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Opinion No. 05-015

Contracts by Local Government and Similar Entities for Energy-Related Services

QUESTION

Whether Tenn. Code Ann. § 12-4-115 covers new construction projects.

OPINION

Yes. Tenn. Code Ann. § 12-4-115 applies to any contract meeting its criteria, whether new or old construction.

ANALYSIS

Tenn. Code Ann. § 12-4-115 reads in full as follows:

Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of this state for energy-related services that include both engineering services and equipment, and have as their purpose the reduction of energy costs in public facilities, shall be awarded on the same basis as contracts for professional services.

The focus of the statute is contracts (1) that are for energy related services that include engineering services and equipment and (2) that are for the purpose of reduction of energy costs in public facilities. The statute does not distinguish between types of construction. Thus, if an entity covered by this statute wishes to award a contract that falls within the two statutory criteria, the entity must award the contract on the same basis as a contract for professional services,¹ whether the contract is for new construction or not.

¹Professional services contracts are awarded on the basis of recognized competence and integrity, not on competitive bids. Tenn. Code Ann. § 12-4-106.

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