

Opinion No. 75-34

June 12, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Harry Wugalter Chief Public School Finance Division Department of Finance and Administration State Capitol Building Santa Fe, New Mexico 87503

QUESTIONS

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1. Under the Public Purchases Act, Section 6-5-17 to 6-5-35, NMSA, 1953 Comp. (2nd Repl. Vol.), must the following insurance covering school employees be bid:

A. group health and accident,

B. comprehensive medical,

C. disability income, or

D. group term life?

2. If the answer to question one is yes, then is it necessary to rebid the insurance at the end of the contract period (three or five years) when there is no change in premiums or benefits?

3. If an insurance company offered additional benefits which the school employees wanted and the school board approved, then would the insurance have to be rebid due to an increase in premiums for the additional benefits?

CONCLUSIONS

1. Yes.

2. Yes.

3. Yes.

OPINION

{*99} **ANALYSIS**

QUESTIONS [1]

Your first question can be answered by referring to certain provisions of the Public Purchases Act. Section 6-5-18 (B), **supra**, provides:

B. "local public body" means every political subdivision of the state created under either general or special acts, which receives or expends public money from whatever source derived, including but not limited to counties, county institutions, boards, bureaus or commissions, incorporated cities, towns or villages, drainage, conservancy, irrigation *{*100}* or other districts, **school, junior college, or vocational technical institute districts**, and every office or officer of any of the above; (Emphasis added.)

Section 6-5-18 (J) specifies that:

J. "purchasing" means the procurement of materials and services for the use of state agencies and local public bodies:

Finally, Section 6-5-21 (B), **supra**, states:

B. All purchasing for local public bodies and those state agencies excluded from the requirement of purchasing through the state purchasing agent shall be performed by a central purchasing office designated by the governing authority of the user, except as otherwise provided in the Public Purchases Act.

Therefore, it is clear that the school districts must procure services and/or materials according to the provisions of the Public Purchases Act.

Now we need to determine whether insurance is a service within the meaning of the Public Purchases Act. To answer this question, we need to look no further than Section 6-5-18 (G), **supra**, which provides us with a definitive answer:

G. "services" means those services other than those provided for in section 9 of the Public Purchases Act [6-5-25], furnished under an agreement by which the contractor furnishes services not provided by employees of the user; for the purposes of the Public Purchases Act, surety bonds and **insurance**, except for workmen's compensation insurance, are considered services. . . . (Emphasis added.)

Under this section, all forms of insurance, except workmen's compensation insurance, are considered services which pursuant to Section 6-5-26, **supra**, must be procured through competitive bidding. Opinions of the Attorney General No. 69-43, dated May 13, 1969; No. 65-137, dated July 22, 1965; No. 69-117, dated October 8, 1969. Your first question must, therefore, be answered in the affirmative.

QUESTIONS [2]

Section 6-5-26 (G), **supra**, provides an answer to your second question:

G. a **single purchase** in an amount estimated to exceed one thousand two hundred fifty dollars (\$ 1,250) shall be made only after notice that sealed bids will be received. . . . (Emphasis added.)

Note Chapter 163, Laws of 1975, effective June 20, 1975, which amends Section 6-5-26 (G), **supra**. When an initial insurance contract expires, a school district is required, if it desires to continue with employee insurance coverage, to enter into a new contract of insurance. The initial purchase of insurance would be considered as a single purchase of this insurance coverage and any subsequent renewal of the insurance or any new contract which might be executed would have to be considered as a second purchase of insurance. Section 6-5-26 (G), **supra**, requires that at the expiration of the contract term the insurance be rebid, even if there is no change in the premiums or benefits.

Furthermore, it would constitute a violation of the spirit and intended application of the Public {**101*} Purchases Act to allow a school district to indefinitely renew without rebidding an insurance contract with the same insurance company. In the case of **New Mexico Bus Sales v. Michael**, 68 N.M. 223, 360 P.2d 639 (1961) the court said:

. . . we would admonish all city, town and state boards, including school boards . . . to whom have been entrusted the expenditure of public funds, that in spending public funds and in the manner of the acceptance of bids on any proposals, that extreme care and caution be exercised to the end that the spirit as well as the letter of the pertinent statute be followed. . . .

The Public Purchases Act is not intended to protect the individual interest of the bidders but rather the advancement of the public interest in securing the most economical result by inviting competition in which all bidders are placed on an equal basis, thereby guarding against favoritism, improvidence, extravagance and corruption. **Township of River Vail v. R. J. Longo-Const. Co. Inc.**, 127 N.J. Super. 207, 316 A.2d 737 (1974); **D. J. Talley & Sons Inc. v. City of New Orleans**, 303 So.2d 195 (La. 1974); **William A. Young & Co. Inc. v. West Orange Redev. Agcy**, 125 N.J. Super. 440, 311 A.2d 390 (1973). If a local school district continually renews its existing insurance contracts with the same insurer, then its employees will never be given the opportunity to be insured by a company that might offer better coverage at a more economical price. It is the spirit of the Public Purchases Act that when existing contracts expire, school districts should rebid and thereby attempt to obtain a more economical price. Accordingly, insurance contracts must be rebid upon expiration of the contract term. Opinion of the Attorney General No. 69-43, dated May 13, 1969.

QUESTIONS [3]

This question has been answered by Opinion of the Attorney General No. 69-43, dated May 13, 1969, in which it is stated:

The questions asked both involve a change in specifications or provisions after an insurance contract has been bid. The changes suggested are both material changes in

specifications. It is our opinion that such changes in an insurance contract may not be made without following the bid procedures set forth in the Public Purchases Act. Any other conclusion would not only violate the spirit and intent of the Public Purchases Act, but would be fundamentally unfair to all other bidders. To allow the changes suggested in the questions above would allow state agencies and local public bodies to seek bids for one thing and then purchase another from the winning bidder. This clearly would violate the provisions of the Public Purchases Act.

We agree with the conclusion reached in this opinion, and we therefore must answer your final question in the affirmative.

By: Louis Druxman

Assistant Attorney General