



February 6, 2023

Kevin Helms  
Project Manager  
City of Athens  
815 North Jackson Street  
Athens, TN 37303

Dear Mr. Helms,

You have asked whether a prime contractor who was awarded a bid during a competitive bidding process may change the subcontractor for electrical, mechanical, and plumbing. It is my understanding that the cost of the electrical, mechanical, and plumbing exceeds \$25,000, and the initial subcontractor was listed on the outside of the envelope.

Tennessee Code Annotated § 62-6-119(b) provides (emphasis added):

(b) The person or entity involved in the preparation of the invitation to bid or comparable bid documents, including any electronic bid documents, shall direct that the following information be written upon the bid envelope or provided within the electronic bid document:

(1) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the prime contract;

(2) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the masonry contract where the total cost of the materials and labor for the masonry portion of the construction project exceeds one hundred thousand dollars (\$100,000);

(3) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the electrical, plumbing, heating, ventilation, or air conditioning contracts except when such contractor's portion of the construction project is less than twenty-five thousand dollars (\$25,000);

(4) For each vertical closed loop geothermal heating and cooling project, the company name, department of environment and conservation license number, classification (G, L or G,L) and the expiration date, except when the geothermal portion of the

construction project is in an amount less than twenty-five thousand dollars (\$25,000);  
(5) Prime contractor bidders who are to perform the masonry portion of the construction project which exceeds one hundred thousand dollars (\$100,000), materials and labor, the electrical, plumbing, heating, ventilation or air conditioning or the geothermal heating and cooling must be so designated; and  
(6) Only one (1) contractor in each of the classifications listed above shall be written on the bid envelope or provided within the electronic bid document.

First, the statutory language in Tennessee Code Annotated § 62-6-119(b)(3) to include the electrical, mechanical, and plumbing subcontractor's qualifications on the bid envelope is mandatory when the subcontractor's portion exceeds \$25,000. In addition, I find no authority for the city to accept a change to any subcontractor when the statute requires the subcontractor to be listed on the bid envelope. Any city policy allowing for an alternative or change of subcontractor from the subcontractor listed on the bid when that portion of the bid exceeds \$25,000 would be in conflict with the statutory requirements. Thus, any such policy or action would be considered a conflict preemption, which McQuillin's defines as "where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the statute." § 15:19. "Conformity to state and federal laws—Types and tests for preemption," 5 McQuillin Mun. Corp. § 15:19 (3d ed.). Thus, the city's authority to allow an alternate subcontractor has been preempted.

As always, I also recommend that you consult with the City Attorney on all of your questions posed to MTAS. I had also planned to recommend that you reach out to the Tennessee Board for Licensing Contractors, but I received a copy of Kathy Holliman's response dated January 31, 2023, which is consistent with my opinion.

Please let me know if you have any additional questions.

With warmest regards,



Stephanie Allen O'Hara  
Legal Consultant