



STATE OF KANSAS

## Office of the Attorney General

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*Curt T. Schneider*  
Attorney General

February 1, 1978

ATTORNEY GENERAL OPINION NO. 78- 58

Dr. James A. McCain  
Secretary of Human Resources  
401 Topeka Avenue  
Topeka, Kansas 66603

RE: Competitive Bidding--Conflict--Federal Law

Synopsis: A conflict exists between the provisions of the Comprehensive Employment and Training Act (29 U.S.C. 801, et seq.) and the State competitive bidding procedures (K.S.A. 75-3739, et seq.) as both statutes apply to the selection of delivery agents for programs operated by the Department of Human Resources pursuant to the Comprehensive Employment and Training Act, and as a result of said conflict the provisions of K.S.A. 75-3739, et seq., are inapplicable to the selection process for such delivery agents.

Dear Dr. McCain:

You inquire whether a conflict exists between the provisions of Title I of the Comprehensive Employment and Training Act, (29 U.S.C. 801, et seq.) [hereinafter CETA], and the competitive bidding requirements of K.S.A. 75-3739, et seq., as both statutes apply to the selection of delivery agents for programs operated by the Department of Human Resources pursuant to CETA. You further inquire as to the effect of such conflict in case it exists.

The requirements concerning competitive bids are found in K.S.A. 75-3739, et seq. K.S.A. 75-3739 requires that "all purchases and contracts for supplies, materials, equipment and contractual services shall be paid based upon competitive bid". K.S.A. 75-3740 provides that the director of purchases

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award all contracts "for which competitive bids are required . . . to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids". This requires the director of purchases to award a contract for services to the lowest bidder unless he has evidence that the bid as submitted does not conform with the specifications, that the terms of delivery will adversely affect the State, or that other conditions imposed in the call for bids are not met.

The administration, receipt and expenditure of funds received by the Department of Human Resources, pursuant to Title I of CETA, is governed by a plan which is submitted to the United States Department of Labor by the State of Kansas and which must be approved by said Department (29 U.S.C. 815(b)). Specifically, among other requirements the plan must:

"(1) [set] forth a comprehensive manpower program which meets the objectives of [CETA] including  
(A) a description of services to be provided, and performance goals; (B) assurance that such services will be administered by or under the supervision of the prime sponsor, [the State of Kansas - Department of Human Resources]; (C) a description of the geographical areas to be served under the plan; and (D) assurances that to the maximum extent feasible manpower services, including the development of job opportunities will be provided to those most in need of them, including low income persons and persons of limited English speaking ability, and that the need for continued funding of programs of demonstrated effectiveness is taken into account in serving such groups and persons; . . ."

"(3)(A) [provide] appropriate arrangements with community-based organizations serving the poverty community, and other special target groups for their participation in the planning of the programs included in the plan; (B) [provide] for utilizing those services and facilities which are available, with or without reimbursement of the reasonable cost, from federal, state, and local agencies to the extent deemed appropriate by the prime sponsor, after giving due consideration to the effectiveness of such existing services and facilities, including, but not

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limited to, the State Employment Service, State vocational education and vocational rehabilitation agencies, area skills centers, local educational agencies, postsecondary training and education institutions, and community action agencies, but nothing contained herein shall be construed to limit the utilization of services and facilities of private agencies, institutions and organizations (such as private business, labor organizations, private employment agencies, and private educational and vocational institutions) which can, at a comparable cost, provide substantially equivalent training or services or otherwise aid in reducing more quickly unemployment or current and prospective manpower shortages; (C) [provide] that in making arrangements for institutional training priorities shall be given (to the extent feasible) to the use of skills centers established under the authority of Section 2601 of Title 42; (D) [provide] arrangements to the extent feasible for the coordination of services for which financial assistance is provided under programs administered by the Secretary of Labor relating to manpower and manpower-related services..."

In our view, these provisions of CETA require that community-based organizations and other groups affected by Title I CETA programs participate in the deliberative process which occurs as the plan is developed. Further, said provisions require that, as part of such deliberations, the continued funding of programs of demonstrated effectiveness, as operated in the past by particular delivery agents, be considered in light of the objectives of CETA and the perceived manpower needs of the disadvantaged community. This position is substantiated by Administrative Law Judge Samuel A. Chaitovitz in his decision in the case of SER/Jobs for Progress of Pueblo, Colorado, Case No. 76-CETA-101, 26 March 1976, in which the combined operative effect of the above-quoted statutes is characterized as follows:

"As part of the planning process for the development of its comprehensive manpower plan, a prime sponsor is required to give 'due consideration' to community-based organizations serving the disadvantaged with programs of demonstrated effectiveness [29 U.S.C. 815(a)(1)(D), 19 C.F.R. 95.14(b)(2)(a)ii, and 29 C.F.R. 95.17(d)(6)] and to make appropriate arrangements with such

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organizations for their participation in the process [29 U.S.C. 815(a)(3)(A), 29 C.F.R. 95.13(b), and 29 C.F.R. 95.17(b)(5)]. Such organizations, of which complainant is by definition, must be included in the planning process and must have an opportunity to fully present their views and proposals and to have them fully and fairly considered. This requires that the prime sponsor not act arbitrarily toward such organizations and must give them full chance to present their proposals."

Thus, the designation of program delivery agents under Title I of CETA is a decision which must be made as part of the planning process, and such decisions must involve community-based organizations and other delivery agents. Further, the competitive bidding procedure by definition precludes "due consideration" of any factor but the lowest dollar bid offered by a responsible bidder where bid specifications and conditions are met and therefore such procedure precludes "due consideration" of the effectiveness of existing services and facilities as required by 29 U.S.C. 815(a)(3)(B) as well as the "taking into account" the need for continued funding of programs of "demonstrated effectiveness" as required by 29 U.S.C. 815(a)(1)(D).

In light of such conflict, it is our view that the provisions of K.S.A. 75-3739, et seq., cannot apply to the selection of delivery agents for programs funded pursuant to Title I of CETA, and the aforementioned provision of federal law must control.

Very truly yours,

  
CURT T. SCHNEIDER  
Attorney General

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