



STATE OF KANSAS

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June 19, 1981

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ATTORNEY GENERAL OPINION NO. 81- 138

Mr. Lynn Burris, Jr.  
Director  
The Kansas State Park and Resources  
Authority  
503 Kansas Avenue, P.O. Box 977  
Topeka, Kansas 66601

Re: State Departments; Public Officers and Employees--  
Department of Administration--Competitive Bids,  
Exceptions

Synopsis: Pursuant to the provisions of K.S.A. 1980 Supp. 75-3739, and subject to certain exceptions not relevant herein, all state contracts for construction and repairs, and all purchases of and contracts for supplies, materials, equipment and contractual services, must be based on competitive bids. This requirement is applicable to the award of a construction contract by the federal government where a federal agency is supervising the construction of park facilities at a state park (pursuant to a "mutually satisfactory division of responsibility for construction") and the state of Kansas is contractually obligated to pay 50% of said construction costs and to bear all costs of operation and maintenance of the completed facilities. Cited herein: K.S.A. 74-4510(1); K.S.A. 1980 Supp. 75-3739.

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Dear Mr. Burris:

You request our opinion as to whether the award of a contract for construction of park facilities at El Dorado State Park must

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be based upon competitive bids. You state that the district engineer of the Corps of Engineers, as contracting officer for the federal government, is planning to award a construction contract to a minority contractor without advertising for competitive bids. The contract is to be awarded pursuant to the provisions of a contract between the Kansas State Park and Resources Authority and the federal government (dated June 3, 1972), wherein the Authority and the federal government agree to jointly construct park facilities on lands leased to the state by the federal government. Under the terms of the 1972 contract, which contract was authorized by K.S.A. 74-4510(1), the state of Kansas is required to pay 50% of the construction costs of park facilities constructed under the agreement, and the state is required to bear all costs of operation and maintenance of the completed facilities.

K.S.A. 1980 Supp. 75-3739 requires, subject to certain exceptions not relevant here, that all state contracts for construction and repairs, and all purchases of and contracts for supplies, materials, equipment and contractual services, be based on competitive bids. As there is no ambiguity in this requirement, the only question which must be addressed is whether the construction contract in question is a contract of the state of Kansas.

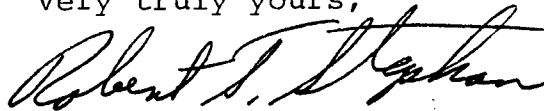
The 1972 contract between the Authority and the federal government, which contract provides for the joint construction of park facilities by the state of Kansas and the federal government, states that park facilities are to be provided "through mutually satisfactory division of responsibility for construction," and also provides that "facilities to be constructed by each party shall be formally agreed upon by the two parties prior to construction." Under this contract provision, the Kansas Park and Resources Authority has requested the Corps of Engineers to develop plans and specifications, advertise and award contracts, and supervise construction of all park facilities. However, as is stated above, the state of Kansas will be responsible for 50% of the construction costs, and the 1972 contract also provides that the Authority "agrees to comply with all applicable Federal and State laws and regulations."

In view of the fact that the state of Kansas will bear 50% of the construction costs of the subject project, and 100% of the cost of operation and maintenance of the completed facilities, it is our opinion that the contract to be awarded is as much a state contract as it is a federal contract, and that the Corps of Engineers should comply with the competitive bidding requirement

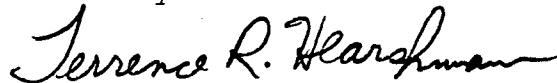
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imposed by K.S.A. 1980 Supp. 75-3739. Further, in our judgment, the Kansas State Park and Resources Authority should, under the 1972 contract, insist that the subject contract be awarded in conformity with the competitive bidding requirements prescribed by state law.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:jm