



STATE OF KANSAS

## Office of the Attorney General

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Curt T. Schneider  
Attorney General

February 9, 1978

ATTORNEY GENERAL OPINION NO. 78- 62

Mr. John Conard  
Executive Officer  
Kansas Board of Regents  
Suite 1416 - Merchants National  
Bank Tower  
Topeka, Kansas 66612

Re: Contracts--Bids--Director of Architectural Services

Synopsis: Use of the design/building procedure, as outlined herein, for construction of a multi-level parking facility at the University of Kansas Medical Center, does not violate K.S.A. 75-3741.

\* \* \*

Dear Mr. Conard:

Ch. 308, § 1, L. 1977, amended K.S.A. 1976 Supp. 75-5404, a provision of the architectural selection law, to make special provision for the construction of a multi-level parking facility at the University of Kansas Medical Center. The existing section, prior to amendment, provided merely, so far as pertinent here, that whenever a construction project is expected to exceed \$100,000, the director of architectural services or his designee shall convene a negotiating committee, and submit to it a list of at least three and not more than five firms which in his opinion are qualified to serve as associate architect to the project. The 1977 amendment added a second paragraph to the section, which provides thus in pertinent part:

"(b) Notwithstanding the provisions of subsection (a) to the contrary for the purposes of constructing the multi-level parking facility at the university of Kansas medical center

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as authorized by 1977 Senate Bill No. 430, such project shall be prepared for competitive bids pursuant to K.S.A. 1976 Supp. 75-3739 and K.S.A. 75-3740, 75-3741, and 75-3742, without compliance with this act or with the act of which this act is amendatory."

The question which is raised is that of compliance with that portion of K.S.A. 75-3741 which requires that

"all contracts for the construction of buildings, major repairs and improvements specifically authorized by the legislature for the use and benefit of any state agency shall be let by the director of purchases to the lowest responsible bidder based on plans and specifications prepared or approved and submitted by the director of architectural services and approved by the administrative head of the state agency concerned." [Emphasis supplied.]

You indicate that the 1977 amendment set out above was enacted in order to permit the construction of the parking facility through the design/building procedure, which you outline in your letter. Initially, you indicate, a set of specifications describing the use, operation, appearance, construction and design of the facility have been prepared by the University of Kansas. These specifications have been submitted to the Facilities Officer of the Kansas Board of Regents and to the office of the Director of Architectural Services, for review and approval. Incorporated in these specifications is a list of requirements soliciting proposals for the design and construction of the facility from experienced design/build teams. Interested teams will evaluate the performance specifications thus prepared, and submit their proposals for the design and construction of the facility. These proposals will include, in addition to a total cost estimate, drawings and specifications describing the design and construction of the parking garage. The proposals thus submitted by the interested design/build teams will then be reviewed by the architectural negotiating committee and by the Director of Architectural Services. Based upon approval of the submitted documents, including the plans and specifications a successful design/build team will be selected.

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After initial plans and specifications have been approved by the Director of Architectural Services, a contract will be signed with the successful design/building team to complete the design and construction of the multi-level parking facility, which will then prepare additional drawings for the facility, adding those construction details which are necessary for the actual erection of the building. These additional drawings will, in turn, also be submitted to the Director of Architectural Services for review and approval prior to construction.

K.S.A. 75-3741 requires the contract to be based on plans and specifications which are approved by the director of architectural services. Under the design/build procedure outlined in your letter, the contract will be let on the basis of proposals submitted by interested design/build teams which include a total cost estimate, drawings and specifications describing the design and construction of the facility. These, of course, will have been reviewed and approved by the Director of Architectural Services prior to execution of the contract. After contract execution, however, the contracting design/build team will complete the design and construction of the facility, "fleshing out," as it were, the design and construction documents on the basis of which the contract was entered into.

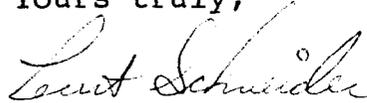
The question apparently is raised whether this procedure constitutes a circumvention of the statutory sequence required by K.S.A. 75-3741. The purpose of the underscored language therefrom, of course, is to require the director of architectural services to review and approve all plans and specifications on the basis of which a construction contract is let. That, of course, is the result of the procedure outlined above, for all design and construction documents describing the facility and on the basis of which the contract is let will have been reviewed and approved by the director. However, it may be argued that the further purpose of the cited language is to require the director of architectural services to review and approve all of the plans and specifications for the construction of a building prior to the letting of the construction contract, and that the design/build procedure necessarily entails final drafting of the plans and specifications for the facility after execution of the construction contract itself.

In my judgment, the language of K.S.A. 75-3741 does not compel this further conclusion. The statute requires that the contract be let on the basis of plans and specifications which are approved by the director of architectural services. Under the procedures outlined above, all plans and specifications for the proposed

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facility will be reviewed and approved by the director of architectural services before construction begins on the basis of any such plans and specifications. Although all the plans and specifications on the basis of which it will be built will not have been prepared and submitted to the director prior to letting of the contract, all of the plans and specifications in existence at the time the contract is let, and on the basis of which the contract is let, will have been approved by the director. In my judgment, this sequential review process meets the requirements of K.S.A. 75-3741.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

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