

1979 WL 43177 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 15, 1979

\*1 Purvis W. Collins  
Director  
South Carolina Retirement System  
Sol Blatt Building  
Second Floor  
Columbia, South Carolina 29201

Dear Mr. Collins:

On behalf of the South Carolina Deferred Compensation Commission, you have requested an opinion on the following matter.

The Deferred Compensation Act, [§ 8-23-10, et seq., 1976 Code](#) of Laws provides in § 8-23-20 that ‘the Commission shall select, through competitive bidding and contracts, plans for purchase of [various investments].’

The Commission proposes to publish an advertisement in the Wall Street Journal, National Underwriters, and in local newspapers in Columbia, Charleston, Greenville, and Florence, South Carolina. The advertisement is an invitation for proposals with a general description of what is involved and an address at which copies of the bids specifications may be obtained. The Committee also proposes to forward the complete invitation for proposals (i.e., the bid specifications) to the fifty largest insurance companies in the country and to all other companies who request a copy.

You have asked the following questions:

1. Are the advertisement and invitation for proposals proper as to format, content and proposed use under the competitive bidding laws of this State?

A Delaware case, [Wilmington Parking Authority v. Ranken, 105 A.2d 614](#), defines competitive bidding as follows: ‘Competitive Bidding’ requires due advertisement, giving opportunity to bid, and contemplates a bidding on the same undertaking upon each of the same material items covered by the contract; upon the same thing. It requires that all bidders be placed upon the same plane of equality and that they each bid upon the same terms and conditions involved in all the items and parts of the contract, and that the proposal be specific as to all bids the same, or substantially similar specifications.’

It appears clear that the advertisement is sufficiently informative and well circulated to satisfy the requirements of competitive bidding. A possible addition, however, might be some sort of deadline or other information as to when the proposals are to be submitted or when the last date to respond to the ad is.

The essence of competitive bidding as set forth in the case quoted above is that the specifications are sufficiently definite so that each bidder is bidding on the same thing. I have read the invitation for the proposals, sections III, IV, and V, and am of the opinion that the specifications contained therein are sufficiently definite. An example of an indefinite and defective specification would be a term such as ‘long-term lease’ which does not provide sufficient information as to what the nature of the bid would be.

2. How should the committee proceed to select from among the responses to the information for proposals the provider or providers of the designated products?

It is settled law that a public contracting authority has the right to reject any or all bids or to let the contract to the bid which in the judgment of the contracting authority presents the best proposition whether or not it is the lowest bid. See 64 Am.Jur.2d Public Works and Contracts, § 67. Federal law is similar in providing that the award shall be made to the most responsible bidder whose bid conforms to the invitation and will be most advantageous to the government, price and other factors considered. Thus, it is clear that the Commission does not have to accept the lowest bid regardless of other circumstances. However, competitiveness must be preserved in the acceptance of the bid. This means that any bid which is accepted must conform to the specifications; only small variances which are not substantial are permitted.

\*2 Please let me know if I can be of any further assistance.

Sincerely yours,

Kenneth P. Woodington  
Assistant Attorney General

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