

1976 S.C. Op. Atty. Gen. 384 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4522, 1976 WL 23139

Office of the Attorney General

State of South Carolina

Opinion No. 4522

November 19, 1976

\*1 The Division of General Services' Bid Notice and Instruction to Bidders, requiring that the EPA gas mileage be used in determining the bid price, is not so indefinite as to destroy the competitive nature of the bid.

TO: James H. Barnes  
State Purchasing Officer

QUESTION PRESENTED:

Does General Services' use of EPA gas mileage estimate figures in its Bid Notice and Instruction to Bidders make the instructions so indefinite or uncertain as to destroy the competitive nature of the bid?

AUTHORITIES CITED:

64 AmJur2d, 'Public Works and Contracts,' Sections 50, et seq.;

81 CJS 'States' Section 58.

DISCUSSION:

On November 3, 1976, the Division of General Services, Central State Purchasing received bids for furnishing 'New Motor Vehicle Equipment Mid-Size Four Door Sedans.' According to the Bid Notice and Instruction to Bidders, the low bid will be determined by adding the unit bid price and the estimate cost of fuel consumption over a 60,000 mile period. The Instruction to Bidders reads:

EPA figures as published by the Federal Environmental Protection Agency entitled '1977 Gas Mileage Guide for New Car Buyers' will also be used in determining the successful bidder.

The following formula will be used.

60,000 miles EPA combined city-highway estimate X \$. 50 =

This figure [sic] will be added to the bid price.

A question as to the legality of the use of the EPA figures as a method of determining the low bid has been raised.

The general rule is that

[s]pecifications inviting bids for public contracts must be sufficiently detailed, definite and precise upon all of the essential elements that enter into the contract, so as to afford a basis for full and fair competitive bidding upon a common standard, . . . 64 AmJur2d, 'Public Works and Contracts,' Section 51 at 903.

A complaint has been voiced that the EPA gas mileage figures are just estimates and are, therefore, not definite enough to furnish General Services with any concrete information. The fact that these EPA figures are estimates do not destroy the competitive nature of the bid. Each bidder was required to bid on the same common standard—the EPA gas mileage estimated, compiled and published by the United States Government. Each bidder knew exactly what the standard was and was given the formula for applying the standard. There was nothing indefinite or uncertain about how the EPA figures were to be used.

As to whether or not General Services had the authority to use EPA gas mileage figures and costs in determining the successful bid, it is within the agency's discretion to determine what criteria are to be employed to determine the successful bid. Pursuant to Section 1–353, CODE OF LAWS OF SOUTH CAROLINA, 1962, the Budget and Control Board, of which General Services is a division, has been legislatively delegated the authority and responsibility to establish rules and regulations governing State purchasing and to conduct that same purchasing.

\*2 A board or commission on which the legislature confers broad general powers is invested with discretion in choosing means and methods of accomplishing the result expected, and, in the absence of fraud or manifest abuse of that discretion, its determination is conclusive. 81 CJS, 'States' Section 58 at 978.

In delegating the Budget and Control Board the authority to establish purchasing rules and regulations and to act as the State's central purchasing agency, the Legislature, by necessary implication, has vested the agency with the discretion to decide what criteria are important in determining the lowest acceptable bidder prior to each Bid Notice. In this instance, the Division of General Services has made the administrative decision that the estimated gasoline operation cost, based upon EPA mileage figures, is an important and necessary criterion in determining the 'lowest acceptable bidder' for a motor vehicle contract.

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