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Opinion Committee

November 11, 1993

RQ-637

Honorable Dan Morales
Attorney General
State of Texas
P. O. Box 12548
Austin, Texas 78711

Re: Request for Attorney General's Opinion Regarding the Legality of Municipalities Using Settlement Certificates Toward the Purchase of New Vehicles as Part of the Competitive Bidding Process Under Chapter 252 of the Local Government Code

Dear Attorney General Morales:

Various municipalities within the State of Texas are in receipt of a Notice of Pendency of Class Action, Proposed Settlement, and Hearing in that class action style Cause No. 92-1089, Tommy Dollar, et al vs. General Motors Corporation pending in the District Court of Harrison County, Texas (copy enclosed).

The essence of the proposed settlement is to award current owners of certain General Motors trucks a certificate bearing a one thousand dollar (\$1,000.00) face value good toward the purchase of new General Motors light duty trucks or replacement models at any time within a fifteen (15) month period. This certificate would be given in exchange for waiver of the right to sue General Motors for defective design of the existing truck fuel system (gasoline tank). Municipalities owning such vehicles would qualify as recipients of the award. It could therefore be beneficial to such municipalities, at their discretion, to participate in the proposed settlement and receive the proffered certificates for future use in the purchase of new vehicles.

However, before municipalities participate in this settlement, the issue of how such certificates could be used consistent with the requirements of Chapter 252 of the Local Government Code, specifically Sections 252.021 and 252.043 of said Code (the competitive bid law), must be resolved.

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Issue No. 1. Section 252.021 of the Local Government Code obligates covered municipalities to comply with the procedures set out in the chapter for competitive sealed bidding in the purchase of described goods or services requiring an expenditure in excess of \$10,000.00 for cities with 50,000 or more inhabitants, or an expenditure of more than \$5,000.00 for municipalities with fewer than 50,000 inhabitants. Section 252.043(A) obligates the City to make the award based on such competitive bids to the "lowest responsible bidder." If a municipality follows the proper procedure as set out in Chapter 252 for the receipt of bids in the purchase of new trucks, may the City after the receipt of such bids apply the value of the settlement certificates in determining who is the lower bidder. For example, if a supplier proposes the sale of a listed vehicle and is low bid by \$500.00, and the next low bidder proposes the sale of a General Motors vehicle for which the certificates would apply, may the municipality consider the use of such certificates in lowering the net bid price of the bid vehicles, and make the award to the manufacturer offering the General Motors vehicles, or can the certificates be used only in the purchase of those vehicles for which General Motors suppliers are in the first instance the low bidder?

Issue No. 2. Could a municipality in presenting its bid package for competitive bid under Chapter 252 require prospective bidders to accept as trade-ins used municipal trucks, specifically trucks the subject of the above-referenced settlement procedure, and offset bid figures for specific vehicles by the amount of the trade-in value of the City's used vehicles, thereby lowering the total amount of each prospective bid? For example, if bidder of manufactured vehicle NO. 1 offers a price of \$10,000 for the new vehicle, and similarly offers an allowance of \$2,000 for the City's trade-in vehicle, thereby resulting in a total bid price of \$8,000, could the City make the award to Bidder No. 1 even though Bidder No. 2 offered a new purchase price of \$9,500 but with a smaller allowance for trade-in of \$1,000, thereby providing a new purchase price of the new vehicle to the municipality of \$8,500.

Given the pendency of the proposed settlement, your kind attention to this request for opinion at your earliest opportunity would be most appreciated. If you have any additional questions, please do not hesitate to contact this office.

Yours very truly,



David Brabham
Criminal District Attorney

DB/sm