

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

January 18, 2019

Haley Broom, Esq.
Attorney, Harrison County Emergency Communications Commission
2909 13th Street, Sixth Floor
Gulfport, Mississippi 39501

Re: Harrison County Emergency Communications Commission

Dear Ms. Broom:

Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and response.

Issues Presented

Your request asks this office to interpret bid specifications for an upcoming project and to make a determination as to whether the procurement of the proposed equipment and services is consistent with the public purchasing statutes found at Section 31-7-13 of the Mississippi Code. Specifically, you provide the following:

Our firm represents the Harrison County Emergency Communications Commission (hereinafter referred to as "the Commission"). The HCECC was created by the Harrison County Board of Supervisors under the authority of Miss. Code Ann. Section 19-5-305. As such, the HCECC is governed and empowered by Miss. Code Ann. Sections 19-5-301, *et seq.*

The Harrison County Public Safety Radio Network and Microwave Subsystem were installed and commissioned in 2001 by the HCECC. The radio/microwave network is nearing end of life. Therefore, the existing Radio Network will need to be upgraded to digital radio technology ("Project-25" Migration) in the foreseeable future. The microwave subsystem is a crucial component of the Radio Network, and the Commission, along with the Harrison County Board of Supervisors, is in the process of having specifications developed for the Microwave Subsystem Modernization Project. The replacement of the microwave subsystem would require the purchase and installation of equipment which

would exceed \$50,000.00 and would fall within the purview of Miss. Code Ann. Section 31-7-13, and could possibly constitute a public works project pursuant to Miss. Code Ann. Sections 31-5-3, *et seq.* After the conclusion of the microwave subsystem update, the Commission plans to move forward with the upgrade of the radio system.

The Specifications are being prepared by the Commission's Consultant, and the current draft of same is attached hereto as Exhibit "A". As illustrated in the attachment, the Request for Proposal describes what the Owner is attempting to accomplish (i.e., a state-of-the-art 6GHz broadband microwave subsystem to replace its legacy Alcatel MDR-8000 configuration) and requests the Vendors to submit a Proposal which identifies the best solution to meet the identified criteria. The Request requires the Vendor identify the equipment that it is proposing to be used, state the cost of the equipment and its installation, state the cost to remove the old microwave equipment, and submit detailed block engineering drawings, amongst other requirements including the proposed cost for the entire project. As illustrated on pages 5-7, the Request for Proposal requires the submittals be divided into two sections: (1) Technical Response and (2) Sealed Infrastructure Pricing Response. The Request identifies how the Technical Portion of the Proposals will be evaluated, and when the Cost Portion of the Proposal will be opened and evaluated.

Based on the foregoing, the Commission requests an official opinion from your Office as to the following:

1. Does Mississippi Law allow a local governmental entity to procure equipment and services in the manner proposed in Exhibit "A"?
2. Is the Request for Proposal attached hereto as Exhibit "A" sufficient to satisfy the "competitive bid" requirement set forth in Miss. Code Ann. Section 31-7-13, as amended?

Response

Pursuant to the provisions of Section 7-5-25 of the Mississippi Code, official opinions of the Attorney General are limited to questions involving determinations solely on questions of state law. Opinions of this office may not be issued which require our office to make factual determinations. Therefore, to the extent that your inquiries require this office to make determinations which exceed the limitations established in Section 7-5-25, we decline to respond to your individual inquiries by way of official

opinion and provide the following for future guidance.

Applicable Law and Discussion

This office is not authorized to make factual determinations and assessments concerning whether a purchasing entity is permitted to procure equipment and services in the manner outlined in a set of specifications. That determination must be made by the purchasing entity itself subject to review by the Office of the State Auditor and a court of competent jurisdiction.

In a prior opinion to the Harrison County Emergency Communications Commission, we determined that it is a "governing authority" as contemplated in Section 31-7-1 and is subject to the general purchasing laws in Sections 31-7-1 *et seq.* MS AG Op., Broom (October 30, 2015). In regard to the procurement of equipment, Section 31-7-13 clearly states the methods to be used by a governing authority. With respect to the procurement of service contracts, we have consistently opined that personal and professional services procured by a governing authority are exempt from the public purchasing statutes. MS AG Op., Stokes (October 20, 2017); MS AG Op., Bassi (March 22, 2013); MS AG Op., Murdock (May 13, 2011). Thus, in the event that a governing authority is procuring a service contract, it could use any method¹ of procurement it chooses.

Whether the Harrison County Emergency Communications Commission is procuring equipment or a service contract is a factual determination to be made by the commission itself. Likewise, the determination as to whether the procurement method the commission is implementing is in compliance with the provisions of the public purchasing statutes is one to be made by the commission as well.

If we may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:


Leigh Triche Janous
Special Assistant Attorney General

¹While a governing authority is not required to seek competitive bids/proposals in the procurement of service contracts, we recommend that it solicit bids/proposals to ensure that it is receiving the best value and to eliminate the appearance of favoritism of specific contractors. See MS AG Op., Stokes (October 20, 2017).