



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 30, 1976

ATTORNEY GENERAL OPINION NO. 76- 381

Mr. Henry H. Knouft
Director of Purchases
Department of Administration
State Office Building
Topeka, Kansas 66612

Re: Contracts--Secretary of Transportation--Change Orders

Synopsis: Change orders to contracts executed under the authority of K.S.A. 1975 Supp. 68-407 are subject to review by the Director of Purchases to determine whether such proposed change orders are within the scope of the original contract, or are so substantial as to require the letting of a new and independent contract pursuant to statutory competitive bidding procedures.

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Dear Mr. Knouft:

In Opinion No. 76-340, I considered the question whether contracts for services of professional consulting engineers entered into by the Secretary of Transportation pursuant to K.S.A. 1975 Supp. 68-407 are subject to the competitive bidding requirements of K.S.A. 1975 Supp. 75-3737. I concluded that such contracts were indeed subject to those requirements, and could not be obtained by negotiation. On page 4 of that opinion, I stated thus:

"Clearly, the fact that the Secretary is the proper party to execution of the contract does not exempt the contract from the procedural steps required to be performed by the Director of Purchases prior to its execution, including the receipt of competitive bids."

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You advise that the further question has been raised whether, in view of the quoted language above, the Division of Purchases has any further responsibility regarding change orders executed regarding an outstanding contract after the initial award for that contract is approved and made.

In my judgment, the Director of Purchases has the same responsibility regarding change orders affecting contracts executed under the authority of K.S.A. 1975 Supp. 68-407 that he has regarding change orders affecting every other contract which he has the duty to award pursuant to the statutory competitive bidding procedures.

Ordinarily, change orders authorize additional or alternative work which falls within the scope of the original contract, and bids are not required for such orders. However, instances may occur in which the additional or alternative work is so substantial in scope that it may not fairly be deemed to be auxiliary to the original contract, and must be regarded as new procurement, for which the statutory bidding procedures must be followed. The Director of Purchases is charged with assuring that all contracts which are subject to K.S.A. 1975 Supp. 75-3739 et seq. are dealt in accordance therewith. Perforce, proposed change orders must be reviewed by the Division of Purchases to determine that in fact the proposed change is not so substantial in scope as to require the competitive letting of a new and independent contract therefor.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj