

1976 WL 30418 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 29, 1976

***1 Re: Winthrop College Food Service Contract**

Mr. Furman E. McEachern, Jr.
Director
Division of General Services
300 Gervais Street
Columbia, South Carolina 29201

Dear Mr. McEachern:

Winthrop College, an educational facility of the State of South Carolina, has requested our opinion as to whether or not the food service maintained by that institution for its students must be let on bids.

An examination of the present contract held by Winthrop for food service indicates that it is a non-profit, non-commercial service established and maintained primarily for its students, but also for college employees and invited guests. The preparation and service of meals is, of course, a part of the normal operation of any college for the benefit of its students.

The question of bidding for food service has arisen, I presume, as a result of the passage of a statute set forth in our 1962 Code of Laws, Section 1-24, which states:

‘Notwithstanding any other provision of law, all State agencies and departments, before contracting for fifteen hundred dollars or more with private individuals or companies for products or services, shall invite bids on such contract from at least three qualified sources.’

An exemption contained in this statute further provides:

‘Provided, however, that the provisions of this section shall not apply to professional services where the person employed is customarily employed on a fee basis rather than by competitive bidding.’

The present food service agreement held by Winthrop employs a firm that manages, procures, prepares, and serves at its own expense the meals provided to Winthrop College. The consideration or compensation paid for this food service is determined by a calculation involving sales, use, occupation or similar taxes and real or personal property taxes. This calculation takes into consideration the various food service types prepared, number of meals served per week, boy/girl ratios, feeding days, and existing wage standards on the campus. This is transposed into a cost per student per day which is billed to the college, or in some instances charged directly to the students per meal.

It is my understanding that there are at least three food service companies operating in the colleges in the state and that other companies have offered proposals to also operate college type food management. It appears that these companies are dependent upon the quality of their service in satisfying the majority of students they serve in order to sell their product, i.e. meals, to make profits. The actual contracting, however, has been directly with the college based upon the considerations previously outlined.

In addition, food service management as herein contemplated is at the least similar to the proposal recently made to the South Carolina Department of Social Services for consulting assistance by a welfare consulting firm. In an opinion from our Attorney

General's office dated January 20, 1976, the Honorable Daniel R. McLeod concluded that compliance with the above quoted Section 1-24 requires invitations to bid from at least three qualified sources. And, that this does not require that such contract be awarded to the lowest bidder.

*2 I agree with Attorney General McLeod's opinion and am of the opinion that the same or similar factors are applicable to food service contracts. The required State universities and colleges should:

A. Prepare a description of the food service it desires;

B. request bids thereon from at least three qualified sources; and

C. award the contract to the firm which is determined to be most qualified at a compensation determined to be fair and reasonable to the State, which does not necessarily have to be the lowest bidder.

Various factors may be considered in making this award which are relevant to the aims and goals of the college in providing this type of auxiliary program for student convenience.

Very truly yours,

Paul H. Infinger
Attorney, Division of General Services

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