

1976 S.C. Op. Atty. Gen. 413 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4543, 1976 WL 23160

Office of the Attorney General

State of South Carolina

Opinion No. 4543

December 14, 1976

***1 Re: Bid on Croft State Park**

Mr. Fred P. Brinkman
Executive Director
South Carolina Department of Parks, Recreation and Tourism
Box 113, Edgar A. Brown Building
Columbia, SC 29201

Dear Mr. Brinkman:

As per your request, I have reviewed the bidding procedure in the Croft State Park development, Project 40-86. This contract was for the construction of the pool, bathhouse and a sewerage collection and treatment system. Bids were received on November 23, 1976. Each bidder bid on a base bid and four alternates. PRT choose to accept Alternates No. 1, 2 and 4. At the time of the public bid opening, none of the three contractors represented raised any questions concerning or objected to any of the procedures followed by PRT during the bidding process. The procedures followed by PRT in inviting bids and in conducting public bid opening are in accord with Section 1-466, CODE OF LAWS OF SOUTH CAROLINA, 1962.

Some nine days after the public bid opening, a disappointed sub-contractor, Gatlinburg Construction Company, telegraphed PRT and insisted that the Department reject all bids and readvertise because the 'method of soliciting and receiving bids was so confusing to the general contract bidders that [Gatlinburg Construction Company is] being denied a job to which [they] are entitled . . .'

It is the opinion of this Office that Gatlinburg Construction Company has no valid objection to the bid procedure and award procedure that PRT has followed here. First, the invitation to bid was for general contractors to finish an entire project. The job was not split into sections for individual sub-contractors to bid on. In its telegram, Gatlinburg Construction made the statement that they offered their bids to the general contractors some four hours prior to bid opening. It is up to the general contractor to determine which sub-contractor he wants to use. In fact, one of the three general contractors that bid the job did choose to use Gatlinburg Construction Company. The other two contractors did not so choose. Since the general contractor is the one bidding the job, it is up to him to determine who he would like to work for him on any particular project. If he chooses a sub-contractor who quotes a higher price than another sub-contractor, the general contractor is taking the risk that he may loose the entire job. That, however, is the contractor's prerogative. There is no State law in South Carolina requiring the State to take not only the low base bid but also the low sub-contractor for each particular alternate, regardless of whether or not that particular sub-contractor bid for the successful general contractor.

Thus, it is the opinion of this Office that the bid for the Craft State Park development contract was properly invited and awarded. If we may be of further assistance, please do not hesitate to contact this Office.

Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

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