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November 24, 1999
N^o. 199-024 (R99-053)

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-253(B), you submitted for review an education opinion for officials of four school districts in which you concluded that school districts can contract for architectural services for a time period of up to five years. While concurring with your conclusion, this Opinion clarifies that school districts must ensure that awarding particular architectural projects under a contract for a period of time will not diminish competitive bidding. [\(U\)](#)

Question Presented

Does the School Procurement Code allow a school district to enter into a contract with an architect for a fixed period of time or does it require the procurement of architectural services on a project-by-project basis only?

Summary Answer

A school district may contract with an architect either for a period of time of up to five years or for a specific project. However, a school district must ensure that awarding architectural contracts for a specific period of time will not diminish competitive bidding.

Background

In 1984, the Legislature enacted the Arizona Procurement Code, A.R.S. §§ 41-2501 to-2662. 1984 Ariz. Sess. Laws, ch. 251. The Procurement Code is intended to, among other things, "[e]nsure the fair and equitable treatment of all persons who deal with the procurement system of this state," "maximize to the fullest extent practicable the purchasing value of public monies of this state," "foster effective broad-based competition within the free enterprise system," and "[p]rovide safeguards for the maintenance of a procurement system of quality and integrity." *Id.* § 1. The Legislature also directed the State Board of Education to adopt a School Procurement Code consistent with the Arizona Procurement Code to govern procurement practices for school districts. A.R.S. § 15-213(A).

Regulations in the School Procurement Code specifically address the procurement of "Specified Professional Services" -- services of architects, engineers, land surveyors, assayers, geologists, and landscape architects. Arizona Administrative Code ("A.A.C.") R7-2-1117 through R7-2-1123; *see* A.A.C. R7-2-1001(83) (defining "specified professional services"); *see also* A.R.S. §§ 41-2571, -2578 (Arizona Procurement Code provisions regarding specified professional services). Although most procurements require that the price or fee be determined before the contractor is selected, when procuring architectural services and other "specified professional services," a school district negotiates the contractor's fee *after* the vendor has been selected. *See* A.A.C. R7-2-1122, -1123.

Although the regulations related to the procurement of "specified professional services" do not specifically address whether a school district may enter into a contract with an architect for a specified period of time, other regulations in the School Procurement Code generally provide that a "contract for materials or services may be entered into for a period of time up to five years" under certain conditions.⁽²⁾ A.A.C. R7-2-1093; *see also* A.R.S. § 41-2546 (parallel Arizona Procurement Code provision regarding multi-term contracts). These contracts for a specified period of time are called "multi-term contracts." *Id.* The School Procurement Code defines "services" as "the furnishing of labor, time or effort by a contractor which does not involve the delivery of a specific end product other than required reports and performance." A.A.C. R7-2-1001(79); *see also* A.R.S. § 41-2511(19) (Arizona Procurement Code definition of services).

Analysis

The same principles of construction that apply to statutes also apply to rules and regulations promulgated by an administrative body. *Marlar v. State*, 136 Ariz. 404, 410, 666 P.2d 504, 510 (App. 1983). A general comprehensive statute and a special statute dealing more specifically with part of the same subject should generally be read together, and harmonized if possible, to give effect to legislative intent. *See Lewis v. Arizona Dep't of Econ. Sec.*, 186 Ariz. 610, 615, 925 P.2d 751, 756 (App. 1996). In keeping with that guideline, the general statute remains applicable to all matters not dealt with in the specific statute. *State ex rel. Larson v. Farley*, 106 Ariz. 119, 123, 471 P.2d 731, 735 (1970).

These principles require that the regulations governing the procurement of "specified professional services" be read in conjunction with the other regulations governing school procurement. Indeed, the regulations governing the procurement of specified professional services often specifically refer to other sections of the School Procurement Code. *See, e.g.*, A.A.C. R7-2-1117(A) (referring to regulations concerning sole source and emergency procurements); R7-2-1118(B) (referring to regulations regarding notice and invitation for bids); and R7-2-1120 (referring to regulations concerning cancellation and rejection of bids). Accordingly, A.A.C. R7-2-1093, which allows multi-term contracts for "materials and services," applies to *all* procured services, including "specified professional services." Architectural services and other "specified professional services" are a subset within the broader definition of "services." *See* A.A.C. R7-2-1001(79), (83). Thus, under the School Procurement Code, a school district may either enter into a multi-term contract of up to five years for architectural services or bid each project separately.

In determining whether to use a multi-term or a project specific contract, however, school districts must be mindful of the goals of the procurement statutes and regulations. Thus, before entering into a multi-term contract, school district governing boards must determine in writing that, among other things, the contract "will serve the best interests of the school district by encouraging effective competition or otherwise promoting economies in school district procurement." A.A.C. R7-2-1093(B)(2). In addition to

assessing the impact on competitive bidding when initially determining whether to enter into a multi-term contract, a school district that has entered into such a multi-term contract with an architect must also determine as particular architectural projects arise whether a project is within the scope of the multi-term contract or whether the project should be bid separately. This determination obviously requires a fact-specific analysis of a multi-term contract's scope of work and the specific project under consideration.

Conclusion

Under the School Procurement Code, in appropriate situations, school districts may enter multi-term contracts with a period of up to five years to obtain architectural services. School districts must, however, ensure that the use of a multi-term contract will not diminish competition.

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1. Under A.R.S. § 15-253(B), the Attorney General must "concur, revise or decline to review" opinions of county attorneys relating to school matters submitted for review. This provision also applies to private counsel's education law opinions. *See* Ariz. Op. Att'y Gen. 199-006.

2. Those conditions include that before entering into a multi-term contract, a school district must establish in writing that: 1) its estimated requirements cover the period of the contract and are reasonable and continuing; 2) such a contract will serve the best interests of the school district by encouraging effective competition or otherwise promoting economies in school district procurement; and 3) if monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled, and the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable. A.A.C. R7-2-1093(B). In addition, a school district must ensure that monies are available at the time the contract is executed for the first fiscal period covered by the contract. A.A.C. R7-2-1093(A).

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