Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 24, 1992

Ms. Judith M. Porras
General Counsel
General Services Commission
1711 San Jacinto
P. O. Box 13047
Austin, Texas 78711-3047

Letter Opinion No. 92-24

Re: Whether section 3.102, article 601b, V.T.C.S. applies to a bid or contract that includes proposed financial participation by certain former state employees (RQ-341)

Dear Ms. Porras:

You inquired about the scope of section 3.102, article 601b, V.T.C.S. Section 3.102 provides

> A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in the preparation of the specifications or request for proposals on which the bid or contract is based. A bidder or contract participant may provide free technical assistance to an agency under this section.

We understand that the General Services Commission's primary concern is whether this provision applies to a bid or contract that includes proposed financial participation by a former state employee who was paid a salary or wages by the state to prepare or otherwise work on the specifications for a particular state bid or contract.

Section 3.102 by its express terms is broadly written to apply to *any* bid or contract that includes "proposed financial participation by *a person* who received *compensation* from the agency to participate in the preparation of the specifications" for that bid or contract. Nothing in section 3.102 nor in any other provision of article 6.01b limits the application of the section to only a bid or contract including "proposed financial participation" by an outside consultant or contractor who, pursuant to a contract with a state agency, has prepared the specifications for the

bid or contract. The legislative history of section 3.102 also does not support a narrow application of section 3.102. *See* Bill File, H. B. 39, 72d Leg., 2d C.S. (1991) (sunset bill finally enacted); bill file, S.B. 831, 72d Leg., Reg. Sess. (1991) (sunset bill as first introduced and considered; containing identical language finally enacted in section 3.102).

Texas case law recognizes that words in a statute should be given their ordinary and popular meaning unless a contrary intent is clearly apparent from the use of the words in their statutory context or unless to do so would subvert the plain purpose of the legislature in enacting the statute. 67 TEX. JUR. 3D *Statutes* § 100 (1989) (and authorities cited therein); *see also* Attorney General Opinions JM-1102, JM-1104 (1989) (courts must follow statutory language if unambiguous when read as a whole). The term "compensation" is generally understood to include any payment, including salaries or wages, for value received or services rendered. *See* WEBSTER'S THIRD NEW INT'L DICTIONARY 463 (1969); BLACK'S LAW DICTIONARY 283 (6th ed. 1990); *Friedman v. American Surety Co. of New York*, 151 S.W.2d 570, 578 (Tex. 1941) (using term "compensation" to refer to salaries or wages paid employees); Attorney General Opinion M-1094 (1972) (using general definition of "compensation" as payments for value received or services rendered).[1]

Neither the terms of the statute nor its legislative intent indicate that the legislature meant to use "compensation" other than in its ordinary and popular sense. Furthermore, one of the purposes of this statute is to ensure fair competition among those individuals or entities seeking state contracts. A broad construction of the statute will further this purpose by discouraging a bidder or proposer from soliciting the assistance of any individual who helped prepare the specifications for the bid or request for proposal. This in turn will place all bidders or proposers for a particular contract on a level playing field. *See generally* Attorney General Opinion JM-940 (1988) (competitive bidding requirements prevent award of contract to consultant who assisted in preparation of specifications). Given the clear broad language of the statute, the absence of any legislative history supporting a narrow construction of its terms, and its enactment to enhance fair competition, we conclude that it applies to a bid or contract to be accepted or awarded by a state agency that "includes financial participation" by a former employee of the agency

---

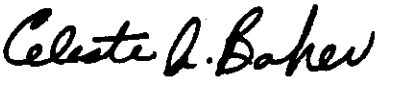
[1]The statutory use of the word "person" is also generally construed broadly, and it is usually interpreted to include any individual or corporate entity. *See Gov't Code* §§ 311.005, 312.011; BLACK'S LAW DICTIONARY, 6th ed. 1990 at 142-3; *Ginther v. Southwest Workover Company*, 286 S.W.2d 291 (Tex. Civ. App.--San Antonio 1955, no writ) (construing "person" broadly to include corporations).

who was paid either salary, wages or other compensation by the agency to participate in the preparation of specifications for that bid or contract. Finally, although we can resolve issues of law in the opinion process, we cannot resolve issues of fact, and thus, we are not able to decide if a particular bid or contract "includes proposed financial participation" by such a former employee.

SUMMARY

Section 3.102, article 601b, V.T.C.S. applies to a bid or contract to be accepted or awarded by a state agency that includes financial participation by a former employee who received either salary, wages or other compensation from the agency to participate in the preparation of specifications for that bid or contract.

Very truly yours,



Celeste A. Baker
Assistant Attorney General
Opinion Committee