



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 6, 1978

ATTORNEY GENERAL OPINION NO. 78- 55

The Honorable Loren H. Hohman, II
State Representative
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Contracts--Competitive Bidding--Medicaid Management
Information Services

Synopsis: The award of a contract for a program known as Medicaid
Management Information Services to Electronic Data
Systems, Inc., was made in full and scrupulous compli-
ance with Kansas competitive bidding requirements.

* * *

Dear Representative Hohman:

You inquire concerning the execution of a contract for a program known as Medicaid Management Information Services (MMIS) between Dr. Robert Harder, Secretary of Social and Rehabilitation Services, and Electronic Data Systems, Inc., of Dallas, Texas (EDS). The bid of each party was itemized for each of three components, the first being a bid for two and one-half years' service, including installation costs; the second being for turnover costs; and the third being a bid for services to be furnished pursuant to a one-year option. At page IV-18, ¶ IV(C)(4)(a) of the specifications upon which bids were solicited describes the option thus:

"4. Contract Duration

Term of Contract and Amendments Thereto

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a. The term is to be an initial contract period which will extend from contract date to three (3) years from the date of award. *The contract is mutually extendable at the option of both parties not to exceed one (1) year under its specific terms and conditions. Written notice to excersise [sic] this option shall be provided by the State not less than 90 days before the contract expiration date.* [Emphasis supplied.]

You question whether the dollar component of each bid which is attributable to the one-year option should properly have been considered in determining the lowest responsible bidder for this contract. EDS bid \$1,407,010 on this item, whereas Pilgrim Health Services, Systems Development Corporation and Blue Cross-Blue Shield bid \$2,906,400, \$2,600,300 and \$2,745,398, respectively. You suggest that the one-year option component of each bid should be excluded from consideration on the ground that it is not a genuine option, but illusory in nature, meaning only that at the end of the initial contract period, if the Department wishes to extend the contract one year, and the contractor is at that time also willing to do so, the bid price will be the cost of the services for that one-year period, the option of the agency being thereby in fact dependent on the willingness of the contractor at that time to proceed under the contract for another year.

Prior to approving the contract, we reviewed this particular question. Until the bids were opened, no party to the bidding process raised any question whatever that the option was not a genuine option vested in the Department to extend the initial contract period for one additional year at its sole option. A transcription of discussion at the pre-bid conference makes clear that the nature of the option was clearly described, i.e., it was the sole option of the Department to extend the contract. All bidders were represented at this conference, and no party made any exception to this description, or indicated that they understood it otherwise. The very substantial dollar bids on the option itself belie any contention that the parties understood it as an illusory option only. Moreover, despite the ambiguity of the underscored language, *supra*, stating that the contract is "mutually extendable at the option of both parties," the remaining language in the entire paragraph refers only to the

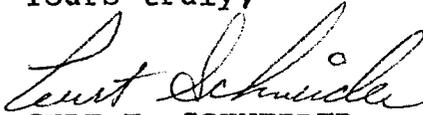
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exercise of options solely by the Department. No provision whatever was set out for exercise of any option by the contractor, and no such provision is made in the executed contract. If any party to the bidding process had any question regarding the nature of the option upon which it was submitting a bid, they were strangely silent throughout the very extensive pre-bid procedure leading up to the time this contract was completed and the bids opened.

I can find no basis whatever for any suggestion that Electronic Data Systems, Inc. is not the lowest responsible bidder. The award was made only after extremely protracted and painstaking efforts by staff of the Department of Social and Rehabilitation Services and the Division of Purchases to assure that the entire process was scrupulously fair, and that every interested party was afforded an equal and fully competitive opportunity to bid on the proposal. Clearly, the language underscored above is ambiguous. Equally clearly, however, every party who was represented at the pre-bid conference understood fully that the option provision upon which parties were asked to bid provided for an option to be exercised solely by the Department to extend the contract for one year beyond the initial contract period. No bidder has affirmatively represented to this office, to the Division of Purchases or to the Department of Social and Rehabilitation Services that they were misled in any fashion regarding the nature of the option in the preparation of their bids, and any such claim at this point is entirely too belated to credit seriously.

In my judgment, the award was properly made to Electronic Data Systems, Inc., and indeed, there is no basis whatever for doing otherwise.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj