

1976 S.C. Op. Atty. Gen. 204 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4370, 1976 WL 22989

Office of the Attorney General

State of South Carolina

Opinion No. 4370

June 17, 1976

***1** Where a school district uses only school district funds and does not use any state funds, the district is not required to invite bids pursuant to Section 1-466, CODE OF LAWS OF SOUTH CAROLINA (1962) before hiring a contractor to complete construction on a school building.

Under an emergency situation, where a school district has found it necessary to terminate the general contractor hired to construct a school building and where the construction and repair must be completed prior to the opening of school, the school district is not required to invite bids pursuant to Section 1-466, CODE OF LAWS OF SOUTH CAROLINA (1962) even if the building is completed with state funds.

TO: Bruce Foster
School District Attorney
School District 5
Spartanburg County

QUESTIONS INVOLVED:

Is a school district required to invite bids pursuant to Section 1-466, CODE OF LAWS OF SOUTH CAROLINA, (1962) before hiring a contractor to complete construction on a school building, where a school district uses only school district funds and does not use any state funds?

Is a school district required to invite bids pursuant to Section 1-466 to complete construction of a school building using state funds under an emergency situation where the original contractor was terminated and the school building must be completed prior to the opening of school?

AUTHORITIES INVOLVED:

Section 1-466, CODE OF LAWS OF SOUTH CAROLINA (1962);

64 AM.JUR.2d 'Public Works and Construction' Section 39;

1971 Atty. Gen. Op. 3143 at 102.

DISCUSSION:

Spartanburg School District Number 5 is in the process of building a new school facility. During construction of the facility, the school district has found it necessary to terminate both the original general contractor and the original architectural firm employed to design and construct the facility. The school district has been successful in hiring a new architectural firm to complete the project. Pursuant to Section 1-466, CODE OF LAWS OF SOUTH CAROLINA (1962) which requires that all public buildings or additions thereto, constructed from state funds be constructed only after the invitation of competitive bids for the construction of such building, the school district invited contractors to

bid on the completion of and repair of defective work on the facility in question. The only contractor to respond to this invitation to bid was the contractor which the school district had already terminated. Due to the problems encountered in construction and completion of the facility, the school district has been forced to occupy the facility, without waiving its rights, to require the completion of the same in its incompleting state. It is estimated that it will require an expenditure of \$300,000 or more to complete the facility and to repair the defective work done by the original contractor.

If the school district uses only school district funds to finance this completion work, Section 1-466 is inapplicable since competitive bids are only required where state funds are used. See enclosed opinion of C. Tolbert Goolsby, Jr., Assistant Attorney General.

*2 Even if the school district uses state funds to complete the facility, it is the opinion of this office that Section 1-466 is inapplicable. First, the school district has made a good faith effort to obtain a second general contractor pursuant to the requirements of Section 1-466. There is no reason to believe that further competitive bid advertisements would reach a result any different than that obtained by the school district's recent advertising effort. In requiring that public buildings be constructed on a competitive bid basis, the Legislature was seeking to insure economy and exclude favoritism and corruption of awarding public contracts. To require a political subdivision of this state to go to the expense of advertising for public bids ad infinitum would be to defeat the Legislative objective of insuring economy. In emergency situations, such as the one here where the school must be completed prior to the beginning of the school year for the safety of its school children as well as the employees, the requirements under the competitive bid statute may be waived:

When contingencies arise and services, material, and property are needed immediately and competitive offers and written contracts would be unserviceable or impossible, the statutes do not apply, because application could not have been intended under these circumstances. . . .

The determination of exigencies of public service which require immediate delivery or performance rests in the discretion of public officials, and the validity of a contract made without advertising does not depend upon the degree of wisdom or skill which may accompany its exercise. A declaration of emergency dispensing with competitive bidding requirements has, however, been held subject to judicial review. 64 AM.JUR.2d, 'Public Works and Contracts' Section 39 at 891-893.

CONCLUSION:

Therefore, it is the opinion that the above described situation, Spartanburg School District Number 5 is not required to seek competitive bids prior to the awarding of a contract to complete the school district facility.

M. Elizabeth Crum
Assistant Attorney General

1976 S.C. Op. Atty. Gen. 204 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4370, 1976 WL 22989