

Inter local Agreements.



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June 27, 2003

Dear Local Government Association:

For your information, we are enclosing a copy of a legal analysis provided to us by our legal counsel at the Attorney General's Office regarding competitive bidding requirements for purchases made pursuant to interlocal agreements.

This advice stemmed from communications our office received from a private firm, U.S. Communities, asserting that local governments do not have to comply with state bid laws, including advertising requirements, if they are purchasing through another government contract pursuant to an interlocal agreement.

Because the State Auditor's Office routinely audits bid law compliance, we want to be sure that you understand that our position is that government entities must comply with applicable state bid laws, even if they are purchasing through an interlocal agreement.

We hope that you will share this information with your members. If you have any questions, please contact Corine Pennington at (360) 586-3508.

Sincerely,

Chuck Pfeil
Chuck Pfeil
Deputy State Auditor

Enclosure

CP:SH:ml

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*\$175,000 Jefferson - Connected to Skennis -
Physicians -*



Christine O. Gregoire


ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

MEMORANDUM

June 23, 2003

TO: Chuck Pfeil, Director of Audit
Washington State Auditor's Office

FROM: Brian E. Buchholz 
Assistant Attorney General

SUBJECT: Local Government Bid Law Requirements

BACKGROUND

This memorandum is in response to your request for legal analysis of a letter written by James Hamill of US Communities to Louella Adams, SAO Audit Manager, dated April 30, 2003, regarding the competitive bidding requirements applicable to purchases by school districts in Washington. (See attachment). In this letter, Mr. Hamill takes the position that school districts (and by implication other local governmental entities) in Washington may avoid statutorily imposed competitive bidding requirements for making purchases by merely entering into an interlocal agreement for such purchases.

Ms. Adams previously informed Mr. Hamill, after consultation with this office, that his position is not supported by Washington law and provided him with copies of Washington State Attorney General Opinions (AGO's) to this effect. Mr. Hamill's April 30, 2003, letter fails to address the AGO's provided by Ms. Adams. Rather, Mr. Hamill asserts:

there is no specific case law, statute, or Attorney General Opinion that expressly requires that the solicitation associated with an intergovernmental purchasing contract must be locally advertised to allow a school district access. If you become aware of any such authority please let us know. In the interim, we will advise Washington school districts making inquiry that they must exercise their reasonable discretion after review of this letter and consultation with appropriate legal counsel.

ISSUE PRESENTED

May a school district or other local governmental entity avoid compliance with its statutory competitive bidding requirements by entering an interlocal agreement for purchasing under the authority of ch. 39.34 RCW, the Interlocal Cooperation Act?

SHORT ANSWER

I answer this question in the negative. School districts and other local governmental entities in Washington cannot avoid compliance with statutorily imposed competitive bidding requirements by entering interlocal agreements for purchases. The Interlocal Cooperation Act does not relieve local governmental entities of their independent statutory obligations. Rather,

ATTORNEY GENERAL OF WASHINGTON

June 23, 2003
Page 2

each local governmental entity is responsible for ensuring that any purchases made pursuant to an interlocal agreement are conducted in compliance with their particular statutorily mandated competitive bidding requirements.

ANALYSIS

Local government competitive bidding statutes are found throughout the Revised Code of Washington in those chapters relating to different types of local governmental entities. The specific requirements for conducting bidding may vary by entity, necessitating reference to each particular entity's specific bidding requirements to determine what (if any) statutory bidding requirements exist. Since Mr. Hamill's letter directly addresses only school district bid law requirements, this memorandum will specifically address only those bidding requirements relating to school districts. However, the analysis relating to whether an interlocal agreement provides relief from bidding requirements applies broadly to all local governmental competitive bidding situations.

A. School District Competitive Bidding

A discussion of school district bidding requirements and purchasing authority in Washington must begin with recognition of the well established principle that school districts are municipal or quasi municipal corporations and, as such, are creatures of statute. Seattle Sch. Dist. No. 1 v. Union, 88 Wn.App. 205, 210, 944 P.2d 1062 (1997); Noe v. Edmonds Sch. Dist., 83 Wn.2d 97, 103, 515 P.2d 977 (1973). Certain competitive bidding requirements are imposed on school districts by RCW 28A.335.190. There is a strong public policy in Washington State favoring competitive bidding. Platt Electric Supply, Inc. v. Seattle, 16 Wn.App. 265, 269, 555 P.2d 421 (1976), *rev. denied*, 89 Wn.2d 1004 (1977). Except as permitted by legislation, public contracts shall be let only after competitive bidding requirements have been complied with. Manson Construction and Engineering Co. v. State, 24 Wn.App. 185, 190, 600 P.2d 643 (1979), *rev. denied*, 93 Wn.2d 1004 (1980). Legislatively prescribed competitive bidding requirements can only be circumscribed by Legislative action, not by the courts or a public agency. Manson, 24 Wn.App. at 190.

When the Legislature statutorily imposes competitive bidding requirements on a municipality such as a school district, those competitive bidding requirements will not be narrowly construed. Reiter v. Chapman, 177 Wash. 392, 397, 31 P.2d 1005, 92 A.L.R. 828 (1934). To the contrary, it has long been held that statutory bidding requirements are in the interests of the public and are both strictly construed and strictly enforced. When such bidding requirements exist, they constitute the rule, and any exceptions permitting deviation from that norm are narrowly interpreted. AGLO 1971 No. 128 at 6.

School districts in Washington have long been subject to statutorily imposed competitive bidding requirements for purchases and public works pursuant to RCW 28A.335.190 and its predecessors. Under RCW 28A.335.190(1) and (2), every purchase of furniture, equipment or supplies with an estimated cost of \$50,000 or more is subject to specific statutorily mandated competitive bidding requirements, including the following notice by publication requirement:

complete plans and specifications for such work or purchases shall be prepared and notice by publication given in at least one newspaper of general circulation within the district, once each week for two consecutive weeks, of the intention to

ATTORNEY GENERAL OF WASHINGTON

June 23, 2003
Page 3

receive bids therefore and that specifications and other information may be examined at the office of the board or any other officially designated location

The advertisement for bids by a school district must be made pursuant to the pertinent statute controlling the acquisition of goods by a school district. Butler v. Federal Way School Dist., 17 Wn.App. 288, 294-95, 562 P.2d 271 (1977).¹ This notice by publication requirement may only be dispensed with for purchases with an estimated cost of less than \$50,000 (see RCW 28A.335.190(2)), purchases falling within the narrowly defined exceptions listed in RCW 39.04.280, purchases made in the event of an "emergency" as defined in RCW 28A.335.190(5), and the direct purchase of school buses pursuant to RCW 28A.335.190(6). Aside from these provisions, there is no statutory authority for a school district to otherwise be excused from complying with this statutory notice by publication bidding requirement. To the contrary, it is well established in Washington that competitive bidding laws cannot be circumvented. Platt Electric, 16 Wn.App. at 274; Gostovich v. West Richland, 75 Wn.2d 583, 452 P.2d 737 (1969); Manson, 24 Wn.App. at 190. Our Legislature has enacted the notice by publication requirement as an integral part of school district bidding requirements that cannot be circumvented outside of the statutorily authorized method.

B. Interlocal Cooperation Act Does Not Relieve Local Government From Complying With Statutory Competitive Bidding Requirements

With this background in mind, I will now address Mr. Hamill's primary contention that application of the Interlocal Cooperation Act (Act), ch. 39.34 RCW, can relieve a local governmental entity from compliance with its particular statutorily imposed competitive bidding requirements.

Contracts for joint actions by public agencies are governed by the Act. Under RCW 39.34.030(1), public agencies are authorized to exercise "any power or powers . . . jointly with any other public agency . . . having the power or powers". The Act also authorizes "public agencies [to] enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter". RCW 39.34.030(2). It is well established that exercise of joint action under these provisions of the Act does not authorize a participating public agency to exercise any powers beyond those it independently possesses. AGO 1988 No. 19 at 5; AGO 1990 No. 4 at 7; AGO 1969 No. 8 at 5. Rather, each public agency must have the power to do individually what it agrees to do jointly. AGO 1991 No. 19 at 6-7. Conducting joint activities under authority of the Act does not relieve public agencies from complying with their individual statutory obligations. AGO 1979 No. 2 at 4. Accordingly, a public entity cannot avoid statutorily imposed independent competitive bidding requirements merely by entering an interlocal agreement.

Mr. Hamill appears to focus on RCW 39.34.080 as primary support for his contention that an interlocal agreement can be used to relieve a school district of statutorily imposed competitive bidding requirements. The law does not support this position.

Under RCW 39.34.080, public agencies are authorized to "contract with . . . other public agencies to perform any governmental service, activity, or undertaking which each public agency

¹ Washington courts have historically interpreted statutorily imposed competitive bidding notice by publication requirements to be mandatory in nature. Reiner v. Clark County, 137 Wash. 194, 241 Pac. 973 (1926); Wyant v. Independent Asphalt Co., 118 Wash. 345, 203 Pac. 962 (1922).

ATTORNEY GENERAL OF WASHINGTON

June 23, 2003
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entering into the contract is authorized by law to perform". By its express terms, this statute prohibits a public agency from entering an interlocal agreement to conduct an activity that it could not legally perform in its independent capacity. In AGO 1978 No. 21, it was observed that a joint purchasing agency formed by two or more school districts must comply with competitive bidding requirements. The AGO further concluded that if a school district otherwise contracts with a purchasing agent to acquire supplies or materials, the district or its agent must comply with applicable statutory bidding requirements. AGO 1978 No. 21. As the Opinion states, "[i]t is axiomatic that one cannot do indirectly what one is forbidden to do directly." AGO 1978 No. 21 at 6.

As noted above, there is strong public policy in this State to enforce competitive bidding laws, and attempts to circumvent the legislatively declared public policy of competitive bidding are not well received. The Legislature has clearly and expressly established narrow statutory exceptions to competitive bidding requirements. The Interlocal Cooperation Act contains no language expressing such intent, nor is there any precedent supporting such a contention. To the contrary, all interpretations of the Act clearly provide that the Act cannot be used to avoid statutorily imposed competitive bidding requirements.

C. Application of RCW 43.19.1911 to School Districts

Additionally, I must briefly address Mr. Hamill's contention that RCW 43.19.1911 does not apply to competitive bidding by school districts. In RCW 28A.335.190(4), it expressly states:

- (4) The contract for the work or purchase shall be awarded to the lowest responsible bidder as defined in RCW 43.19.1911

This is a statutory bidding requirement that must be complied with by all school districts in Washington. As with other bidding requirements, it cannot be circumvented merely by entering an interlocal agreement.

CONCLUSION

In conclusion, Mr. Hamill's contention that school districts (and other local governmental entities in this State) can avoid statutorily imposed competitive bidding requirements by entering into interlocal agreements is not supported by the law. The Interlocal Cooperation Act does not relieve local governmental entities of their independent statutory obligations. Based on the law of this State, school districts and other local governmental entities must be able to establish that all purchases have been conducted in compliance with their particular statutorily mandated competitive bidding requirements.

I trust this analysis will be of assistance to you. You are reminded that this memorandum represents my considered legal judgment on the question presented, but is not an opinion of the Attorney General.

BEB:rlw
Attachment
cc: Stacia Hollar, Deputy, Legal Affairs
Louella Adams, SAO Audit Manager

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cc: Stacia Hollar, Deputy, Legal Affairs
Louella Adams, SAO Audit Manager

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Sincerely,

Chuck Pfeil
Deputy State Auditor

Enclosure

CP:SH:ml



Christine O. Gregoire


ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

MEMORANDUM

June 23, 2003

TO: Chuck Pfeil, Director of Audit
Washington State Auditor's Office

FROM: Brian E. Buchholz 
Assistant Attorney General

SUBJECT: Local Government Bid Law Requirements

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