

PUBLIC BUILDINGS: A bid proposal which does not bid on the entire
: project advertised and which does not meet
BIDS: : reasonable requirements is not a compliance
: with the advertisement and should be rejected.



October 10, 1952

10-14-52

Honorable Ralph McSweeney
Director
Division of Public Buildings
State of Missouri
Jefferson City, Missouri

Dear Mr. McSweeney:

This is in reply to your request for an opinion reading as follows:

"On September 30, 1952, we opened bids for a food refrigeration, storage and processing building to be constructed at State Hospital No. 2, St. Joseph, Missouri.

"Two addenda to the specifications were sent to all contractors who had requested the specifications. These were received by the said contractors about five days before the time for opening bids. One of the addenda provided for changes in the work to be done and also provided for extra cement and patch work. The other addenda provided generally that bidders should submit a statement indicating the proposed sub-contractors for the refrigeration equipment section of the work, together with a list of the manufacturers of the major items of equipment to be installed in that contract.

"The low bidder failed to furnish a list of sub-contractors and a list of the manufacturers of the major items of equipment and further failed to indicate in his bid that he was bidding upon the addenda. Under these circumstances, was the low bid responsive to the advertisement for bids?

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"I am sending you the complete file in the case so that you will have all the available information."

Section 8.250, RSMo 1949, provides for advertising for bids for construction of any building, improvement, alteration or repair, which exceeds the sum of Ten Thousand (\$10,000.00) Dollars. The section further provides that:

"* * * The number of such public bids shall not be restricted or curtailed, but shall be open to all persons complying with the terms upon which such bids are requested or solicited."

(Emphasis ours.)

The public policy of requirements for competitive bidding is set forth in Case vs. Inhabitants of Trenton, 74 A. 672, wherein the Court stated at l.c. 673:

"We must consider the public policy which underlies the requirements of competitive bidding. The purpose of the statute requiring competitive bidding is that each bidder, actual or possible, shall be put upon the same footing. The municipal authorities should not be permitted to waive any substantial variance between the conditions under which bids are invited and the proposals submitted. If one bidder is relieved from conforming to the conditions which imposes some duty upon him, or lays the ground for holding him to a strict performance of his contract, that bidder is not contracting in fair competition with those bidders who propose to be bound by all the conditions. This is the policy which prevents the modification of specifications after bids have been presented, and the awarding of the contract to one of the bidders based upon such revised specifications."

The duties of public officials with relation to letting contracts upon competitive bidding are set out in Collier vs. City of Saint Paul, 26 N.W. (2d) 835, l.c. 840:

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"Statutory and city charter provisions requiring competitive bidding in the letting of public contracts require, as necessary corollaries, that the public officials whose duty it is to let a contract should adopt definite plans and specifications with respect to the subject matter of the contract; that the plans and specifications be so framed as to permit free and open bidding by all interested parties; that a bid shall constitute a definite offer for the contract which can be accepted without further negotiations; and that the only function of the public authority with respect to bids after they have been received shall be to determine who is the lowest responsible bidder. (Citing cases) It necessarily follows also that a bid must conform substantially to the advertised plans and specifications, and that where there is a substantial variance between the bid and the plans and specifications it is the plain duty of the public authority to reject the bid."

There seems to be some indication in the case of Maryland Pavement Company vs. Mahool, 110 Md. 397, that a bidder who does not comply with the conditions of the specifications has no right to even have his bid considered by the authority making the award. In that case, the low bidder had not deposited a sample granite block. The Court held that requiring a sample was a reasonable condition and was inserted for the best interests and protection of the city.

Likewise, bids have been rejected because they did not conform to a reasonable requirement of the advertisement that a picture of the apparatus be furnished with the bid. (See: Hahn Motor Truck Corporation vs. Atlantic City, 140 A. 675.)

The standard form of bid proposal being used at the present by the State of Missouri contains the following:

"1. The undersigned, having examined and being familiar with the local conditions affecting the construction of the work and

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with the drawings, the specifications (including the advertisement for bids, instructions to bidders, the bid forms, the form of bond, general conditions, special conditions, alternates, the form of contract and the detailed specifications and addendas, numbers ___ to ___ inclusive thereto) as prepared by _____ Architects, hereby proposes to furnish all labor, material, equipment and services required for the performance and completion, in a workmanlike manner, of all work to complete the new FOOD REFRIGERATION STORAGE & PROCESSING BUILDING at STATE HOSPITAL NO. 2, ST. JOSEPH, MISSOURI, all in accordance with the aforementioned documents for:

"The sum of _____
_____ DOLLARS (\$ _____)."

This paragraph is an integral part of the proposal, as it identifies the work upon which the contractor is bidding. The addenda are as important as the specifications. Often times, these addenda contain instructions and information as to extra or different work which will change considerably the amount of the contract. When a bidder leaves the addenda numbers blank he is not bidding upon the full project which has been advertised.

In this particular instance, an acceptance of the proposal of the low bidder would not be an acceptance of the project advertised and the addenda thereto. That the addenda were received by the low bidder is clearly evidenced by the registered return receipt.

Under these circumstances, we believe that the failure of the contractor to complete the bid proposal and the failure to submit the list of sub-contractors and manufacturers of equipment to be used is sufficient to justify denying to him the award of a contract. Section 8.250, supra, says that the right to bid shall be open to all persons "complying with the terms upon which such bids are requested or solicited."

It has been said that:

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"A municipality which acquires a reputation for loose specifications and unjust discrimination in the enforcement of specified requirements suffers financial loss in decreased competitive bidding, even though there be not the slightest evidence of fraud, collusion, or dishonesty."

(Fraser vs. City of Buffalo, 210 N.Y. Sup. 548, 550.)

The rule of conformity of the proposal to reasonable requirements contained in an advertisement for bids and in the specifications is applied with greater strictness when challenged in the inception of the proceedings than after construction has been completed. (North View Land Co. vs. City of Cedar Rapids, 169 N.W. 644, 645.)

The requirement that the bidder furnish a list of subcontractors and the manufacturers of the equipment to be used in the building is a reasonable one and one which is designed to protect the state. If the officials charged with construction and equipment are enabled to determine the type of equipment a bidder proposes to use, they are then able to determine whether or not specifications have been complied with. In some instances there may be a misinterpretation of the requirements of the specifications, and it is considerably better to have such difficulties cleared up before a contract is entered into and work started on the project.

CONCLUSION

Therefore, it is the opinion of this department that a bid proposal which does not contain a bid on addenda to the specifications and which does not meet reasonable requirements is not a compliance with the advertisement for bids and is such a material variance that the bid should be rejected.

Respectfully submitted,

APPROVED:

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J. E. TAYLOR
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