

ORDINANCE NUMBER 3229

AN ORDINANCE ESTABLISHING RULES AND POLICIES FOR ELECTRONIC SUBMISSION OF PUBLIC WORKS BIDS

WHEREAS, Alabama law regarding the solicitation, execution and administration of public improvements contracts (“public works”) by municipalities is set forth in Title 39, Chapters 1 through 5, of the Code of Alabama, 1975; and

WHEREAS, Act 2023-497 of the Alabama Legislature, further codified in Section 39-2-2(k), Code of Alabama, 1975, reads as follows:

“(k) For the purposes of this chapter, sealed bids may also be solicited and submitted through electronic means including, but not limited to, electrical, digital, magnetic, optical, electromagnetic, or any other similar technology, provided that the awarding authority adopts rules and policies to ensure that all electronic submissions are transmitted securely and bids remained sealed until bid opening;”
and

WHEREAS, the City of Vestavia Hills City Council set a strategic goal for the continuing reduction of paper usage in City business by embracing available technologies and software developments in order to successfully complete endeavors of the City through electronic means; and

WHEREAS, the City of Vestavia Hills is desirous of soliciting and submitting bids for public works projects through electronic means pursuant to §39-2-2(k), Code of Alabama, 1975, with said rules and policies as detailed in the attached “Rules and Policies of Electronic Bidding of Public Works Projects,” marked as Exhibit A and attached to and incorporated into this Ordinance Number 3229 as if written fully therein; and


WHEREAS, the Mayor and City Council feel it is in the best public interest to adopt said public works bidding process as detailed in the attached Exhibit A.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The City Council hereby adopts the rules and policies detailed in the Exhibit A as the procedure to solicit, open and process public work bids electronically pursuant to Section 39-2-2(k), Code of Alabama, 1975; and

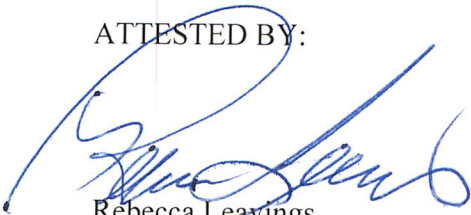
2. The purchasing agent shall retain a copy of said rules and policies and utilize this listing for the solicitation, opening and processing of public works bid as of the effective date of this Ordinance Number 3229; and
3. This Ordinance Number 3229 shall become effective immediately upon adoption and approval following publishing/posting pursuant to Alabama law.

DONE, ORDERED, ADOPTED AND APPROVED this the 8th day of July, 2024.



Ashley C. Curry
Mayor

ATTESTED BY:



Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3229 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 8th day of July, 2024, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills New Merkel House, Vestavia Hills Library in the Forest, and Vestavia Hills Civics Center this the 15th day of July, 2024.



Rebecca Leavings
City Clerk

Rules and Policies of Electronic Bidding of Public Works Projects

The following steps shall be utilized in the solicitation, collection, opening and processing of Public Works Bids for the City of Vestavia Hills.

1. Designs, developed and written specifications, and front-end documents for a said public works project bid shall be prepared, advertised and issued in the current manner and procedures of the City; and
2. A notification will be added to bid terms and conditions stating bidders should submit responses electronically through the City's service provider at the appropriate electronic address listed. An automatic "email return notification" will be sent to the submitting bidder upon receipt of their bid or proposal; and
3. Once the City Department has approved said documents, all documents shall be submitted to the Office of the Purchasing Agent for review; and
4. When all documents are approved and ready for bidding, said documents shall be uploaded to a password secured platform by the Purchasing Agent or his designee and made available for bidders to review and download. The software utilized by the City shall ensure the identification, security and confidentiality of electronic bids or proposals and ensure that electronic bids remain effectively unopened until the designated time and date; and
5. Any and all costs to be incurred by the review and/or download of documents for bidding shall be borne by the City; and
6. Addenda and messages to/from bidders may be added to the bid by the Purchasing Agent or his designee up until the published deadline as needed to answer questions, clarify information, etc.; and
7. The bids shall be uploaded and secured until bid opening. Said platform shall allow the bidder sole access to his bid until the time of bid opening for the purpose of revisions as determined needed by the bidder; and
8. At the specified bid closing time/date, the Purchasing Agent or his designee, password-enabled, will unseal and download all bids. A bid that is submitted non-electronically may be accepted manually and then entered electronically by the Purchasing Agent after the bid opening, as stated in the bid and proposal document terms and conditions; and
9. Staff will read all bid responses received by the closing time and date aloud to any interested parties present at the bid opening. After tabulation of bids or proposals, an official bid tabulation will be created and the Purchasing Agent will post the bid tabulation on the City's website until acceptance by the Governing Body or for a period of 30 days, whichever is less. If technology allows, said bid opening meeting may be available by means of an electronic meeting, i.e. virtually via Zoom, etc.; and
10. Bids shall be held securely until such time as the City Council accepts a successful bidder and an executed contract is secured; and
11. Records for bids shall be maintained pursuant to the city's current record management system.

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720
TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

E-Mail: patrickboone@bellsouth.net

June 18, 2024

By Electronic Mail

City Clerk Rebecca Leavings
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Electronic Bidding of Public Works Projects

Dear Mrs. Leavings:

On May 14, 2024, you sent to me via electronic mail a proposed ordinance establishing rules and policies for electronic submission of public works bids, together with a request that I review the ordinance and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. FACTS

Alabama law regarding the solicitation, execution and administration of public improvements contracts ("public works") by municipalities is set forth in Title 39, Chapters 1 through 5, of the *Code of Alabama, 1975*. Act 2023-497 of the Alabama Legislature (effective September 1, 2023), further codified in Title 39-2-2(k), *Code of Alabama, 1975*, reads as follows:

"(k) For the purposes of this chapter, sealed bids may also be solicited and submitted through electronic means including, but not limited to, electrical, digital, magnetic, optical, electromagnetic, or any other similar technology, **provided that the awarding authority adopts rules and policies** (*emphasis added*) to ensure that all electronic submissions are transmitted securely and bids remained sealed until bid opening."

II. MY LEGAL RESEARCH

Before writing this opinion, I completed the following research:

A. ACT 2023-497 NOW TITLE 39-2-2(K), CODE OF ALABAMA, 1975: Although Act 2023-497 authorizes electronic bidding for public projects, it did not establish the rules and policies described in the Act.

B. OTHER ALABAMA MUNICIPALITIES: It is my understanding, based upon your May 14, 2024 e-mail, that no other municipality in Alabama has yet established the required “rules and policies.”

C. ALABAMA LEAGUE OF MUNICIPALITIES: It is my understanding, based upon your May 14, 2024 e-mail, that you worked together with the Alabama League of Municipalities in the preparation of the proposed ordinance.

D. ALABAMA DEPARTMENT OF FINANCE: The latest Memorandum from the State of Alabama Department of Finance dated February 1, 2024 advises “Note, the electronic procedures in this provision are only for bid submission. Advertisements for sealed bids must comply with *Ala. Code* §39-2-2(a), which still requires advertisement in a newspaper of general circulation.” The Alabama Department of Revenue has amended Section 355-4-3-.02 3(b) of the *Alabama Administrative Code* to allow submission of bids electronically but has not adopted any “rules or policies.”

E. THE ALABAMA DEPARTMENT OF FINANCE DIVISION OF CONSTRUCTION MANAGEMENT: State agencies, as well as municipalities and counties, are subject to the public works competitive bid laws. The Division of Construction Management (“DCM”) has amended Chapter 6D of the *Manual of Procedures* to authorize electronic bidding, but I do not find that DCM has prepared any “rules and policies” to date.

III. LEGAL OPINION

It is my legal opinion that your ordinance meets the requirements of Act No. 2023-497 now codified as Title 39-2-2(k), *Code of Alabama, 1975*.

IV. BASIS OF LEGAL OPINION

I base my opinion upon the fact that Act No. 2023-497 requires that the bids submitted electronically be secure until such time as they are opened. Your ordinance complies with that requirement.

V. MY RECOMMENDATION

I recommend that ordinance be prepared in final form and placed on the agenda for the City Council meeting scheduled for June 24, 2024 for a first read.

June 18, 2024

Page 3

Your leadership and initiative in moving forward with the newly authorized electronic bidding is just another example why you are considered as and recognized to be the best City Clerk in the State of Alabama.

Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Manager Jeffrey D. Downes (by e-mail)