

STATE PURCHASING AGENT

When two or more bidders tie in amounts bid, the State Purchasing Agent may declare one the lowest and best bidder.

August 28, 1941



Mr. Ted Ferguson
State Purchasing Agent
Jefferson City, Missouri

Dear Mr. Ferguson:

This department is in receipt of your letter wherein you request an opinion based on the following question:

"At your earliest convenience, will you please render this office an opinion as to what procedure we should follow in the awarding of contracts when the lowest and best bid is a tie between two or more vendors."

"For your own information, this matter has been discussed with one of your Assistants, Mr. Creech."

The Purchasing Act was enacted in 1933 and is now Chapter 104, Sections 14589 to 14602, inclusive, R.S.Mo. 1939. Section 14591 relates to purchases on competitive bids. As two or more bidders have submitted bids for the same sum, or in other words, the bids are identical, the question arises as to the meaning of the sentence "The contract shall be let to the lowest and best bidder."

It was held in *State vs. Herman*, 59 N.E. 104, 63 Ohio State 440, that public officers had a certain discretion in awarding contracts and could not be mandamus-ed even though it was their duty to award the contracts to the lowest and best bidders. The phrase "lowest and best bidder" was under construction in the case of *Wilmott Coal Company vs. State Purchasing Commission*, 54 S.W. (2d) 634. It was held in that decision that the State Purchasing Commission of Kentucky should consider not only the amount of the bid, but also possible judgment, capability, skill and responsibility of the bidder and the quality of the good which was proposed to be furnished. In the decision of *Altshul vs. the City of*

Ted Ferguson

-2-

August 28, 1941

Springfield, 193 N.E. 788, the words lowest and best bidder were construed not to be the lowest dollar bidder but that the city authorities had discretion in determining what was, under all the circumstances, the lowest and best bid for the work involved.

Therefore, taking into consideration the meaning of the expression lowest and best bidder, along with the other terms of the statute which give the purchasing agent the right to refuse any or all bids, and advertise for new bids, or, with the approval of the Governor, to purchase the required supplies in the open market, we are of the opinion that you have the authority to determine yourself who of the two or more persons submitting equal bids is the lowest and best bidder, taking into consideration the quality of the goods or merchandise, responsibility of the bidder, and other elements which the above authorities indicate should be taken into consideration. The other alternative is that you could refuse the bids if you decide that none of the lowest are the best bidders and readvertise for new bids, or purchase the required supplies on the open market with the approval of the Governor.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General