

February 24, 2009

Mr. Terry Harrison, City Administrator
City of Pulaski
P.O. Box 633
Pulaski, Tennessee 38478

Re: Local Preference to bidders

Dear Mr. Harrison

In his publication of June 18, 2002, MTAS Senior Legal Consultant Sidney Hemsley states that "The Municipal Purchasing Law requires that contracts over a certain amount be competitively bid." He cited "The Tennessee Supreme Court in State ex rel. Wright v. Leech, 622 S.W 2d 807 (Tenn. 1981)" in response to the question, what does the term competitive bidding in the Municipal Purchasing Law Mean? The Court stated:

1. "The request for bids must not unduly restrict competition. All persons or corporations having the ability to furnish the supplies or materials needed to perform work to be done should be allowed to compete freely without any unreasonable restrictions."
2. "It is essential that bidders, so far as possible, be put on terms of perfect equality so that they may bid on substantially the same proposition and on the same terms."
3. "In order to attain competitive bidding in its true sense, proposals for bids must be invited under fair circumstances which afford a fair and reasonable opportunity for competition."
4. "Among other things, the advertisement for bids shall include specifications of the supplies or equipment to be purchased and the quantity there of."

Mr. Hemsley goes on to say "Those standards are not optional, continued the court, they must be followed. The obvious fundamental principles of Leech are that all bidders must be put on a level playing field, and that the bidding process actually be competitive. In fact, it further said in Metropolitan Air Research Testing Authority, Inc. v. Metro Government of Nashville & Davidson County, 842 S.W. 2d 611 (Tenn. Ct. App 1992), that:

One of the purposes of competitive bidding is to provide bidders with a fair opportunity to compete for public contracts. Thus, the courts have recognized that the statutes and ordinances requiring competitive bidding impose upon the government an implied obligation to consider all bids honestly and fairly."

If the city lets bids on the basis that the bidder is local, the city may be challenged on fairness and lack of competitiveness.

According to Mr. Hemsley's report, the court in Owen of Georgia, Inc v. Shelby County ruled that the reasons cited by the county that Pidgeon Thomas employees have a higher proportion of minorities and is a local concern-do not constitute good reason for rejecting the other bid.

It is for these reasons that I recommended against retaining charter provisions favoring local bidders during the last charter revision. If all things are equal, I think the city could justify making the award to the local bidder. MTAS recommends that the city not award bids based on local preference.

Sincerely

Ron Darden
Municipal Management Consultant

CC. Sidney Hemsley, MTAS Senior Legal Consultant
Dennis Huffer, MTAS Legal Consultant