

MAINE STATE LEGISLATURE

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December 28, 1956

To Commissioner David H. Stevens, State Highway Commission
Re: Bids

Our attention has been called to the matter of bids submitted to the Commission at its invitation and opened December 19, 1956, for construction of a bridge at York, Maine. It has been alleged to us that the low bid was rejected and the low bidder, an out-of-state corporation, was refused any consideration whatsoever in the bidding for the reason that its corporate seal had not been affixed to its bid and it had not submitted, with its bid, an affidavit to the effect that the officer signing the bid was duly authorized by the corporation. It is our understanding that the attention of this corporation had previously been specially directed to the Commission's specifications requiring the affixing of the corporate seal and the submission of the affidavit. It is further alleged to us that a representative of the corporation was present at the opening of the bids in the office of the Commission, that he had with him the required affidavit and also had with him the corporate seal. We understand that he was refused permission to affix the corporate seal to the bid. It is further our understanding that the bid submitted by this company was \$17,147.95 lower than the next lowest bid.

We have been told that the reason given for failure even to consider the bid was a ruling by this department that a bid lacking such a seal, or not accompanied by such an affidavit, could not be considered. Such a ruling has never been made.

Some time ago, in regard to another matter, a bid was submitted by a newly formed corporation, the corporation at that time not having a seal, and, therefore, no seal was attached to the bid. In a discussion of that matter by members of this office, it was the consensus that it would be administratively helpful to the responsible state official if the corporate seal were affixed and some evidence presented to show the authority of the corporate officer to sign the bid. We note that the Commission has now incorporated in its specifications of invitations to bid the requirement of corporations that a seal be affixed and the bid be accompanied by an affidavit showing the authority of the corporate officer to sign. The purpose of this requirement, of course, is to establish prima facie evidence for the State, in the event it should become necessary to sue the bidder for failure to fulfill the terms of the bid. May we here suggest, parenthetically, if you are going to require evidence of the authority of the corporate officer to sign, that it might be more reasonable, and more useful to the State, to require, instead of an affidavit, a certified copy of the corporate records?

While it does not seem unreasonable to require these things as part of a bid, they certainly are not and cannot be construed to be a material part of a bid, to the exclusion of every other consideration, or any other. We would recommend the retention of these requirements, for the purposes set forth above, but we refuse to accept any responsibility for administrative, or other, misinterpretation or mis-application of these requirements.

We call your attention to Section 102-7 appearing at the bottom of page 10 and top of page 11 of your "State of Maine, State Highway Commission, Standard Specifications, Highways and Bridges, Revision of January 1956." The last sentence of this section reads:

"The Commission reserves the right to waive technicalities and make the award for the best interests of the State."

Upon the facts presented in this matter it appears upon the face of it that some seventeen thousand dollars of taxpayers' money might have been saved, had the technicality of omission of the seal and affidavit been waived. The circumstances would seem at least to require some consideration of this bid rather than its complete rejection.

We further understand that this contract was immediately awarded to one other than the actual low bidder. Any action on our part to remedy the situation at the present time would, therefore, result in further expense, rather than in a saving to the State.

It is not ordinarily the province of this office to interfere with the administrative policy of another state department. However, when such a policy appears to be decidedly detrimental to the best interests of the State, and is purportedly based upon an opinion of this office, then we feel we must interfere.

Briefly, we do not want it to be said that an opinion of this office is the basis for a decision that properly belongs in the area of discretion to be exercised by the Highway Commission, particularly where, in our opinion, such decision results in a conclusion that borders on an abuse of discretion.

We believe that a continuation of the practice which apparently exists, of rejecting bids for "informalities" which in no wise constitute a substantial deviation from the request for bids, may result, as in the present case, in financial loss to the State of Maine. We must, therefore, advise you that if, under such facts in a subsequent case, a low bid were to be rejected for any such reason, then we should be compelled to bring a proper action in court to protect the interests of the State.

Frank F. Harding
Attorney General

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