THE ATTORNEY GENERAL OF TEXAS

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ATTORNEY GENERAL

March 11, 1989

Honorable Chet Edwards
Chairman
Senate Nominations Committee
Texas State Senate
P. O. Box 12068
Austin, Texas 78711

LO-89-20

Dear Senator Edwards:

You ask whether the competitive bidding requirements of section 21.901 of the Education Code apply to cumulative purchases from one vendor that in the aggregate exceed $5,000. Relevant portions of section 21.901 provide:

> (a) Except as provided in Subsection (e) or (f) of this section, all contracts proposed to be made by any Texas public school board for the purchase of any personal property shall be submitted to competitive bidding when said property is valued at $5,000. or more.
>
> (b) Except as provided in Subsection (e) of this section, all contracts proposed to be made by any Texas public school board for the construction, maintenance, repair or renovation, of any building or for materials used in said construction, maintenance, repair or renovation shall be submitted to competitive bidding when said contracts are valued at $5,000 or more.

Subsections (c), (e), and (f) provide exceptions that do not appear to be relevant to your inquiry, and subsection (d) provides for notice requirements.

We find no language in this or other sections of the Education Code that would suggest that subsequent purchases from the same vendor should be aggregated to achieve the

$5,000 threshold that requires competitive bidding requirements.

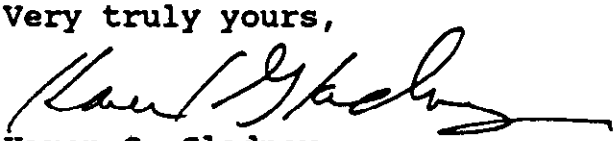
We note that Subchapter B, Chapter 271, of the Local Government Code also regulates competitive bidding on public works contracts by school districts and other governmental entities. That subchapter supplies competitive bidding requirements for contracts that require the expenditure of more than $10,000. As was the case with section 23.901 of the Education Code, we find no indication that cumulative purchases act together to trigger the necessity of competitive bidding.

Generally, school districts are accorded substantial discretion in these matters. As one of our courts of civil appeals has explained, "[T]heir power in making such contracts is general, and in the absence of limitations they are required merely to act faithfully and in the exercise of their best judgment so as to best serve the interest of their district." Stapleton v. Trussell, 196 S.W. 269, 270 (Tex. Civ. App. - Fort Worth 1917, no writ); Attorney General Opinion LO-88-7 (1988).

It is also a general rule that an attempt to avoid competitive bidding requirements by the division of a job into parts renders the resultant contracts void. See Kelly v. Cochran County, 82 S.W.2d 641 (Tex. 1935); Fonder v. City of South Sioux Falls, 71 N.W.2d 618 (S.D. 1955); 53 A.L.R.2d 493. See also Local Gov't Code § 271.028.

If we may be of further assistance, please do not hesitate to contact us.

Very truly yours,



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