



The Attorney General of Texas

March 23, 1981

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Mr. Homer A. Foerster
Executive Director
State Purchasing & General
Services Commission
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Opinion No. MW-310

Re: Construction of section 3.08(a)
of article 601b, V.T.C.S.

Dear Mr. Foerster:

You have requested our opinion regarding this question:

Is the commission authorized by section 3.08(a) of article 601b, V.T.C.S., to waive all competitive bidding requirements, whether formal or informal, on delegated purchases under \$100?

Article 601b, V.T.C.S., the State Purchasing and General Services Act, provides in pertinent part as follows:

Sec. 3.08. (a) The commission shall establish a procedure by which state agencies shall be delegated the authority to purchase supplies, materials, and equipment if the purchase is less than \$500 and shall provide in the procedure that formal competitive bidding is not required for purchases under \$100.

....

(d) Agencies making purchases under this section must attempt to obtain at least three competitive bids from sources which normally offer for sale the merchandise being purchased.

....

Sec. 3.10. ... All purchases of and contracts for supplies, materials, services, and equipment shall, except as provided herein, be based whenever possible on competitive bids.

You state that the commission delegates authority to make such purchases to agencies under its Rule 028.12.01.059(b), but that it asks agencies to take a minimum of three informal competitive bids where possible. The rule does not distinguish between bids under \$500 and those under \$100, but requires an attempt at competitive bidding in each instance. You further state that the term "formal competitive bidding" has a rather precise meaning in purchasing circles and that it comprehends "a bid which has been submitted in a sealed envelope to prevent dissemination of its contents before the specified time and date set for bid opening."

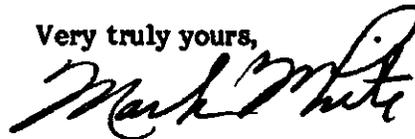
For the following reasons, we answer your question in the negative. First, section 3.08(a) expressly provides that "formal" competitive bidding is not required for purchases under \$100, not that "competitive bidding" is not required. We must assume that the legislature used the adjective "formal" for a purpose, Eddins-Walcher Butane Company v. Calvert, 298 S.W. 2d 93 (Tex. 1957); L & M-Surco Manufacturing, Inc. v. Winn Title Company, 580 S.W. 2d 920 (Tex. Civ. App. - Tyler 1979, writ dismissed), and that it did not regard "formal competitive bidding" and "competitive bidding" as synonymous. We further assume that the legislature intended that the term "formal competitive bidding," which is not defined in the statute, would be given its commonly accepted meaning. See Sanford v. State, 492 S.W. 2d 581 (Tex. Crim. App. 1973); In re Estate of Furr, 553 S.W. 2d 676 (Tex. Civ. App. - Amarillo 1977, writ refused n.r.e.); Texas Employers' Insurance Association v. Haunschild, 527 S.W. 2d 270 (Tex. Civ. App. - Amarillo 1975, writ refused n.r.e.). Second, section 3.08(d), which provides that agencies making purchases under section 3.08 must attempt to obtain at least three competitive bids from the designated sources, does not except purchases of less than \$100. It applies to all purchases of less than \$500, and its conditions must be satisfied.

We therefore conclude that the commission is not authorized by section 3.08(a) of article 601b, V.T.C.S., to waive all competitive bidding requirements, whether formal or informal, on delegated purchases under \$100. However, in view of the fact that section 3.10 only requires competitive bids "whenever possible," we think the commission may promulgate rules indicating those instances in which it will consider that competitive bids are not possible.

S U M M A R Y

The State Purchasing and General Services Commission is not authorized by section 3.08(a) of article 601b, V.T.C.S., to waive all competitive bidding requirements, whether formal or informal, on delegated purchases under \$100.

Very truly yours,



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