

Competitive bids, school bus transportation services

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The Honorable Betty S. Holzendorf
Senator, District 2
410 Senate Office Building
Tallahassee, Florida 32399-1100

The Honorable E. Denise Lee
Representative, District 15
1401 The Capitol
Tallahassee, Florida 32399-1300

The Honorable Stan Jordan
Representative, District 17
417 House Office Building
Tallahassee, Florida 32399-1300

Dear Senator Holzendorf, Representative Lee, and Representative Jordan:

You ask this office's opinion regarding the authority of the Duval County School Board to award school bus transportation contracts.

I am of the view that it is the responsibility of the school board to make the ultimate decision regarding the provision of school transportation services, provided that any action taken by the school board is consistent with the rules of the State Board of Education and the policies and procedures established by the school board and such action is not arbitrary or capricious. While the school board must competitively bid such contracts, the method of procedures for the competitive bid process is left to the sound discretion of the board.

According to information received by this office, the Duval County School Board presently provides transportation to approximately 60,000 students through private bus contractors. During the 1999 school year, the cost of such contracts exceeded thirty-five million dollars. In an opinion from the City of Jacksonville General Counsel, dated April 17, 2000, the School Board was advised that such school bus transportation contracts must be competitively bid.[1] You ask whether Florida law requires such competitive bids.

Section 237.02, Florida Statutes, states:

"Expenditures shall be limited to the amount budgeted under the classification of accounts provided for each fund and to the total amount of the budget after the same have been amended as prescribed by law and regulations of the state board [of education]. The school board shall endeavor to obtain maximum value for all expenditures."

While section 237.02, Florida Statutes, does not directly state that competitive bids are required for school board purchases, the statute does evince an intent that purchases will be made through competitive bidding. For example, section 237.02(2), Florida Statutes, in setting forth alternative procedures for purchasing, states that the State Board of Education may, by regulation, provide for alternative procedures for bidding or purchasing in cases in which the character of the item requested renders competitive bidding impractical.[2]

Moreover, section 237.02(1)(a), Florida Statutes, requires each school board to develop and adopt policies establishing the plan to be followed in making purchases *as may be prescribed by the State Board of Education*. Section 6A-1.012(6), Florida Administrative Code, adopted by the State Board of Education, provides:

"Except as authorized by law or rule, bids shall be requested from three (3) or more sources for any authorized purchase or *contract for services* exceeding the amount established in Section 287.017, Florida Statutes, for purchasing category two. School boards, by rule, shall set this amount or a lesser amount and shall establish purchasing policy relative to purchases of a dollar value less than this formal bid threshold. *The school board shall have the authority to reject any or all bids and request new bids. In acceptance of bids, the school board shall accept the lowest and best bid from a responsive and responsible bidder.* The school board is not required to request bids for purchases made from contracts of the Department of Management Services as referenced in subsection (4) of this rule. Bids are not required for purchases made through the pool purchase provisions of Section 229.79, Florida Statutes." (e.s.)

Thus, section 237.02, Florida Statutes, requires the school board to adopt policies regarding purchases in accordance with the rules of the State Board of Education. The rules of the state board require a school board to request bids from at least three sources for a contract for services that exceeds the amount established in section 287.017, Florida Statutes, category two, *i.e.*, \$25,000.[3] While the rule recognizes certain exceptions, none of the exceptions appear applicable to the instant inquiry.[4]

Accordingly, in light of the above, I am of the opinion that the school board is required to adopt policies providing for the competitive bidding of such contracts as the school bus transportation service contracts.[5] This office has been advised that the attorneys for the school bus contractors had previously reached a similar conclusion.

Although I am of the view that the Duval County School Board must competitively bid the school bus transportation contracts, I would note that the competitive bid procedures are left up to the sound discretion of the school board. As discussed above, Rule 6A-1.012, Florida Administrative Code, requires that bids be sought from at least three sources. The rule recognizes that the school board has the authority to reject any or all bids and request new bids. In accepting bids, the rule provides that the school board shall accept the lowest and best bid from a responsive and responsible bidder. The structuring of the process itself, however, is left to the school board's discretion. In implementing the procedures it has adopted, the board may not act arbitrarily or capriciously.

While it is the responsibility of the superintendent to recommend plans and procedures for providing facilities for the economical and safe transportation of students,[6] it is the

responsibility of the school board, after considering the superintendent's recommendations, to

"make provision for the transportation of pupils to the public schools or school activities they are required or expected to attend; authorize transportation routes arranged efficiently and economically; provide the necessary transportation facilities, and, when authorized under regulations of the state board and if more economical to do so, provide limited subsistence in lieu thereof; and adopt the necessary rules and regulations to ensure safety, economy, and efficiency in the operation of all buses, as prescribed in chapter 234." [7]

Accordingly, while it is the responsibility of the superintendent to make recommendations on school bus transportation services, it is the school board which must make the ultimate decision regarding the provision of such services, provided that any action taken by the school board is consistent with the rules of the State Board of Education and the policies and procedures established by the school board.

I trust that the above advisory comments may be of assistance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/

[1] Legal Advisory Opinion No. 00-01, dated April 17, 2000. *And see* s. 7.202, Ch. 2, Art. VII, Jacksonville Charter, stating that the opinion of the general counsel

"shall constitute the final authority for resolution or interpretation of any legal issue relative to the entire consolidated government and shall be considered valid and binding in its application unless and until overruled or modified by a court of competent jurisdiction or an opinion of the Attorney General of the State of Florida with a matter of state involvement or concern."

[2] This office, in considering earlier versions of s. 237.02, concluded that competitive bidding was required. *See* 1939 Op. Att'y Gen. Fla. 153 (contract to furnish and operate school buses would necessitate calling for bids); 1951 Op. Att'y Gen. Fla. 409 (school board may not avoid competitive bid requirements for furnishing of bus service).

[3] *See* s. 287.017(1)(b), Fla. Stat., stating: CATEGORY TWO: \$25,000.

[4] *See, e.g.,* Rule 6A-1.012(7), Fla.Admin.C., providing that the requirement for requesting bids from three or more sources is waived for the purchase of professional or educational services, educational tests, textbooks, printed instructional materials, computer software, films, filmstrips, videotapes, disc or tape recordings, or similar audio-visual materials, and for library and reference books, and printed library cards where such materials are purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent within the state, a

governmental agency or a recognized educational institution. *And see* subsection (8) of the rule which states:

"(a) The requirements for requesting bids and making purchases for goods and services as set forth in this section are hereby waived as authorized by Section 237.02, Florida Statutes, when the following conditions have been met by the district school board:

1. Bids have been requested in the manner prescribed by the state board, and
2. The school board has made a finding that no valid or acceptable firm bid has been received within the prescribed time.

(b) When such a finding has been officially made, the school board may enter into negotiations with suppliers of such goods and services and shall have the authority to execute contracts with such suppliers under whatever terms and conditions as the board determines to be in the best interests of the school system."

See also subsections (10) and (11) of the Rule providing that a school board acquiring information technology resources, as defined in Section 282.303(13), Florida Statutes, or entering into risk management programs or contracting with third party administrators, may make any acquisition through the bid process or by direct negotiation and contract.

[5] This office has been advised that the school board has adopted such competitive bid policies.

[6] Section 230.33(10), Fla. Stat.

[7] Section 230.23(8), Fla. Stat.