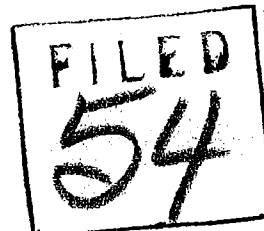


STATE PURCHASING AGENT:

The state purchasing agent need not consider a bid proposal for public printing which does not substantially conform to the specifications upon which bids were solicited and received.

May 20, 1959



Honorable Elwood Long
State Purchasing Agent
Capitol Building
Jefferson City, Missouri

Dear Mr. Long:

Reference is made to your request for an official opinion, which opinion request reads as follows:

"This office has recently submitted a request for bids for a certain publication. Complete specifications and also a copy of the previous publication was submitted at that time. Upon opening the sealed bids it was noted that four firms had submitted bids that met the specifications as submitted. One of the four firms had submitted an alternate bid that was considerably lower, but they had changed the specifications as to the sheet size by reducing the size of the publication from size 8-1/2" x 11" to 8-3/8" x 10-7/8".

"I would like to have an opinion particularly on Section Number 34.200, which deals with specifications and the awarding of contracts. Because as in the past this office, in regard to printing, had made it a policy not to make awards on an alternate bid, when the bids were submitted meeting the specifications."

We understand your question to be whether you should consider a proposal for public printing which varies from the specifications upon which bids were requested or whether a bid which varies from the specifications should be rejected.

From the information submitted with your opinion request, it appears that the specifications upon which bids were requested

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call for "Pages and cover to be 8 1/2" x 11" trimmed size." One bidder submitted a bid conforming in all respects with the specifications, including the item above noted. This bidder also submitted an alternate bid on the same proposal, which alternate bid reads as follows:

"ALTERNATE BID

12 Monthly Issues, trim size 8 3/8 X 10 7/8
printed web fed offset on inside 15
pages. Cover printed sheet fed offset.
All other specifications remain the
same.-----\$_____."

Suffice it to say that this "alternate bid" is substantially lower in total price than any of the other bids submitted. Further, all other bids conform to the specifications as written. Section 34.210, RSMo 1949, provides that the state purchasing agent shall have the public printing of the state executed upon competitive bids and reads as follows:

"The state purchasing agent shall have the public printing of the state executed upon competitive bids, and shall award the contract to the lowest responsible bidder and shall in all instances reserve the right to reject any and all bids; provided, that printing jobs of less value than fifty dollars may be purchased on the open market if approved by the comptroller. The purchasing agent may combine orders or subdivide individual jobs for the purpose of advertising and contracting as shall be to the best interests of the state. The purchasing agent shall exercise diligence in soliciting bids from all printing firms in the state that might reasonably be expected to be interested in bidding on any particular item and shall at all times endeavor to maximize competition among potential bidders. Bonds satisfactory to the purchasing agent shall be given by the parties to whom contracts are awarded, to secure the faithful performance of such contracts."

Section 34.200, RSMo 1949, provides that the state purchasing agent shall invite bids upon specifications which he has prepared and that any contract which is awarded shall be upon such specifications. Said section more fully provides as follows:

"The state purchasing agent shall prepare specifications for all printing to be contracted for and shall invite all bids and let all contracts upon such specifications which shall be a part of each contract and shall

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not be changed or modified after the contract is awarded. Such specifications prepared by the purchasing agent shall state clearly and distinctly the kind and character of the work to be done, the quality of paper desired, the number of copies to be furnished, and wherever possible shall have attached a sample of previous issues of the publication or form. Copies of such specifications shall be made available to all bona fide applicants therefor."

The public policy underlying statutory requirements that all contracts be awarded only after competitive bidding is succinctly stated in the case of Case v. Inhabitants of Trenton, 74 A. 672, wherein the court stated:

"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. * * *"

The duties of public officials with relation to letting contracts upon competitive bids are set out in Collier v. City of St. Paul, 26 N.W.2d 835, l.c. 840, as follows:

"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

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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."

The foregoing principles of law and statutory provisions considered, we are of the opinion that your office need not consider a bid which deviates from the specifications upon which bids were solicited and that the "alternate bid" above referred to should be rejected. First, an award based upon this proposal would not be a contract based upon the specifications as required by Section 34.200, supra. Second, a contract based upon this "alternate" proposal would not be executed upon competitive bids as required by Section 34.210, supra. There simply would be no basis for comparison of bids since no other bids have been called for or received for "trim size 8 3/8 X 10 7/8" as set out in the "alternate" proposal. Who can say what the other proposals would have been if submitted upon this specification or whether this "alternate bid" would have been the lowest responsible bid if all bids had been submitted upon this specification?

CONCLUSION

Therefore, it is the opinion of this office that the state purchasing agent need not consider a bid proposal for public printing which does not substantially conform to the specifications upon which bids were solicited and received.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

DDG:hw:lvd