

From: Caldier, Rep. Michelle
Sent: Thursday, July 12, 2018 4:43 PM
To: Even, Jeff (ATG)
Cc: Trudeau, Yasmin (ATG)
Subject: Opinion Request

Jeff,

As you know I have been working with a constituent regarding ESD's in Washington and he has asked that I submit the following for clarification. May a state school district contract directly with a state educational service district for construction management services, value engineering reviews, constructability reviews, commissioning procedures or other public works without first complying with the competitive procurement procedures as specified in RCW 28A.335.190 and RCW 39.26.120?

Background:

Vancouver based Educational Service District 112 has been contracting directly with various state school districts to provide professional construction related services including construction management, value engineering studies, constructability reviews, commissioning services and other public works on school projects statewide. In soliciting for this work, ESD 112 has advised the various school districts that regardless of the estimated contract amounts, the school districts can use an Interlocal (Interagency) Agreement as a contract and thereby avoid the need to comply with any competitive procurement procedures they would otherwise be obligated to observe in respect to contracting for public works. Our contention is that an interlocal agreement contract does not relieve the school district from it's existing statutory obligations to secure contracts for public works through a fair and competitive selection process that allows all qualified vendors of these services an equal opportunity to secure this work. Please note that within a recent similar AG Opinion document (AGO 2011 No. 2) the AG advised the following: "The Interlocal Cooperation Act therefore, does not excuse public agencies from complying with otherwise applicable legal requirements". And it simply makes good sense that school districts should use a fair and competitive procurement process for these often very costly services to insure the highest potential for the cost-effective use of taxpayer dollars. If the work is simply given to the ESD without a fair and competitive selection process, there is less assurance that the school district will receive the best value for their expenditure of public funds.

Warmest Regards,



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