Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert K. Corbin

March 9, 1982

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ARIZONA ATTORNEY GENERAL

Mr. J. William Brammer
DeConcini, McDonald, Brammer,
Yetwin & Lacy, P.C.
Attorneys at Law
240 North Stone Avenue
Tucson, Arizona 85701

Re: I82-028 (R82-013)

Dear Mr. Brammer:

We have reviewed your opinions dated November 11, 1981 and January 29, 1982, to the Tucson Unified School District, addressing the following fact situation.

Tucson Unified School District published a request for proposals for the provision of professional psychiatric services, but received no proposals in response to its request. District administrators then contacted officials at the University of Arizona Health Sciences Center who agreed to provide the desired services. You were asked whether the District could contract with the Arizona Board of Regents to have these services provided by the University of Arizona Health Sciences Center without rebidding for proposals. Alternatively, the District asked whether it could contract directly with another entity without again soliciting proposals on the theory that the District already had met the requirement to solicit such proposals.

The following is a revision of your opinions.

A school district may enter into a contract for

professional services without a subsequent request for proposals when the previous request for proposals did not generate a proposal only if the law applicable to contracting for professional services excuses further compliance with the law when no one responds to a request for proposals. A.C.R.R. R7-2-701.C, which governs contracting for professional services does not excuse compliance under such circumstances. If a school district, after not receiving a response to a request for proposals, is able to find someone who will provide the service, that person must submit a proposal in response to another request for proposals unless an agreement with that person otherwise is exempt from the requirements of A.C.R.R. R7-2-701.C.

You noted that A.C.R.R. R7-2-701.C.9 authorizes a school district to enter into an intergovernmental agency agreement with another government agency without requesting proposals. You then concluded that a school district and the Board of Regents could enter into an agreement under which the Arizona Health Services Center at the University of Arizona would provide psychiatric services to the school district without the school district's complying with A.C.R.R. R7-2-701.C for the reason that such an agreement would be an intergovernmental agency agreement and, therefore, exempt from the requirements of A.C.R.R. R7-2-701.C. The Attorney General respectfully disagrees.

The exemption of intergovernmental agency agreements from the requirements of A.C.R.R. R7-2-701.C has its genesis in A.R.S. § 41-1051.C, which provides:

> The provisions of this article [Art. 1, Ch. 6.1, Title 41, A.R.S.] shall not be applicable to intergovernmental agency agreements. . . .

The term "intergovernmental agency agreement" is not defined in Article 1. The term, however, is used to describe agreements authorized in Article 3, Chapter 7, Title 11, A.R.S., entitled "Joint Exercise of Powers." In that article two or more agencies, as defined in A.R.S. § 11-951, are permitted to enter into agreements for the joint exercise of any power common to the contracting parties. Ch. 94, § 1, 1968 Ariz. Sess. Laws. A.R.S. § 11-952 specifies terms of the agreements and procedures that the agencies must follow to

enter into such agreements. The existence of the comprehensive scheme in A.R.S. §§ 11-951 through 11-954 for intergovernmental agreements leads us to think that the Legislature intended to exempt from the requirements of A.R.S. §§ 41-1051 through 41-1056 only the agreements permitted by A.R.S. §§ 11-951 to 11-954.

We previously have considered in Atty.Gen.Op.Nos. I79-193 and I81-068 what agreements are included within the scope of A.R.S. §§ 11-951 to 11-954. In I79-193 we concluded A.R.S. § 11-952 authorizes agreements involving the exercise of a power common to the contracting parties. We said in I79-193:

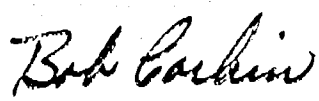
> Thus, when two public agencies contract for services or enter into an agreement for joint action pursuant to § 11-952.A, each agency must have the power to perform the services or action contemplated in the contract pursuant to which they agree to allocate responsibilities between them.

In the instant matter, a school district simply is seeking to purchase psychiatric services. The school district has no power to perform the services it is attempting to purchase; the school district is not purporting to exercise any power that it may have jointly with the Board of Regents. We conclude, therefore, that an agreement between a school district and the Board of Regents under which the school district would purchase psychiatric services is not an intergovernmental agency agreement under A.C.R.R. R7-2-701.C.9. That being our conclusion, the school district may enter into such an agreement only upon receiving a proposal from the Board of Regents pursuant to the school district's request for proposals in compliance with A.C.R.R. R7-2-701.C.

We also note that A.C.R.R. R7-2-701.C.9 exempts from the requirements of R7-2-701.C "contracts for direct health care services provided by a physician licensed pursuant to A.R.S., Title 21 [sic],[1] Chapter 13 or 17." We interpret this exemption to apply only to contracts entered into directly with licensed physicians who agree to provide health care services to the other contracting party. This exemption,

therefore, is not applicable to an agreement with an entity such as the Board of Regents which is not a licensed physician.

Sincerely,



BOB CORBIN
Attorney General

BC/GLL/bl

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1. The reference should be to Title 32. See A.R.S. § 41-1051.C.

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DINO DeCONCINI
OF COUNSEL

January 29, 1982

2-9-82 jpc
LOWE

R82- 013

EDUCATION OPINION
ISSUE NO LATER THAN
4-9-82

Felizardo Valencia, Director
Legal & Research Services
Tucson Unified School District
P.O. Box 40400
Tucson, Arizona 85717

Re: Bid Award Matters

Dear Mr. Valencia:

In response to your January 21, 1982, memorandum, and with reference to our letter opinion dated November 11, 1981, this is to reconfirm the legal advice contained in that letter.

Where a request for proposals for the provision of professional services with a value in excess of $5,000 is advertised and no responses are received, the District may not contract directly for those services, except as noted below.

If outside professional services are to be provided by a sister public agency which qualifies as a party for an intergovernmental agreement pursuant to A.R.S. §§11-951 and 952, bidding for those outside professional services is not required. This is permitted pursuant to subsection C9 of R7-2-701.

This letter, together with your memorandum, the opinion letter of November 11, 1981, and related documents are being furnished to the Attorney General for his review pursuant to A.R.S. §15-253(B). A.R.S. §15-381 provides that board members shall have no personal liability for acts done in reliance upon written opinions of the Attorney General or upon written opinions of the County Attorney with which the Attorney General concurs, which the Attorney General declines to review, which are revised by a written opinion by the Attorney General or which are deemed to be

affirmed by the Attorney General if the opinion has not been concurred in, revised or declined to be reviewed by the Attorney General within sixty days after receipt of the opinion by the Attorney General.

Very truly yours,

DeCONCINI McDONALD BRAMMER
YETWIN & LACY, P.C.

J. Wm. Brammer, Jr.

JWB/rl
cc: Board of Education
Dr. Merrill A. Grant
Dr. Bennie Linkhart
Hon. Bob Corbin
Gary L. Lassen, Esq.

R82- 013

TUCSON UNIFIED SCHOOL DISTRICT

P.O. BOX 40400
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TUCSON, ARIZONA 85717

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TUCSON, AZ 85701

- M E M O R A N D U M -

TO: J. Wm. Brammer, Jr.
DeCONCINI McDONALD BRAMMER YETWIN & LACY, P.C.

FROM: Felizardo Valencia, Director
Legal and Research Services

SUBJECT: Legal Opinion Regarding Bid No. 3825 - Outside Psychiatric Services and Similar Issues

Award of Bid No. 3825 - Outside Professional Psychiatric Services, as proposed, was not considered by the Governing Board because of the advice provided in your letter dated November 11, 1981. Thus, Bid No. 3825, as such, is not the issue at hand.

The continuing issue is whether the District can seek services directly when there has been no response to the call for bids and after receiving approval from the Arizona Department of Education.

Since the issue may surface again in the near future, I suggest that you consider referring your advice to the Attorney General for review.

Please let me know if you have any questions regarding this matter.

Valencia

FV:cb
1/21/82

Attachments

Copy to Dr. Bennie R. Linkhart

R82- 013

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DINO DeCONCINI
OF COUNSEL

November 11, 1981

RECEIVED
NOV 16 1981
LEGAL & RESEARCH SERVICES

Mr. Felizardo Valencia
Director of Legal and Research Services
Unified School District No. 1
P. O. Box 40400
Tucson, Arizona 85717

Re: Bid 3825 - Contract with University Health Services Center for Outside Psychiatric Services

Dear Felix:

On November 9, 1981, you telephoned me concerning whether it would be proper under circumstances you described for the District to enter into a contract with the University of Arizona Health Sciences Center for the provision of outside professional services. These circumstances and the response of this office to your question are as follows:

1. A request for proposals (no. 3825) was published pursuant to law soliciting proposals for the provision of professional psychiatric services.

2. No proposals were received by the District in response to this request. District administrators then contacted officials at the University of Arizona Health Sciences Center who agreed to provide the desired services.

You asked whether the District can contract with the University of Arizona under such circumstances without rebidding for proposals. It is the opinion of this office that as long as the District enters into an intergovernmental agreement with the University of Arizona Health Sciences Center, that no further bidding is necessary.

Bidding for outside professional services is regulated by Rule R7-2-701, promulgated by the State Department of Education. Subsection C9 of this rule provides as follows:

> The provisions of this subsection C shall not be applicable to intergovernmental agency agreements.

Therefore, as long as the District enters into an intergovernmental agreement as provided by A.R.S. §11-951 and §11-952, bidding for these outside professional services is not required.

I wish to point out that this office disagrees with the analysis contained on the Board "agenda item" document provided to this office for review. That document states that "since there was no response to call for bid number 3825, outside professional psychiatric services, the District has the right to arrange directly for this service." There is no exception in the bidding statutes and regulations which would allow the District to contract for services directly because no proposals were received in response to a prior request for proposals. The reason the District can contract directly in this case is the bidding exception set out above for intergovernmental agreements.

The intergovernmental agreement between the University of Arizona and the District must comply with the requirements of A.R.S. §11-952, and be reviewed by legal counsel for both the District and the University.

Do not hesitate to contact me if you have further questions regarding this matter.

Sincerely,

DeCONCINI McDONALD BRAMMER
YETWIN & LACY, P.C.

Bill

J. Wm. Brammer, Jr.

JWB:rms
cc: Members of the Board of Education
Dr. Merrill A. Grant
Dr. Bennie Linkhart