S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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May 5, 2000

Opinion No. 00-086

Competitive Bidding Requirements For County Road Construction Contracts

QUESTION

May Sumner County award a road design and construction contract on a "design-build" basis, without competitive bidding, to an engineering firm that has partnered with a road construction firm for that purpose, where Sumner County's governing body believes such award to be in the best interest of the taxpayers?

OPINION

No. The statutes that authorize Sumner County to let a public contract for county road construction require the county, through its statutorily designated officials, to advertise the proposed letting of such a contract and to receive sealed bids for the proposed road project.

ANALYSIS

We are advised that Sumner County has adopted the County Financial Management System of 1981 to administer its county finances. Tenn. Code Ann. §§5-21-101 *et seq.* This purchasing system clearly mandates that purchases and contracts be awarded on a competitive bidding basis. Tenn. Code Ann. §§5-21-119 and 5-21-120.

Furthermore, Sumner County must comply with the County Uniform Highway Law in its expenditure of funds for county road and highway purposes. The County Uniform Highway Law requires that all purchases for county road and highway purposes, with certain minor exceptions, shall be made on a competitive bidding basis. Tenn. Code Ann. §54-7-113.

It is stated in your letter that Tenn. Code Ann. §§ 54-9-124 and 54-9-125 "seem to give the county road commissioners broad discretion in waiving competitive bid requirements when such is deemed to be in the best interest of the taxpayers." Title 54, Chapter 9 is an optional act and applies only to construction financed by the issuance of bonds. Further, the Sumner County Highway Department operates under Chapter 338 of the Private Acts of 1933, as amended, which renders moot the option of Sumner County's electing to operate under the "road districts" and "road Commissioners" and other requirements contemplated by Title 54, Chapter 9, Part 1.

According to our interpretation, should Sumner County in the future decide to repeal Chapter 338 of the Private Acts of 1933, as amended, in order to adopt the provisions of Title 54, Chapter 9, Part 1, the language in Part 1 and Part 2 requires competitive bidding.

The primary purpose of statutory construction is to ascertain and give effect to the intention of the legislature as expressed in the statute without unduly restricting or expanding the intended scope of the statute. *Parks v. Tenn. Mun. League Risk Mgmt. Pool*, 974 S. W. 2d 677 (Tenn. 1998). The meaning of the statute is determined by viewing the statute as a whole and in light of its general purpose. *City of Lenoir City v. State ex rel. City of Loudon*, 571 S. W. 2d 297 (Tenn. 1978). Legislative intent is primarily derived from the natural and ordinary meaning of the language therein when read in context with the whole statute. *James Cable Partners, L. P. v. City of Jamestown*, 818 S. W. 2d 338 (Tenn. App. 1991). A statute should be construed, if practicable, so that its component parts are consistent and reasonable; inconsistent phrases should be harmonized, where possible, so as to reach the legislative intent. *State v. Odom*, 928 S. W. 2d 18 (Tenn. 1996).

Competitive bidding statutes have been enacted to provide bidders with a fair opportunity to compete for public contracts and to promote the public interest by guarding against favoritism and fraud. *Marta v. Metropolitan Government of Nashville*, 842 S. W. 2d 611 (Tenn. App. 1992). The express provisions of Tenn. Code Ann. §§ 54-9-124, 54-9-125, 54-9-209, and 54-9-210 manifest the intent of the General Assembly to require counties in this state to utilize the competitive bidding process to let public contracts for county road construction. The provisions of Tenn. Code Ann. § 54-9-125 must be construed in light of this legislative purpose.

Tenn. Code Ann. § 54-9-125 expressly authorizes the county to exercise its discretion in defining the scope of the proposed road construction to be accomplished by public contract, in rejecting all bids, and in resubmitting the proposed construction project for another letting. When considered *in pari materia* with Tenn. Code Ann. §§ 54-9-124 and 54-9-209, the provision of this statute that authorizes the county to "adopt such other method of letting the work" must be construed as a reiteration of the discretion of the county to define the scope of the proposed road construction project "either in whole or in part, as the results of their (the county highway commissioners') investigation and judgment may indicate." Such a statutory construction is consistent with the legislative purpose of requiring counties in this state to utilize the competitive bidding process to let public contracts for county road construction.

This office recognizes that contracts extended by counties for professional services, including engineering services, shall be awarded "on the basis of recognized competence and integrity," not necessarily on the basis of a competitive bidding process. Tenn. Code Ann. § 12-4-106. However, the road design and construction contract that the county proposes to let to an engineering firm/road construction firm partnership is more than a contract for "services by professional persons." The proposed "design-build" contract is a public contract for the construction of a county road, and the county must utilize the competitive bidding process to let such a contract.

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