



2014-047

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

March 10, 2014

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Honorable E. Shane Black  
Attorney, Board of Commissioners  
Limestone County Communications District 911  
Hand Arendall, LLC  
102 South Jefferson Street  
Athens, Alabama 35611

Emergency Management Communications –  
Districts – Competitive Bid Law – Contracts  
– Exemptions

If the Limestone County Communications District 911 (“District”) determines that the purchase of a computer-aided dispatch (“CAD”) system with a mapping component would impact the safety or security of persons and structures within the E-911 system, then it is the opinion of this Office that such a purchase would be exempt from the Competitive Bid Law pursuant to section 41-16-51(a)(15) of the Code of Alabama.

Dear Mr. Black:

This opinion of the Attorney General is issued in response to your request on behalf of the Limestone County Communications District 911.

QUESTION

Does the District’s purchase of a new computer-aided dispatch software system (with mapping component) fall within the bid law exception set forth in section 41-16-51(a)(15) for the “purchases of products related to, or having an impact upon, . . . the security or safety of persons, structures, facilities or infrastructures?”

### FACTS AND ANALYSIS

The Limestone County Communications District 911 is an emergency communications district, typically referred to as an "E-911 district," created and operating pursuant to sections 11-98-1 through 11-98-15 of the Code of Alabama. ALA. CODE § 11-98-1 to § 11-98-15 (2008, Supp. 2013). In your letter of request, you informed this Office that part of the function of the District necessarily includes its ability to quickly and accurately track the precise location of a call, collect information about the call, and relay that information to emergency responders. The District's ability to quickly and effectively perform these tasks is frequently essential to the security and safety of the emergency caller. Currently, the District uses a computer-aided dispatch ("CAD") software system and a mapping software that works with the CAD software. In your letter of request, you credit the CAD and mapping software for giving the District the ability to effectively execute the key functions previously referenced.

The District seeks to purchase a new CAD system and questions whether the purchase of this software would fit within the bid law exception found in section 41-16-51(a)(15) of the Code. Section 41-16-51(a)(15) states as follows: "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.*" ALA. CODE § 41-16-51(a)(15) (Supp. 2013).

This particular exception was added pursuant to Act 2004-487. This act also added similar exceptions to the Public Records Law, Public Works Law, and the Open Meetings Act. Research reveals no case law interpreting these exceptions.

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997). This provision exempts from competitive bidding contractual services and purchases of products that are related to or have an impact on the safety or security of persons or structures. The term "related" is defined as "having relationship: connected by reason of an established or discoverable relation: having similar properties." WEBSTER'S THIRD INTERNATIONAL DICTIONARY 1916 (2002). The term "impact" is defined as "an impelling or compelling effect." *Id.* at 1131.

Accordingly, although the routine purchase of office supplies by a public safety entity would not be related to or have an impact upon the safety of persons, the purchase of software that locates emergency callers with pinpoint accuracy may have an impact upon public safety. This, however, is a factual determination that the awarding authority must make. In doing so, the awarding authority should consider these definitions and be mindful that such a determination is reviewable

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by the courts and may not be arbitrary, unreasonable, or capricious. *See Anderson v. Fayette Cnty. Bd. of Educ.*, 738 So. 2d 854, 857 (Ala. 1999), quoting *Union Springs Tel. Co. v. Rowell*, 623 So. 2d 732 (Ala. 1993).

The foregoing notwithstanding, the purchase of the software may also be exempt from the bid law requirements if such software is considered custom as expressed in section 41-16-51(a)(11) of the Code of Alabama. *See, generally*, opinion to Honorable R.L. Campbell, Chairman, Morgan County Emergency Management Communications District, dated December 6, 1994, A.G. No. 95-00046. This provision states the following: "**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.**" ALA. CODE § 41-16-51(a)(11) (Supp. 2013).

Although these provisions may provide a method by which the Limestone County E-911 System may avoid the competitive bidding process, this Office has historically taken the position that it is better to follow the competitive bidding process in acquiring goods and services, even if the acquisition can be found to fall within the purview of one of the exemptions. *Campbell* at 4.

#### CONCLUSION

If the District determines that the purchase of a CAD system with a mapping component would impact the safety or security of persons and structures within the E-911 system, then it is the opinion of this Office that such a purchase would be exempt from the Competitive Bid Law pursuant to section 41-16-51(a)(15) of the Code.

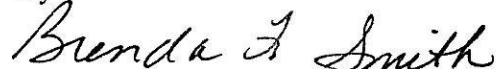
I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:



BRENDA F. SMITH

Chief, Opinions Division

LS/MMG  
1708101/176218

**Section 41-16-51**

**Contracts for which competitive bidding not required.**

(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:

(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 Sections 21-2-1 to 21-2-4, inclusive.

(7) Purchases of maps or photographs from any federal agency.

(8) Purchases 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 road or bridge 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 projects 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 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.

(17) Purchase 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.

(b) This article shall not apply to:

(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 Sections 11-58-1 to 11-58-14, inclusive.

(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 11-58-14, inclusive.

(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 Sections 11-54-80 to 11-54-99, inclusive, or Sections 11-54-20 to 11-54-28, inclusive, or any other statute or amendment to the Constitution of Alabama authorizing the construction of plants or other facilities for industrial development or for the construction and equipment of buildings for public building authorities under Sections 11-56-1 to 11-56-22, inclusive.

(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.

(c) The state trade schools, state junior colleges, state colleges, and universities under the supervision and control of the State Board of Education, the district boards of education of independent school districts, the county commissions, and the governing bodies of the municipalities of the state shall establish and maintain such purchasing facilities and procedures as may be necessary to carry out the intent and purpose of this article by complying with the requirements for competitive bidding in the operation and management of each state trade school, state junior college, state college, or university under the supervision and control of the State Board of Education, the district boards of education of independent school districts, the county commissions, and the governing bodies of the municipalities of the state and the governing boards of instrumentalities of counties and municipalities, including waterworks boards, sewer boards, gas boards, and other like utility boards and commissions.

(d) Contracts entered into in violation of this article shall be void and anyone who violates the provisions of this article shall be guilty of a Class C felony.

*(Acts 1967, Ex. Sess., No. 217, p. 259, §2; Acts 1967, No. 209, p. 573; Acts 1967, No. 769, p. 1625; Acts 1969, No. 763, p. 1352; Acts 1980, No. 80-463, p. 723; Acts 1982, No. 82-425, p. 667, §1; Acts 1982, No. 82-508, p. 840, §1; Acts 1983, No. 83-515, p. 778; Acts 1984, No. 84-298, p. 666; Acts 1989, No. 89-665, p. 1319; Acts 1993, No. 93-615, p. 1009, §1; Acts 1995, No. 95-630, p. 1334, §1; Act 98-148, p. 249, §1; Act 2004-487, p. 906, §1; Act 2006-279, p. 489, §1; Act 2009-760, p. 2294, §2; Act 2011-530, p. 869, §1; Act 2016-298, §1.)*