

1976 S.C. Op. Atty. Gen. 392 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4529, 1976 WL 23146

Office of the Attorney General

State of South Carolina

Opinion No. 4529

November 24, 1976

*1 The City of Hanahan may require bidders to furnish a bid bond and may disqualify any party refusing to furnish such bond. The City also has the right to reserve, in its invitation to bid, the right to accept separate items in one or more bids.

Attorney at Law
City of Hanahan, South Carolina

QUESTIONS PRESENTED:

1. Did the City of Hanahan act properly in requiring a bid bond and in disqualifying a party refusing to furnish such bond?
2. Did the City act properly in reserving the right to accept separate items in one or more bids?

AUTHORITIES CITED:

64 Am. Jur. 2d. 'Public Works and Contracts' 10 McQuillen on Municipal Corporations

DISCUSSION:

The City of Hanahan, South Carolina, has recently purchased two sanitation vehicles. The bid procedure and award of the bid have been questioned and the City of Hanahan has requested the Attorney General's Office to render an opinion as to the legality of its bid procedure and award in this particular instance. The City of Hanahan has not adopted an ordinance relating to bid procedures and requiring that the City award a bid to the lowest acceptable bidder, but it has been following the general recommendations of the National Purchasing Institute. As a general rule, however, it is considered that the interest of the public are best served by submitting such contracts [public works contracts], particularly if of importance in size, to competitive bidding. Thus, experience has shown that the interests of the public are best conserved by offering contracts for public work to the competition of all persons able and willing to perform it, . . . 64 Am. Jur. 2d. 'Public Works and Contracts' Section [34 At 886](#).

As a part of the City's competitive bid process, each prospective bidder was required to submit a 'bid bond.' Each prospective Vendor shall be required to present to the City of Hanahan City Treasurer a cash bid bond in the amount of five (5) per cent of the Vendor's bid for each unit. The bid bond shall be held by the City of Hanahan until the Vendor's unit is delivered and accepted by the City, unless said bid is forfeited to the City as herein specified. Specific terms, III-C-I.

In its invitation to bid, the City further specified: 'The City of Hanahan reserves the right to reject any, all, or any portion of bids, and shall reserve the right to accept separate items in the bid.' Invitation to Bid II-E.

The first question which has arisen, is whether or not the City could legally refuse to certify the bid of one bidder on the grounds that that bidder refused to furnish a bid bond as required by the specific terms of the invitation to bid. The requirement that each bidder furnish a bid bond was made a specific condition of the bid. It is clear that any bidder who failed to furnish a bid bond could be disqualified.

When a bond is required of bidders, the public authorities may exercise discretion as to its sufficiency, and in general, if a satisfactory bond is not tendered as required, the bid may be rejected. 64 Am. Jur. 2d. 'Public Works on Contracts,' Section 60 at 914.

*2 Therefore, it was within the authority of the City of Hanahan to disqualify any bidder who did not furnish a satisfactory bid bond.

The second question presented is whether or not the City of Hanahan could legally reserve the right to accept separate items in each bid. The general rule is, that as long as there is not a statutory requirement that a single contract for any particular contract of be employed, the municipality in its discretion may award different portions of public contracts to different bidders. See 10 McQuillen on Municipal Corporations, Section 29.76 at 435;

[T]he courts have frequently upheld the right of the public in the exercise of their proper discretion to require separate bids, or to award separate contracts, for different portions or features of a single improvement, or for two or more distinct improvements. 64 Am. Jur. 2d. 'Public Works and Contracts,' Section 56 at 911.

All bidders were advised in the invitation to bid that the City reserved the right to accept separate items in the bid. No one can be heard to complain that they were bidding on a unit project. Therefore, it is the opinion of this Office that the City of Hanahan had the right to award the contract to two different bidders in the purchasing of truck chassis and mounted packers for the twenty five yard (25) yard rear-loading refuse compacting units.

CONCLUSION:

It is the opinion of the Attorney General's Office that the City of Hanahan had the authority to require each bidder to furnish a bid bond and to disqualify any bidder refusing to furnish such a bond and that the City acted properly in reserving the right to accept separate items in one or more bids and awarding the bid to two separate bidders.

M. Elizabeth Crum

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