



TEXAS SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS

SENATOR FRANK MADLA
CHAIRMAN

RQ-0150-99

MEMBERS:

SENATOR JON LINDSAY, VICE-CHAIRMAN
SENATOR RODNEY ELLIS
SENATOR MIKE MONCRIEF
SENATOR DREW NIXON

RECEIVED

NOV 23 1999

Opinion Committee

November 18, 1999

The Honorable John Cornyn
Attorney General
ATTN: Opinion Committee
Post Office Box 12548
Austin, Texas 78711-2548

FILE # MK-41128-99
I.D. # 41128

Re: Request for an Opinion under Chapter 2254 of the Texas Government Code Concerning Procurement of Guaranteed Program Management Services by a Public School District.

Dear General Cornyn:

Please accept this letter as one of formal request for an Opinion from your office on the following question:

Can a public school district properly procure "guaranteed program management" services (as defined herein) as a professional service under Chapter 2254 of the Texas Government Code ("Professional Services Procurement Act")?

FACTS:

A School District in Texas ("District") has recently requested qualifications regarding the District's need for "outsource program management agency resources."¹ In procuring a program manager, the District is utilizing the Professional Services Procurement Act rather than Chapter 44 of the Texas Education Code because the District desires professional services versus construction services.

In response to its request, the District received a proposal for "guaranteed program management" services.² This opinion is being requested to determine if the District can properly

-
1. An example of the District's request for qualifications.
 2. A copy of the proposal received by the District is enclosed.



contract for the proposed "guaranteed program management" services as follows: (1) the District desires to select and contract with the program manager³ as its sole architect pursuant to the Professional Services Procurement Act; (2) the District will then contract for construction service with one or more contractors, pursuant to Chapter 44; (3) the District in turn will then assign all such construction contracts to the program manager under a power of attorney or some other mutually acceptable mechanism; (4) and the program manager would then guarantee the budget and schedule results for the District's bond program. The contractor(s) selected by the District would provide all necessary construction services. The program manager will not self-perform any construction services.

ISSUE:

A previous opinion of Attorney General Mattox appears to be in harmony with the proposed situation given that a contract for the services of a construction manager consultant was deemed excepted from competitive bidding as a contract for professional services.⁴ Many of the services requested of a program manager by the District are analogous to those typically required of a construction manager agent.⁵ Additionally, program management meets the generally accepted legal definition of "professional service" wherein the service is predominantly mental or intellectual, rather than physical or manual.⁶

Please call me or Jason Anderson, the Senate Intergovernmental Relations Committee policy analyst assigned to this issue, if you have any questions or require further information. Thank you for your consideration of this matter.

Yours truly,



Frank Madla

FM/ja

Encl.

3. Unlike the term "construction management," "program management" is not a term utilized by Chapter 44 or by Chapter 2254.

4. Atty. Gen. Op. No. JM-940 (1988) copy enclosed.

5. See page II-7 of the enclosed proposal for a detailed list of the services to be provided to the district.

6. Maryland Casualty Co. v. Crazy Water Co., 160 S.W.2D 102 (Tex. Civ. App.--Eastland 1942, No Writ); Atty. Gen. Op. No. MW-344 (1981).