



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

October 26, 1977

ATTORNEY GENERAL OPINION NO. 77- 349

Mr. John Dekker
Director of Law
455 North Main
Wichita, Kansas 67203

Re: Cities--Procurement--Minority Set-Aside

Synopsis: No Kansas statute prohibits a city from implementing a minority set-aside program in its procurement procedures whereby prescribed and designated portions of major construction elements of a local construction or renovation project may be let by competitive contract on the basis of a bidders' list composed solely of minority business enterprises, in order to conform to federal requirements applicable to the expenditure of grants administered by the U.S. Economic Development Administration or other federal agencies.

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Dear Mr. Dekker:

You request my opinion whether a proposed procurement procedure to be followed by the City of Wichita, conforms to requirements of the federal Local Public Works Act which is administered by the U.S. Economic Development Administration.

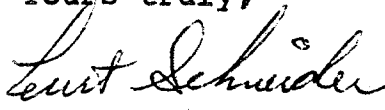
You advise that the Act requires that not less than ten percent of the grant proceeds be applied to contracts with minority business enterprises, which are defined as any business, fifty percent of which is owned by a person or persons of a minority class, including Negro, Spanish-speaking, Oriental, Indian, Eskimo and Aleut. Instead of attempting compliance with the Act by requiring a general contractor to set aside ten percent of the amount of

Mr. John Dekker
Page Two
October 26, 1977

the contract to be let to minority subcontractors, the city proposes itself to designate some portion of all the major construction elements associated with the project now under consideration, the Lawrence Stadium renovation, which include mechanical, electrical, painting, general construction, demolition and paving, which the city itself would set aside for contracts with minority business enterprises, based most probably on competitive bids submitted by parties on an eligible bidder's list composed entirely of minority enterprises. In this fashion, the city would assure compliance with the minority set-aside requirement directly, than relying upon the contractual obligation of a general contractor to provide the required set-aside. You request my opinion whether this proposed procedure is in conflict with any state or local legislation.

There is no state statutory competitive bidding or other procurement procedure applicable to the construction in question. Thus, nothing in state law precludes the city from proceeding as described above. The proposed procurement procedure is clearly a matter of local concern, i.e., a matter of "local affairs and government," concerning which the city is authorized to deal directly in the exercise of the legislative and administrative authority granted to it directly by Article 12, § 5 of the Kansas Constitution. The procedure is within the constitutional authority of the city under this provision, and does not violate any applicable state laws.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj