

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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April 1, 1959

To: John R. Dyer, Purchasing Agent, Bureau of Purchases

Re: Bids on Belt Loaders

This memo is in response to your recent oral inquiry concerning bids for certain heavy equipment to be purchased for the State Highway Department.

The equipment in question is a belt loader designed to gather stone, dirt, gravel, snow, etc. and convey such material, by means of a belt to trucks for quick removal.

On February 17, 1957, your department sent out requests for bids on the above equipment, the requests containing such specifications as would advise the bidder of the type, model and other characteristics of the equipment desired to be purchased by the State.

In all, three bids were received in response to the request for bids.

It appears that one bid was rejected as being informal. It was deemed desirable by you to reject a second bid, that of Company A, as being too high.

Question: You ask if the third bid, that submitted by Company B, could be accepted, that company having submitted dollar-wise the lowest bid.

Answer: We are of the opinion that bid of Company B is not acceptable.

In examining the two bids in question, it appears that Company A submitted a bid wherein no exceptions were taken to the specifications set forth in the State's request for bids. The form of Request for Bids supplied by the State, was returned by Company A unchanged, except for the filling in of blank spaces provided for notation of bid prices and other pertinent information.

Company B, on the other hand, returned the bid, and accompanied same with a letter in which the bidder set forth dimensions and other variances of its machine which did not comply with the specifications contained in the request for bids.

For instance, the State requests a machine having a stand-up cab, with a minimum over-all length of 39'. The bid of Company B proposes to offer a machine with a sit-down cab with an over-all length of 31' 3". In other respects the machine would also vary from the specifications.

The bid of Company B is, in effect, a counter proposal.

Under our laws counter proposals, or alternative bids, may be submitted. Such alternative bids however, may be considered only under certain circumstances, i.e., where bids submitted in conformity to specifications are not received.

Sub-section V, of section 39, Chapter 15-A Revised Statutes of Maine, as enacted by Chapter 340, Public Laws of 1957, reads as follows:

"Bids shall be received only in accordance with the specifications contained in the proposal or invitation to bid. However, a

bidder may submit an alternative bid on services, supplies, materials and equipment which do not conform to but approximate the specifications contained in the proposal or invitation to bid, provided such alternative bid sets forth complete specifications pertaining to the alternative services, supplies, materials or equipment being offered. Bids which do not conform to the foregoing provision shall be disregarded. *Alternative bids shall be considered only in the event no bid is received for the services, supplies, materials or equipment specified in the proposal or invitation to bid and the foregoing requirements have been complied with.* The State reserves the right to reject any or all bids, in whole or in part, to waive any formality and technicality in any bid and to accept any item or items in any bid. No bid may be withdrawn during a period of 21 calendar days immediately following the opening thereof;”

The above statute clearly prohibits consideration of Company B alternative bid, when another bid was received which, in all respects, appears to be in conformity with the written specifications.

The said sub-section V shows clearly a Legislative directive that deviations from specifications cannot be permitted at will by administrative decision.

Bids shall be received only in accordance with the specifications contained in the invitation to bid. The second and fourth sentences of sub-section V are in derogation of the principle that a purchaser may purchase an article which complies with, or substantially complies with, the specifications. The second sentence provides that bids not in conformity with, but approximating the specifications, may be submitted only as alternative bids. As pointed out above, the fourth sentence of sub-section V provides that such alternative bid can be accepted only in the event a bid conforming to the specifications is not received.

Such a law does not permit the exercise of discretion in purchasing articles which approximate, but do not conform to, the specifications.

It is for the above reasons that we are of the opinion that the State may not award a contract on the basis of the Company B bid.

It has been suggested that the specifications were so drawn that no bidder could comply with them, and that as a result all bids might be considered as alternative bids and the contract awarded to the lowest of such alternative bidders.

The specifications may have been so written. However, one of the bids makes no exceptions to the specifications, but proposes to supply the equipment as requested. This being so, it cannot be considered as an alternative bid.

Two of the bids have already been rejected. We are of the opinion that the third and final bid should be rejected, and therefore suggest that a new request for bids be sent out for the desired equipment.

FRANK E. HANCOCK
Attorney General