STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 13-92

Granting Preferences for Local Businesses Under Municipal Purchasing Law of 1983

QUESTION

May a municipality that is subject to the Municipal Purchasing Law of 1983 implement a policy that grants a preference to local businesses bidding on municipal contracts?

OPINION

No.

ANALYSIS

The Municipal Purchasing Law of 1983, codified at Tenn. Code Ann. §§ 6-56-301 to -307, applies to "all purchases by authorized officials in all municipalities using or encumbering municipal funds," with certain exceptions set forth at Tenn. Code Ann. § 6-56-302. Under the Purchasing Law, municipal officials must make most purchases "only after public advertisement and competitive bid." See Tenn. Code Ann. § 6-56-304.

The purpose of such a competitive bidding statute is to provide bidders with a fair opportunity to compete for public contracts and to promote the public interest by guarding against favoritism and fraud. Metropolitan Air Research Testing Auth. v. Metropolitan Gov't of Nashville, 842 S.W.2d 611, 616-17 (Tenn. Ct. App. 1992). A participating bidder has the right to have its bid considered honestly and fairly, competing on the same footing as all other bidders. Computer Shoppe, Inc. v. State, 780 S.W.2d 729, 737 (Tenn. Ct. App. 1989). Competitive bidding "requires that all bidders be placed upon the same plane of equality and that they each bid upon the same terms and conditions involved in all the items and parts of the contract, and that the proposal specify as to all bids the same, or substantially similar specifications." State ex rel. Leech v. Wright, 622 S.W.2d 807, 815 (Tenn. 1981).

When a policy gives a preference to certain bidders, the policy violates the competitive bidding principles set forth above. In short, such a policy does not place all bidders on the same plane of equality. Accordingly, this Office has opined that a policy by a local board of education giving preference to purchases from minority businesses would violate the competitive bidding provisions of Tenn. Code Ann. § 49-2-203(a)(4). Tenn. Att'y Gen. Op. 87-83 (May 5, 1987). This Office has also opined that a "Buy American" policy would violate competitive bidding requirements. Tenn. Att'y Gen. Op. 78-303A (July 26, 1978). Similarly, a municipal policy that

gives a preference to local businesses bidding on municipal contracts would violate the competitive bidding provisions of Tenn. Code Ann. § 6-56-304. Due to this conflict, a municipality lacks the authority to adopt such a policy. *See Crawley v. Hamilton County,* 193 S.W.3d 453, 456 (Tenn. 2006) ("Municipal ordinances in conflict with and repugnant to a State law of a general character and state-wide application are universally held to be invalid.").

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