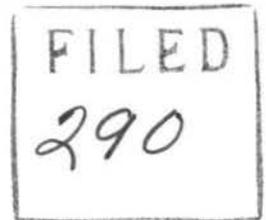


OPINION LETTER NO. 290  
Answer by Letter - Klaffenbach

December 4, 1972

Mr. Gary G. Sprick  
Assistant Prosecuting Attorney  
Boone County, Courthouse  
Columbia, Missouri 65201



Dear Mr. Sprick:

This letter is in response to your request for an opinion in which you ask:

"Whether or not a county hospital organized under chapter 205 RSMo must advertise for new bids in order to build additional two floors on the hospital building or whether it can let this to contractor on the site by a change order under existing contract."

You also state that:

"A question has arisen in Boone County with respect to some construction work being undertaken by the Boone County Hospital. Said hospital is organized and governed under the provisions of Chapter 205 of the Revised Statutes of Missouri.

"In August, 1972, bids were taken and a contract was subsequently let to the John Epple Construction Company for the construction of the first three levels of the new nursing tower for Boone County Hospital. This tower is designed to eventually become seven levels high. The work now under contract provides for the middle floor to be completed internally and for the lower and upper floors to

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be shelled in only. The base bid for the work now in progress was for two levels. An alternate bid for a third level to be shelled in only was taken and accepted. The base bid which was accepted was for \$1,558,900.00 and the alternate bid which was accepted was for \$222,000.00.

"Part of the intent in getting the third level as an alternate bid was to determine what the cost of the shelled in level would be so that, if funds were available, additional shelled in levels might be built. However, this was not spelled out in the specifications nor were any other bids requested or accepted for additional levels.

"The hospital now has money available to make it possible to add two more shelled in levels which would become levels four and five of the expansion plan. The present contractor, John Epple Construction Company, has indicated a desire and willingness to build the additional desired fourth and fifth shelled in floors on the same basis as he did on the alternate bid for the third floor which was accepted by the hospital. Attached hereto are certain statements and documents relating to this matter which give additional information concerning it and also point out the advantages to the hospital and to the public interest to shell in two additional floors as an extension of the work already under contract. However, the question presented is whether the two additional floors can be built by this present contractor by a change order which would simply make a change in the contract adding these two floors at a cost of approximately \$444,000.00 or whether these two floors must be rebid in the normal manner?"

Section 205.250, RSMo, which is applicable to such county hospitals, provides:

"No hospital buildings shall be erected or constructed until the plans and specifications have been made therefor and adopted by the board of hospital trustees, and bids advertised for according to law for other county public buildings."

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Other procedures for contracts and bids for public buildings are found in Sections 50.660 and 49.420, RSMo. We find no statutory or case authority for a change order of the nature contemplated.

Section 205.250, which we quoted above, is strict in its requirement that there be advertisement for bids. In construing similar provisions in what is now Section 50.660, RSMo, the United States Court of Appeals for the Eighth Circuit in Layne-Western Co. v. Buchanan County, Mo., 85 F.2d 343, 347 (1936) stated:

" . . . The statute in the instant case, however, provides that 'all contracts and purchases' shall be let after competitive bidding. It would be hard to imagine a more inclusive statute. . . ."

Accordingly, we are of the view that the work cannot be completed by the contractor on a mere change order and that if the board of trustees wishes to add additional floors there must be advertisement for bids.

Very truly yours,

JOHN C. DANFORTH  
Attorney General