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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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June 15, 2009

Honorable Howard Keeton
Chairman, Tennessee Valley
Youth Services Board II
c/o Chad Coker, Esquire
110 East Fifth Street
Tuscumbia, Alabama 35674

Youth Services – Competitive Bid Law –
Contracts – Boards – Professional Services
– Colbert County

Based on section 41-16-50(a) of the Code of Alabama, county instrumentalities 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, the Tennessee Valley Youth Services Board II 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.

Dear Mr. Keeton:

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

QUESTION

Are there any applicable competitive bid laws that require the Tennessee Valley Youth Services Board II to bid out a proposed management contract, since the

vast majority of funding for the facility is obtained from the Department of Youth Services and the respective county commissions of the participating county members?

FACTS AND ANALYSIS

The Tennessee Valley Youth Services Board II ("Board") is created pursuant to section 44-3-1, *et seq.*, of the Code of Alabama. Section 44-3-2 of the Code authorizes counties and municipalities to form regional, nonprofit public corporations that provide for the temporary care and custody of youths who have been placed under the jurisdiction of a juvenile court. ALA. CODE § 44-3-2 (1991). Such corporations are governed by a board of directors that are comprised of representatives from the participating counties or municipalities. ALA. CODE § 44-3-5 (1991).

In your letter of request, you stated that the Board oversees the general operation of the Tennessee Valley Detention Center ("Center"), which houses juveniles charged with delinquency violations. The Board is comprised of one member from each of seven participating counties in North Alabama. *See, generally*, ALA. CODE § 44-3-5 (1991). The financing for the Center is derived from the Department of Youth Services and from participating county commissions. Periodically, other counties provide funding when the Center houses their juveniles. The day-to-day operations of the Center are carried out by a contractor.

Your question contemplates whether the Competitive Bid Law is applicable to the Board because funding for the facility is generated from public funds from the state and the member counties. Section 41-16-50(a) of the Code of Alabama defines the types of transactions and lists the entities that are subject to the Competitive Bid Law. This section states as follows:

With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, *all expenditure of funds of whatever nature for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars (\$15,000) or more*, and 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

fifteen thousand dollars (\$15,000) or more, *made by or on behalf of . . . the county commissions, the governing bodies of the municipalities of the state, and the governing boards of instrumentalities of counties and municipalities . . . shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder. . . .*

ALA. CODE § 41-16-50(a) (Supp. 2008) (emphasis added). As a governing body of an instrumentality of multiple counties, the Board is subject to the provisions of the Competitive Bid Law. *See, generally*, opinion to Honorable Jesse A. Keller, Attorney, Riverbend Center for Mental Health, dated October 14, 2005, A.G. No. 2006-004 (stating that mental health authorities are not exempt from the Competitive Bid Law). Thus, it is the opinion of this Office that the proposed management contract must be competitively bid unless one or more exemptions apply.

Exemptions to the Competitive Bid Law are provided in section 41-16-51 of the Code of Alabama. In your request, you informed this Office that the Board seeks to renew the management contract for a company that oversees the day-to-day operations of the facility for the Board. Any company that the Board engages would need to be proficient in, among other things, handling the security issues surrounding juveniles, training of personnel handling juveniles, and purchasing of food for these juveniles. Nothing stated leads this Office to believe that the services being offered by the current company are so specialized as to prohibit the possibility of these services being bid or to fit within the exception offered in section 41-16-51(a)(3) of the Code of Alabama relating to professional services.

Section 41-16-51(a)(15) of the Code of Alabama, however, exempts “[c]ontractual 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*” from bidding. ALA. CODE § 41-16-51(a)(15) (Supp. 2008). To the extent that the proposed work involves the security procedures and plans taken with regard to these juveniles, it is the opinion of this Office that the contract for such services falls within this exception and is not required to be bid.

Security services for the facility and the juveniles are not the only services contemplated by this particular contract. Instead, you mentioned other services were also contemplated. Previously, this Office has determined that the purchase of other services that are inextricably intertwined with the service that

is exempt from the bid law are also exempt. Services that are not inextricably intertwined are subject the bid laws. *See, generally*, opinions to the following:

- Honorable Guy F. Gunter, III, Attorney, City of Opelika, dated September 9, 2005, A.G. No. 2005-192;
- Honorable Thomas T. Gallion, III, Attorney, Montgomery County Commission, dated September 23, 2005, A.G. No. 2005-197; and to
- Honorable E. Allen Dodd, Jr., Attorney at Law, dated August 29, 1995, A.G. No. 95-00303.

CONCLUSION

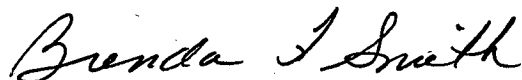
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I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

TK/MMG/atc

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