

1982 Ky. Op. Atty. Gen. 2-363, Ky. OAG 82-337,  
1982 WL 177003 (Ky.A.G.)

\*1 Office of the Attorney General

Commonwealth of Kentucky

OAG 82-337

July 6, 1982

Mr. J. William Young  
Bradshaw & Weil  
621 Broadway  
Paducah, Kentucky 42001

Dear Mr. Young:

This is in response to your letter of March 15, in which you raise the following questions:

- “1. Under the Code, could a city soliciting insurance proposals, for example, limit its list of bidders to agencies that have their major office within the boundaries of that city's limits?
2. Under 45A.345(6), does this mean that a city or similar public agency could specify an advantage of say 25% on insurance pricing for an agency whose main office is inside that city's limits? Perhaps the reasoning could be that such an agency can provide on the spot handling and services for loss adjustment, third party liability, etc.”

Our response to both questions would be in the negative, assuming that the city is operating under the Model Procurement Code that would require competitive sealed bidding on all contracts in excess of \$5,000 under the terms of [KRS 45A.365](#). Where competitive bids are required, all persons desiring to bid must be afforded the opportunity to do so. The purpose of requiring bids is to invite competition and guard against favoritism, extravagance, fraud and corruption and to secure the best possible work at the least price that is prescribed. Bidding

requirements are enacted for the benefit of property owners and taxpayers and not for the benefit and enrichment of bidders and should be so construed and administered as to accomplish such purpose in the public interest. Referring to *McQuillin, Municipal Corporations*, Vol. 10, § 29.29, we quote the following:

“A fair opportunity must be afforded for free competition. Inherent in competitive bidding is the requirement that the public body shall prescribe a common standard on all matters that are material to the proposals, to the end that interested persons may bid intelligently and will be induced to bid by the promise of impartiality. No scheme or device promotive of favoritism or unfairness or which imposes limitations, not applicable to all bidders alike, will be tolerated. These fundamental rules have been announced and applied in a multitude of cases.”

The Court, in [City of Springfield v. Haydon, 216 Ky. 483, 288 S.W. 337 \(1926\)](#), held that “competitive bidding must not be destroyed or impaired.”

Thus, for the city to limit its list of bidders to those insurance agencies having major offices within the boundaries of the city limits would, in our opinion, violate the purpose and intent of requiring competitive bidding under the Kentucky Model Procurement Code or, for that matter, any other statute that requires competitive bidding.

We might point out that if the city is not operating under the Kentucky Model Procurement Code, which is optional, it would then be required to operate under [KRS 424.260](#) which has been construed as not applicable to insurance contracts in the case of [McCloud v. City of Cadiz, Ky. App., 548 S.W. 2d 158 \(1977\)](#). One of the basic reasons for the Court reaching this decision under the terms of [KRS 424.260](#) was the exemption of professional services generally which it concluded was the nature of insurance activities. However, insofar as the Kentucky Model Procurement Code is con-

cerned, [KRS 45A.380](#), dealing with noncompetitive negotiation contracts, specifically lists those contracts that are professional in nature and excepted from competitive bidding, which does not include insurance contracts with the exception of those contracts for group life insurance, group health and accident insurance, group professional liability insurance, workmen's compensation insurance and unemployment insurance.

Yours very truly,  
\*2 Steven L. Beshear  
Attorney General

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