

ALABAMA ROAD BID BUNDLING AUTHORITY



Local governments may have an interest in jointly exercising common powers to provide services more efficiently and with lower costs. Local governments may be able to realize cost savings and increases in efficiency by pooling resources and creating one large bid package (bid bundling).¹ The purpose of this document is to determine whether local Alabama jurisdictions have the authority to pool resources and projects to bundle bids into one large bid package.

Alabama Bid Laws

In Alabama, the Competitive Bid Law and the Public Works Law govern the purchase of goods and services. The Public Works Law applies when any public funds are used for construction or other services performed on public property.² Therefore, the Public Works Law applies to public road and bridge construction. The Competitive Bid Law applies to the “expenditure of funds of whatever nature . . . made by or on behalf of” counties or municipalities for services and materials.³ The Competitive Bid Law does not apply to public works projects because those “competitive bidding requirements are governed exclusively by” the Public Works Law.⁴

Competitive Bid Law. The Competitive Bid Law provides that “the governing bodies of two or more counties . . . may provide, by joint agreement, for the purchase of . . . services . . . or for the purchase or lease of materials. . . . for use by their respective agencies.”⁵ Municipalities must pass an ordinance and contracting agencies must pass a resolution to participate in a joint agreement to competitively bid for services.⁶ The contracting agencies may also “designate a joint purchasing or bidding agent.”⁷ Therefore, local governments and their agencies may enter into joint purchasing agreements with other local governments and their agencies if the project is not a public works project.

Public Works Law. The Public Works Law does not expressly address whether local governments may enter into joint purchasing agreements or bundle bid packages. However, Alabama law expressly allows adjoining counties to have joint projects across streams or waters that form the boundary between two counties.⁸ Additionally, local governments may extend aid to the construction of any bridge or highway that will benefit the local government.⁹ Alabama law gives counties broad discretion in deciding whether a project will benefit the county since that determination is made solely by the county commission.¹⁰ Therefore, under Alabama law, local governments could pool resources for road and bridge projects that benefit the local government or when the projects cross a stream between counties.

Other Scenarios. For other scenarios, Alabama law is silent. However, Alabama law permits “any county or incorporated municipality” to “enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually.”¹¹ Individually, local governments can create bid packages under the Public Works Law, so local governments may be able to bundle bid packages with other local governments under a joint exercise of powers or services.¹²

With the uncertainty surrounding local governments’ authority to bundle bids under the Public Works Law, local governments may be taking a risk if they bundle bids for public works projects, though. A violation of the Public Works Law carries a steep penalty. If a public works contract is in violation of the Public Works Law, the contract will be null and void.¹³ Additionally, willful violations of the Public Works Law are a Class C felony.¹⁴ Furthermore, courts must strictly construe the Public Works Law and “the courts shall not invoke or apply any principle of quantum meruit, estoppel, or any other legal or equitable principle.”¹⁵ Therefore, a court cannot save a public works contract for substantial compliance or good faith if it violates the Public Works Law.

Conclusion

For road and bridge construction, Alabama law expressly grants local governments the ability to pool resources for road and bridge projects that benefit the local government or when the projects are built across a stream between joining counties. Alabama law also makes county commissions the sole authority to determine whether a project will benefit the county. Therefore, counties would likely have a path to pool resources and bundle bids for road projects. For any other road and bridge project, Alabama law does not specifically address whether local governments can bundle bids. Local governments may be able to bundle bids with other local governments if they determine that the project would be beneficial or under a joint exercise of powers or services. However, there are also steep consequences for violations of the Public Works Law.

Acknowledgement

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¹ Qiao, Y, et al. *Bundling Bridge and Other Highway Projects: Patterns and Policies*, Journal of the Transportation Review Board, pp 167- 178. (2018).

² Ala. Code § 39-2-1(6) (1975).

³ Ala. Code § 41-16-50(a) (1975).

⁴ Ibid.

⁵ Ala. Code § 41-16-50(b) (1975).

⁶ Ibid.

⁷ Ibid.

⁸ Ala. Code § 23-1-88 (1975).

⁹ Ala. Code § 23-1-89 – 90 (1975).

¹⁰ Ibid.

¹¹ Ala. Code § 11-102-1 (1975).

¹² Ala. Code § 39-1-1 (1975).

¹³ Ala. Code § 39-2-2(c) (1975).

¹⁴ Ibid.

¹⁵ Ala. Code § 39-5-6 (1975).