



STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

**Curt T. Schneider**  
Attorney General

March 30, 1978

ATTORNEY GENERAL OPINION NO. 78-135

Mr. O. D. Turner  
Secretary of Transportation  
Kansas Department of Transportation  
State Office Building  
Topeka, Kansas 66612

Re: Engineering Services--Contracts--Bidding

Synopsis: A contract for consulting services to provide assistance to minority contractors, which entails not only engineering but accounting, business management and perhaps other professional services, is not subject to K.S.A. 75-5801 *et seq.*, but must be let in accordance with the competitive bidding requirements of K.S.A. 75-3739 *et seq.*

\* \* \*

Dear Mr. Turner:

You advise that the Kansas Department of Transportation is preparing to initiate a pilot project designed to improve opportunities for minority contractors to participate in the federally-aided highway construction program being implemented in this state. It is your intention to provide these services by utilization of a qualified professional consultant. The project is a part of your Supportive Services Program, totally funded by Federal Highway Administration monies, and is undertaken as an important part of the agency's affirmative action program.

The services to be provided under this project involve engineering, administrative and fiscal training for minority contractors in the highway construction industry.

Mr. O. D. Turner  
Page Two  
March 30, 1978

After selection of the minority contractors deemed capable of benefitting from the program, the supportive services to be provided them fall into several categories. One phase will include the

"review of the contractor's engineering and construction capabilities, accounting and record keeping procedures, and his methods of materials purchasing."

The consultant will identify and assess the areas of weakness with each respective contractor, and develop a training and assistance program to fit the needs of each respective firm. The consultant will also

"include special training in the areas of engineering and construction scheduling, assistance in establishing adequate bookkeeping records, assistance in producing financial statements from present records, and the establishment of regular procedures for reporting costs, purchases, income, and work progress."

In addition, the consultant will assist those contractors who are capable of bidding as prime contractors to become prequalified with the Department, and assist in preparing business profile packages for those firms which may be eligible to bid as subcontractors on Department projects. Additionally, the consultant will contract bonding companies interested in bonding minority contractors, and assist minority firms in preparing and submitting the necessary data to obtain bonds required for bidding. Concerning bidding assistance, the consultant will alert

"qualified minority contractors of upcoming construction projects in their areas, assisting minority contractors wishing to bid in the take-off or estimate of materials needed for a project, aiding the contractor in submitting a bid in compliance with DOT procedures, and helping the contractor to understand the engineering and construction specifications applicable to projects in their field."

Mr. O. D. Turner  
Page Three  
March 30, 1978

Lastly, the consultant will provide on-site assistance to minority contractors, regarding compliance with construction plans and specifications, preparation of field records and billings, construction scheduling, and in responding to especial complex problems which may arise in various projects.

As thus described, the services will include engineering services, as well as accounting and management services. The question which you pose is whether a contract for these consulting services may be negotiated pursuant to K.S.A. 75-5801 *et seq.* K.S.A. 75-5802(b) defines "engineering services" as

"any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning or design of engineering works and systems, engineering, surveying, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; and which includes such service or creative work in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects and such architectural work as is incidental to the practice of engineering."

The act applies whenever a "project requiring engineering services is proposed by a state agency." K.S.A. 75-5803. The term "project" is defined by K.S.A. 75-5802(e) to mean

"any capital improvement project or any study, plan, survey or program activity of a state agency, including development of new or existing programs and preparation of federal grant applications."

The services which the consultant would provide will entail engineering services, but also accounting, management and allied services.

Mr. O. D. Turner  
Page Four  
March 30, 1978

Engineering services are but one component of the services to be provided under the contract. The consultant must provide, thus, a multiplicity of services, some of which entail engineering services and others which do not. K.S.A. 75-5801 *et seq.*, was a response of the 1977 legislature to rulings that engineering services were liable to the competitive bidding process. It remains the overriding policy of this state that contracts for services shall be entered into by competitive bidding pursuant to K.S.A. 75-3739 *et seq.* Contracts for engineering services may be negotiated. However, this contract entails other services in addition to engineering services. To exempt it from K.S.A. 75-3739 *et seq.*, on the ground that engineering services was one component of the services to be provided by the consultant would be to exempt other services, equally important under the proposed contract, from statutory bidding requirements to which they are otherwise subject. K.S.A. 75-5803 provides for the selection of a firm to provide engineering services on the basis of statements of qualifications and performance data concerning the firms' and engineers' demonstrated capabilities and competence. The consulting services involved here range far beyond the professional engineering services which may be evaluated on the basis of statements of qualifications and performance data contemplated by the act, and indeed, involve services which may very well be furnished by persons with business management and accounting skills, separately from those engineering services. In my judgment, the consulting services envisioned by this proposal, as described above, do not fall within the negotiating authority of K.S.A. 75-5801 *et seq.* but must be procured in compliance with the competitive bidding requirements of K.S.A. 75-3739 *et seq.*

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj