of the types of projects:

- Bathroom in an older building does not comply with Americans with Disabilities Act standards. Work would remove fixtures and partitions, move wall, change the door, install new compliant fixtures with the appropriate spacing. Carpenters, electricians, and plumbers involved.
- Renovation of a building wing to convert under-utilized classrooms to student study rooms. Work would have interior partition walls, doors, new ceilings, floors, paint, HVAC diffuser and return changes, thermostats. HVAC mechanics, carpenters, painters, and electricians involved.
- Car that runs off of the road and clips sidewalk pedestrian lights. Work replaces light stands and makes connections. Carpenters and electricians involved.
- Tree falls on a courtyard brick wall destroying the wall and gate. Work would rebuild the wall and replace the gate. Probably would have pedestrian sidewalk lights to replace. Masons, carpenters, and electricians involved.

The purpose of the Public Works Law requiring contracts to be let by public authorities to the lowest responsible bidder is designed to protect the public against collusive contracts and to prevent favoritism toward contractors by public officials. Such contracts tend to secure fair competition upon equal terms to all bidders and to close all avenues to favoritism and fraud. *Glencoe Paving Co. v. Graves*, 266 Ala. 154, 94 So. 2d 872 (1957).

In 1993, this Office stated that a city may solicit bids under the Competitive Bid Law with specifications based upon unit prices for a definite period of time. Opinion to Honorable Larry K. Anderson, City Attorney, City of Dothan, dated February 23, 1993, A.G. No. 93-00123. The *Anderson* opinion stated that the awarding authority may use an indefinite number of items in the specifications to establish a unit price so long as a definite period of time is stated during which the unit price as established by the bid and award will be binding upon the successful bidder/vendor.

In 2004, this Office stated that a county commission could purchase asphalt pursuant to the Public Works Law by seeking bids on a unit price basis.

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The contract was awarded on an annual basis and included several options such as a unit price for materials, a unit price for the delivery of the materials, and a unit price for the materials to be "laid in place" by the successful bidder. Opinion to Honorable Gregory B. White, Chairman, Covington County Commission, dated March 1, 2004, A.G. No. 2004-083.

The University seeks to contract in a similar procurement method as approved in the above-cited opinions of this Office. Consistent with those opinions, and because there will be strict compliance with the Public Works Law in soliciting and awarding the unit price bids, the proposed Job Order Contract procurement method is legal.

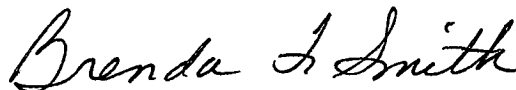
CONCLUSION

The University of South Alabama may enter into the described unit price contracts or Job Order Contracts if the contracts are executed in compliance with the Public Works Law and are limited to the repair and renovation contracts as described in the opinion request.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/DEL/GWB

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