



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 26, 2022

Brian Jernigan
Superintendent of Education
Monroe County School District
Post Office Box 209
Amory, Mississippi 38821

Re: Competitive Written Bid under Section 31-7-13

Dear Mr. Jernigan:

The Office of the Attorney General has received your request for an official opinion.

Background

In your request, you assert that there is an increase in online product availability, more often at a lower price. You further state that certain online businesses do not offer a signed quote, but some do allow purchase orders where payment is not rendered until the product is received.

Question Presented

Is a printed cost with a description of an item “in cart” an allowable quote for local education agencies to make purchases that are over \$5,000 but less than \$50,000 pursuant to Mississippi Code Annotated Section 31-7-13(b)?

Brief Response

No. Section 31-7-13(b) defines two specific and detailed types of “competitive written bids” that are acceptable for a purchase over the amount of \$5,000 but not over the amount of \$50,000. A printed cost with a description of an item “in cart” is not one of the “competitive written bids” contemplated by or allowed by the statute.

Applicable Law and Discussion

Section 31-7-13(b) eliminates the need for publishing or posting an advertisement for bids where the purchasing agent is expending more than \$5,000 but not more than \$50,000. According to that

statute, purchases costing an amount within those parameters may be made from the lowest and best bidder without publishing or posting advertisements for bids so long as at least two (2) competitive written bids are obtained prior to making a purchase. Miss. Code Ann. § 31-7-13(b).

The statute further provides, in pertinent part:

The term “competitive written bid” shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on vendor’s letterhead or identifiable bid form and signed by authorized personnel representing the vendor. “Competitive” shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids... Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

Miss. Code Ann. § 31-7-13(b). A printed cost with a description of an item “in cart” is neither a bid submitted on a bid form furnished by the buying agency or governing authority and signed by the vendor’s authorized personnel, nor a bid submitted on a vendor’s letterhead or an identifiable bid form and signed by the vendor’s authorized personnel. As such, this office is of the opinion that such a printed cost is not a competitive written bid as required under Section 31-7-13(b).

Notably, there are several exemptions within Section 31-7-13 that could apply depending on the type of commodity being purchased or if there is an emergency that necessitates a purchase at the price point contemplated in subsection (b). However, this opinion is limited to the general application of subsection (b) and does not consider any of those exemptions because additional information would be necessary to opine on their specific application. Additionally, you may also wish to consult any applicable rules and regulations promulgated by the Department of Finance and Administration pursuant to Section 31-7-5.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Abby C. Overby*

Abby C. Overby
Special Assistant Attorney General