



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

June 23, 2021

Bobby R. Long, Esq.
Attorney for Gulfport-Biloxi Regional Airport Authority
Post Office Drawer W
Gulfport, Mississippi 39502

Re: Determination of Fee for Site Location/Development Firm

Dear Mr. Long:

The Office of the Attorney General has received your request for an official opinion.

Background

You state that the Gulfport-Biloxi Regional Airport Authority (the “Authority”) would like to issue a request for qualifications for a site location/development firm to assist in locating an aviation related industry or commercial operation that would be willing to lease all or a portion of this property.

Questions Presented

1. Can the Authority base the fee to be paid a site location/development firm on a fixed percentage of the amount of the lease payments the Authority receives from the lessee over a defined period of time upon the placement of an applicable business, industry, or tenant?
2. If the answer to the first question is no, can the Authority pay a negotiated fixed fee upon the placement of an applicable business, industry, or tenant that depends on the total value of the lease, i.e., \$10,000.00 on a lease valued at \$50,000.00 to \$100,000.00, \$15,000.00 on a lease valued at \$100,000.00 to \$150,000.00, etc. for a defined period of time?

Brief Response

1. Yes. We are not aware of any provision of state law that would prohibit the Authority from paying a fixed fee to a site location/development firm, where such fee is based on a percentage of the lease payments paid to the Authority by commercial tenants.
2. The answer to your first question renders your second question moot.

Applicable Law

The Authority was created pursuant to Section 61-3-1 *et seq.* Section 61-3-15 provides, in part:

An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter (excluding the power to levy and collect taxes or special assessments) including, but not limited to, the power:

...

(d) To execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter.

Our office has consistently opined that personal and professional services procured by a governing authority are exempt from public purchasing statutes and the governing authority can use any method of procurement it chooses. *See e.g.*, MS AG Op., *Stokes* at *1 (Oct. 20, 2017); MS AG Op., *Broom* at *2 (Jan. 18, 2019). We have further stated that while a governing authority is not required to seek competitive bids in the procurement of service contracts, soliciting bids/proposals ensures that they are receiving the best value and eliminating favoritism of specific contractors. MS AG Op., *Stokes* at *1 (Oct. 20, 2017).

This office previously opined that a municipality had authority to pay a contractor a fee based on a percentage of any savings achieved through the claim negotiation services provided by the contractor, assuming the municipality determined that the compensation was reasonable for the services performed. MS AG Op., *Brown* (Aug. 5, 2016). On another occasion, citing the Mississippi Department of Wildlife, Fisheries, and Parks' broad authority over state parks and its ability to manage and lease out such property, we opined that if that department found that it was in the state's best interest, it could enter into a contingency fee agreement for the management of two golf courses. MS AG Op., *Polles* at *1 (Dec. 8, 1994). This office has also opined that a school district could pay a placement agency a search fee based on a percentage of the salary of the hired employee. MS AG Op., *Hemphill* at *2-3 (Sept. 18, 2014). In *Hemphill*, we stated: "Such a fee must be for a specific amount, or an amount that can be readily determined by the contracting parties, and must be reasonable and appropriate for the benefit received by the school district." *Id.* at *3. Similarly, we find no prohibition against an airport authority basing the fee paid to a site location/development firm on a fixed percentage of the amount of lease payments paid by the lessee, if the airport authority determines that such an arrangement is in that authority's best interest.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Phil Carter

Phil Carter
Special Assistant Attorney General