



General Services Commission

1711 San Jacinto P.O. Box 13047
Austin, Texas 78711-3047

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Opinion Comm

RQ 705

May 27, 1994

SJS

FILE # ML-26662-94
I.D.# 26662

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

RE: Automated Information Systems Through The Catalogue Purchase Procedure

Dear General Morales:

TEX. REV. CIV. STAT. ANN. Art. 601b §3.081(Vernon Supp. 1994) provides that state agencies must acquire automated information systems through the catalogue purchase procedure unless the General Services Commission (the "GSC") or the agency determines that the best value available accrues from an alternative purchase method. The GSC is responsible for designation of "qualified information systems vendors" and approval of vendors' catalogues of products and services eligible for purchase through the catalogue purchase procedure.

Article 601b §1.02(4) was also enacted by the 73rd Legislature to define automated information systems as:

"any automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated, including computer software, awarded to a vendor by a state agency covered by the Information Resources Management Act . . . or any telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for the purpose of transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on that network."

Many telecommunications apparatus and devices, as components of a voice, data or video network, are automated information equipment. The statutory definition of automated information systems does not state that services relating to telecommunications apparatus or device(s) are to be purchased through the catalogue purchase procedure. However, currently, services such as maintenance, technical assistance and other services related to the automation of

The Honorable Dan Morales
May 27, 1994
Page 2

information systems relating to telecommunications equipment are also available for purchase through the catalogue purchase procedure.

In addition to the services that are related to telecommunications equipment, other telecommunication services are provided by local exchange carriers ("LEC(s)"), interexchange carriers ("IXC(s)")(the "Carriers") and cellular telephone service providers, mobile radio service providers and pager service providers (collectively referred to as the "Service Providers"). Several Service Providers have submitted applications and catalogues of their services to the GSC for approval and designation as "qualified information systems vendors".

It has been argued that the services offered by the Service Providers are essential to the functionality of telecommunication equipment, and therefore, such services should be available for purchase under the catalogue purchase procedure. Two factors distinguish these services from those that are currently available for purchase through the catalogue purchase procedure. First, "telecommunications services" are excluded from the statutory definitions of commodities to be purchased through catalogues. Secondly, depending upon the services offered, the Service Providers may be subject to licensing and/or tariff regulation by the Public Utility Commission ("PUC") or the Federal Communications Commission ("FCC").

If designated as "qualified information systems vendors", these Service Providers would be able to negotiate contract terms and conditions, including rates, pertaining to their services directly with state agencies, subject to the catalogue purchase procedures set forth in Article 601b, §3.081 and commission rule 1 TAC §113.19. However, the acquisition of carrier services by or for state agencies is afforded unique treatment. Article 10 of Article 601b expressly requires the GSC to provide (1) centralized telephone service for state agencies, the legislature and legislative agencies within the capitol complex, and (2) intercity communications through the statewide system of telecommunications services ("TEXAN") for all state agencies. Thus, the procurement of carrier services for state agencies is largely done by the GSC. Further, to the extent carrier services constitute services of public utilities, they are not subject to the provisions of article 3 of Article 601b, generally relating to competitive bidding.

Therefore, as all of the Service Providers described above are subject to the regulatory jurisdiction of the PUC or the FCC and Article 601b articles 3 and 10 set forth the methods by which Carrier services are to be acquired for the State of Texas, the GSC respectfully requests your opinion as to whether the services offered by these Service Providers can be offered for purchase through the catalogue purchase procedure.

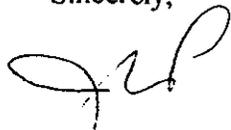
The Honorable Dan Morales

May 27, 1994

Page 3

Your review and response to this request is greatly appreciated and if you have any questions, please contact Rose-Michel Munguia, GSC Staff Attorney at 463-9974.

Sincerely,

A handwritten signature in black ink, appearing to read 'JP', with a large, stylized flourish extending from the end of the signature.

John Pouland
Executive Director