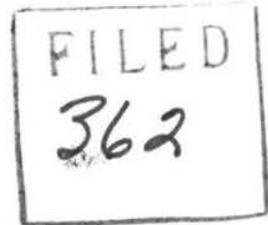


CART:
COUNTY COURTS:
ROADS AND BRIDGES:

Contracts by a county court for the building of roads from funds derived from the County Aid Road Trust Fund cannot be awarded without competitive bidding.

OPINION NO. 362

September 20, 1971



Honorable James L. Paul
Prosecuting Attorney
McDonald County
Pineville, Missouri 64856

Dear Mr. Paul:

This is in response to your request for an opinion as to whether a county court can award contracts for the building of roads from funds derived from gas tax refunds without competitive bidding.

We assume that your reference to a "gas tax refund" refers to funds available to the counties from the County Aid Road Trust Fund, as set out by Article IV, Section 30(a) of the Missouri Constitution. With respect to these funds, this section provides:

" . . . The funds credited to each county shall be used by the county solely for the construction, reconstruction, maintenance and repairs of roads, bridges and highways, and subject to such other provisions and restrictions as provided by law. In the absence of other controls provided by law, the state highway commission shall prescribe policy, rules and requirements for the expenditure of these funds by counties, including, among other things, highway commission approval of plans for projects on which the funds are to be used. . . ." (emphasis added)

Thus, all restrictions applying to the expenditure of funds by the county generally will apply to the expenditure of County Aid Road Trust moneys.

Section 50.660, RSMo 1969, of the County Budgeting Law, provides in pertinent part that:

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". . . All contracts and purchases shall be let to the lowest and best bidder after due opportunity for competition, including advertising the proposed letting in a newspaper in the county with a circulation of at least five hundred copies per issue, if there is one, except that the advertising is not required in case of contracts or purchases involving an expenditure of less than five hundred dollars, in which case notice shall be posted on the bulletin board in the courthouse. It is not necessary to obtain bids on any purchase in the amount of one hundred dollars or less made from any one person, firm or corporation during any period of thirty days. All bids for any contract or purchase may be rejected and new bids advertised for. . . ."

Section 229.050, RSMo 1969, which deals specifically with the construction of roads by contract, provides:

"1. Whenever it shall be ordered by the county court, township board or district commissioner, as the case may be, that any road, bridge or culvert in the county be constructed, reconstructed or improved or repaired by contract, and the engineer's estimated cost thereof exceeds the sum of five hundred dollars, the county, township or district authorities shall order the county highway engineer, or other engineer in their employ, or both such engineers acting together, if so desired, to prepare and file with the clerk of the court, township board or district commissioners, as the case may be, all necessary maps, plans, specifications and profiles, and an estimate of the cost of the work. The court or other proper authority may approve or reject the maps, plans, specifications and profiles and order others prepared and filed.

"2. When the maps, plans, specifications and profiles have been approved, the county, township or district authorities shall order the engineer to advertise the letting of the contract proposed to be let by advertisement in some newspaper published in the county wherein the contract is to be executed, which said

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advertisement shall be published once a week for three consecutive weeks, the last insertion to be within ten days of the day of letting.

"3. All bids shall be in writing, accompanied by instructions to bidders which shall be furnished by the engineer upon application. All bids on road work shall state the unit prices upon which the same are based. All bids shall be sealed and filed with the clerk of the county court, township board or special road district commissioners, and, on the day and at the hour named in the advertisement, shall be publicly opened and read in the presence of the court, township board or special road district commissioners, and the engineer, and shall then be recorded in detail in some suitable book. All bids shall be accompanied by a certified check equal to ten percent of the engineer's estimate of cost, payable to the county treasurer, to the use of the county, township or road district, as the case may be, or a bidder's bond executed by some surety company authorized to do business in this state or other good and sufficient surety in a like sum shall be given, as a guarantee on the part of the bidder that if his bid be accepted he will, within ten days after receipt of notice of such acceptance, enter into contract and bond to do the work advertised, and in case of default forfeit and pay sum of ten percent of the engineer's estimate of cost.

"4. The contract shall be awarded to the lowest responsible bidder. The court may in its discretion reject any or all bids. Any bid in excess of the engineer's estimate of the cost of the work to be done shall be rejected. When it shall be decided by order of record to accept any bid, the county, township or district authorities shall order a contract to be entered into by and between the bidder and the county, township or special road district, as the case may be. The contract shall have attached to and make a part thereof the proposal sheet, instructions to bidders, and bid, maps, plans, specifications and profiles.

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"5. Whenever the contract is executed and approved by order of record and endorsement thereon, it shall be filed and preserved as a permanent record. It shall be incorporated in the contract that the county, township or special road district shall reserve the right to make any additions to, omissions from, changes in or substitutions for the work or materials called for by the drawings and specifications, without notice to the surety on the bond given to secure the faithful performance of the terms of the contract. The bidder must agree that before the county or political subdivision shall be liable for any additional work or material, the county or political subdivision must first order the same, and the cost thereof must be agreed upon in writing and entered of record before such additional work shall apply in case of omissions, deductions or changes, and the unit prices shall be the basis of the values of such changes.

"6. In case of disagreement upon the cost or price of any addition, omission or change ordered or so desired, then it is expressly agreed that the decision of the state highway engineer shall be received and accepted as fixing definitely and finally the cost of such change, and when so fixed, the court, township board cost or price of any addition, omission shall enter of record such change. It shall also be provided in the contract that the contractor will furnish and promptly pay for all labor employed and materials used in the performance of such contract."

Thus, it can be seen that competitive bidding is required in the awarding of contracts by the county court for building of roads from funds derived from County Aid Road Trust Fund moneys. The type of notice to prospective bidders called for depends upon the estimated cost of the road building project. Where the estimated expenditure is in excess of five hundred dollars, the notice provisions contained in Section 229.050, sub. 2, must be followed. Where the estimated expenditure is less than five hundred dollars, the notice provisions of Section 50.660 are to be followed.

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CONCLUSION

It is the opinion of this office that contracts by a county court for the building of roads from funds derived from the County Aid Road Trust Fund cannot be awarded without competitive bidding.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard L. Wieler.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General