

1977 S.C. Op. Atty. Gen. 66 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-70, 1977 WL 24412

Office of the Attorney General

State of South Carolina

Opinion No. 77-70

March 3, 1977

*1 TO: William Putman
State Auditor

QUESTION INVOLVED:

In light of Section 1-24, Code of Laws of South Carolina, 1962, as amended, can the Finance Division of the Budget and Control Board specify the particular make and model computer, in its invitation to bid on a computer necessary for implementation of a centralized payroll/personnel system?

AUTHORITIES CITED:

Section 1-24, Code of Laws of South Carolina, 1962, as amended;

64 AM.JUR.2d 'Public Works and Contracts';

35 A Words and Phrases, 'Qualified';

[Pacella v. Metropolitan District Commission](#), 159 N.E.2d 75 (1959);

[Taylor v. County Board of Oregon County](#), 53 S.E.2d 34 (1949).

DISCUSSION:

The Finance Division of the Budget and Control Board has been charged with the development of a centralized payroll/personnel system which is to be implemented by January 1, 1978. A necessary element in the implementation of the centralized payroll/personnel system is the acquisition of a computer system having a greater capacity than the one currently used by the State. Because of the limited time frame, it is necessary that the operation of the larger computer be compatible in all aspects with the present computer system. The needed compatibility can be achieved by specifying the required make and model number in the invitation to bid. There would then be several qualified suppliers of equipment who could bid upon this invitation. The question is whether or not this outlined procedure is in compliance with Section 1-24, Code of Laws of South Carolina, 1962, as amended.

Section 1-24 provides in pertinent part:

Notwithstanding any other provision of law, all State agencies and departments, before contracting for fifteen hundred dollars or more with private individuals or companies for products or services, shall invite bids on such contract from at least three qualified sources.

The general rule with regard to the interpretation of statutes requiring competitive bidding and the letting of contracts for public materials is that

[S]ince they are based upon public economy and are of great importance to the taxpayers, laws requiring competitive bidding as a condition precedent to the letting of public contracts ought not to be fritted away by exceptions, but on the contrary, they should receive a construction always which will fully, fairly, and reasonably effectuate and advance their true intent and purpose, and which will avoid the likelihood of their being circumvented evaded, or defeated. They should be construed with the primary purpose of best advancing of public interest, and they must generally be strictly construed with the words used therein not extended beyond their plain meaning, but a strict construction of such a statute is not always required. Rather they are to be construed in the light of the apparent legislative policy. 64 AM.JUR.2d 'Public Works and Contracts,' Section 37 at 889 and 890.

*2 The key phrase in interpreting Section 1–24 is that bids on any contract should be invited 'from at least three qualified sources.' (Emphasis supplied). The term 'qualified' has been defined as synonymous with 'susceptible'; 'capable'; 'competent'; 'fitting'; 'possessing legal power or capacity.' 35A Words and Phrases 'Qualified' at 366.

A primary rule of statutory construction is that where the words of a statute are unambiguous, there are to be taken in their plain and everyday meaning. Here the work 'qualified' is unambiguous and means no more than that the materials which are bid upon are useful and available at the time of the bid.

The question then becomes whether or not an agency of the State has the authority to designate one particular make of computer where that make is the only brand which will fill the qualifications needed when the bids are invited. The situation here is that the Finance Division of the Budget and Control Board has been directed to develop a centralized payroll/personnel system by January 1, 1978, and have this system operative by that date. The Finance Division feels that this action can be accomplished only by specifying the particular make and model number of a computer having a data base larger than the computer currently being used. The Finance Division feels this action is necessary in order to have this system ready by January 1, 1978, for several reasons. First, the model computer which the Finance Division wants to specify has a data base large enough to meet the State's needs for the foreseeable future. Also, if the next larger size model were to be specified, the State would be required to construct a chilled water facility to cool the computer since the Finance Division computers are now cooled by air conditioning and computers larger than the model in question can only be cooled by chilled water. Secondly, if any other make computer with the exception of any brand, is used, all of the existing programs which are now run on Finance Division computers must be rewritten and the one brand which can run existing programs without their having to be rewritten, can only operate on a chilled water coolant system. Although computer companies other than the one now being used by the Finance Division can rewrite the existing programs, this would necessitate the Finance Division furnishing them with sufficient State employees to provide them with information necessary to the rewriting of said programs. The State, at this time, does not have sufficient employees to be able to furnish the necessary information for rewriting all of these programs by January 1, 1978. Thirdly, the State is now in need of a larger computer data based and this need will be greatly increased in the event that the State goes to AOS insurance. Fourthly, the State payroll system operates on a calendar year basis. Finally, in that the entire payroll system of the State will be operated on this computer, it is necessary that the State have a back up system, in case of emergency, at its disposal. If the Finance Division specifies a single make computer in its invitation to bid, then the University of South Carolina and the Employment Security Commission, both agencies of the State, have the same type computer system and can provide emergency back up service at the direction of the Budget and Control Board. If another make computer is ordered, the Finance Division or the Budget and Control Board would then be required to rely upon private companies having similar computers to provide services for the State. The availability of private company computer time is something over which the Budget and Control Board would have no control.

*3 Another consideration in the invitations to bid on a single make computer is the fact that even though one computer make is being specified, the competitive nature of the bid will not be destroyed. This is true because there are several computer brokers or used computer vendors in the State of South Carolina and in other states. Therefore, the State can invite bids from three or more brokers and still maintain the competitive nature of the bid. In support of the State's right to designate a single type or make of equipment where the competitive nature of the bid will not be destroyed are many cases allowing State, county and

municipal authorities to designate patented or monopolized materials for use in public improvements. See: [Taylor v. County Board of Oregon County](#), 53 S.E.2d 34 (1949).

In the case of [Pacella v. Metropolitan District Commission](#), 159 N.E.2d 75 (1959), the Supreme Judicial Court of Massachusetts was confronted with a situation where taxpayers sought to enjoin the awarding of a contract on the ground that 'public advertisement of specifications which * * * are so unreasonably restrictive in scope as to preclude true competition do not comply with the statutory mandate' and that the situation is one 'where the form of an invitation for competing bids was complied with * * * yet the substance [was] subverted by the deliberate adoption of specifications which required the use of a single manufacturer's product, and foreclosed bidders from offering the functionally equal product of others.' [Pacella](#) at 79.

The Massachusetts court opined that an invitation to bid may specify a patented product or one that is manufactured by one bidder, ' . . . suggesting that such 'cases go on the assumption that although a patented product is specified, other bidders can secure it and supply it.' [Pacella](#) at 80. Like the [Pacella](#) case, the Finance Division is faced with a situation where the product is manufactured by only one bidder but other bidders may secure the product and submit bids in response to the Finance Division's invitation.

CONCLUSION:

Based upon the factual circumstances surrounding this particular bid, Section 1–24 and the applicable case law, this Office is of the opinion that the Finance Division can specify the make and model of the computer needed for the payroll/personnel system.

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