

1983 WL 181860 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 22, 1983

*1 Willa S. Bellamy
General Operations Manager
State Development Board
Post Office Box 927
Columbia, South Carolina 29202

Dear Ms. Bellamy:

Pursuant to your letter request and my recent conversations with Mr. Hankinson, this is to advise that this Office finds no objection to the State Development Board entering into a 'sole source procurement contract' with Flight Safety International, Inc., in accordance with the proposed agreement attached to your letter.

As I advised Mr. Hankinson, the State Chief Procurement Officer at the Division of General Services, upon the execution of the contract, should be provided a copy of that contract with a covering letter that explains the reason for sole source procurement. The reason being that the flight training can be accomplished by FSI while the Development Board's aircraft is being serviced and maintained at the FSI facilities in Arizona, resulting in a considerable savings of both pilot training cost and pilot time, since the training may be accomplished while the pilots are at the FSI facility waiting to return the aircraft to South Carolina.

As to the agreement itself (provided there is attached an appropriate schedule of the cost of service and other costs to be paid by the Development Board), we would approve it for execution, subject to one important change.

Paragraph (4) may not be executed by the Development Board as the State may not enter into hold harmless agreements with private individuals or corporations. This amounts to an extension of the credit of the State in violation of the State Constitution. Instead, the parties may enter into an agreement which requires the State Development Board to provide, or pay the cost of the insurance necessary to cover claims and losses which might be suffered by FSI in performing the contract. This can be accomplished by eliminating the first sentence of paragraph (4) and substituting the following sentence:

'The operator agrees to provide and maintain during the term of this agreement, or to pay the cost of such insurance as may be required by FSI to protect it, its officers, directors and employees from losses involving any and all claims, losses, liability, damage and expense arising out of or in any way connected with the use of any operator-furnished aircraft, including but not limited to loss of or damage to the aircraft itself.'

If the above steps are taken, execution of the contract would be proper for the purpose intended.

Sincerely,

Frank K. Sloan
Chief Deputy Attorney General

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