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RQ-744

September 9, 1994

SJS

RE
SEP 14 1994
Opinion Committee

Office of the Texas Attorney General
ATTENTION: OPINIONS COMMITTEE
P.O. Box 12548
Austin, Texas 78711-2548

ML-29080-94

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RE: Request for Attorney General Opinion

ISSUE: Whether direct purchases by a county under the Catalogue Purchase Procedure of Article 601b, §3.081, V.T.C.S. requires competitive bidding

Dear Mr. Morales:

This letter is written to request an opinion on whether competitive bidding is required for the purchase or lease of automated information systems under the Catalogue Purchase Procedure made available to local governments, including McLennan County, by §3.081 of Article 601b, V.T.C.S. McLennan County is a political subdivision of the State of Texas which is subject to the competitive bidding requirements of Chapter 262 of the *Local Government Code* for the purchase or lease of items exceeding \$15,000.00, and is a member of the Cooperative Purchasing Program administered by the General Services Commission. Recently, the General Services Commission advised the McLennan County Purchasing Agent of the opportunity to purchase automated information systems through the Catalogue Purchase Procedure. The Catalogue Purchase Procedure, as described in information from the General Services Commission, allows a purchasing entity to contract directly with qualified vendors and to negotiate additional terms and conditions provided that the purchase or lease is based on the best value available. A copy of the letter and materials provided by the General Services Commission is enclosed for your review.

As noted in the letter from the General Services Commission, Article 601b, §3.081(g) mandates that the General Services Commission "shall make the catalogue purchasing procedure enumerated in this section available to local governments that qualify for cooperative purchasing under Sections 271.802 and 271.803, Local Government Code." However, the letter from the General Services Commission also points out that "this procedure may not satisfy competitive bidding requirements that govern a local government."

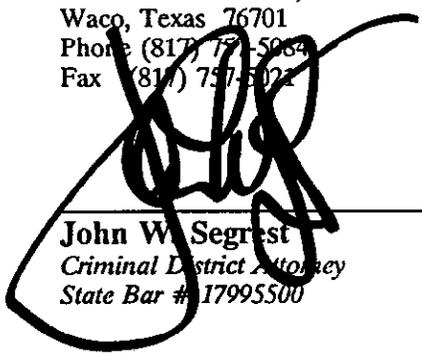
Section 271.083, subsection (b), of the *Local Government Code* provides that "a local government that purchases an item under a state contract satisfies any state law requiring the local government to seek competitive bids for the purchase of the item." As stated above, Article 601b, §3.081, *V.T.C.S.*, provides in part that the Commission will make the catalogue purchasing procedure available to local governments that qualify for cooperative purchasing under §271.082 and §271.083, *Local Government Code*. The question that has arisen is whether the mandate that the procedure be made available to local governments (§3.081(g)), either separately or when read together with §271.083 of the *Local Government Code*, allows counties to make purchases under the catalogue purchase procedure without formal compliance with the competitive bidding laws. On one hand, Article 601b doesn't contain language expressly exempting catalogue purchasing by local governments from competitive bidding. Likewise, §271.083 of the *Local Government Code* refers to the purchases of an item "under a state contract" as satisfying competitive bidding requirements, however, a catalogue purchase is not a purchase under an existing state contract, but, rather, is a purchase directly from a vendor identified as a qualified vendor under the catalogue purchase system. On the other hand, Article 601b, §3.081(g) specifically states that the General Services Commission shall make the catalogue purchasing procedure available to local governments that qualify for cooperative purchasing under §271.082 and §271.083 of the *Local Government Code*. The catalogue purchasing procedure set out in §3.081 does not require state agencies to bid-out automated information systems items, and allows the direct negotiation with and purchase from qualified vendors. It would seem that the Legislature intended the *same* system to be available to local governments. It would make little sense for the Legislature to mandate that the catalogue purchasing procedure be made available to local governments if the local governments could not take advantage of the catalogue purchasing procedure due to the requirements of the competitive bidding laws. Likewise, the inclusion of §271.083 of the *Local Government Code* in the language of subsection (g) of §3.081 indicates that the competitive bidding exemption of subsection (b) of §271.083 of the *Local Government Code* may have been intended to apply to catalogue purchases by local governments.

This is a very important issue to county governments across the state. The catalogue purchasing procedure would give county governments much more flexibility in selecting and negotiating contracts with automated information system vendors. However, the uncertainty over the ability to use this procedure is keeping many counties from using the system being offered by the General Services Commission. I respectfully request that you issue an opinion giving direction on whether the catalogue purchasing procedure is available to counties without the need of compliance with the competitive bidding procedure of Chapter 262 of the *Local Government Code*.

Thank you for your attention to this matter. This request originated with our county purchasing agent, Randy Beck, and was drafted by an attorney who advises the County, namely Michael W. Dixon, Haley & Davis, P.C., Bank One Plaza, Suite 600, 510 North Valley Mills Drive, Waco, Texas 76710, Telephone (817) 776-3336, Fax (817) 776-6823. If you have any questions or comments regarding this matter please do not hesitate to contact Mr. Dixon or me.

Respectfully Submitted:

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cc: Dixon