

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2021-010

TO: Mayor John Engen, Dale Bickell, Jeremy Keene

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE July 7, 2021

RE: Government competitive bidding laws are for the protection and benefit of the public and government and not for the benefit of an unsuccessful bidder

FACTS:

Missoula County Public Works director Shane Stack has received a July 6, 2021 public information request letter from an attorney representing Knife River requesting public information on eleven (11) topical areas pertaining to the Mullan BUILD and aggregate mine public information. Missoula County has requested city public works director assistance gathering information.

ISSUE(S):

If any of the public information requested pertains to competitive bidding selection what are the purposes of public government competitive bidding?

CONCLUSION(S):

Primary purposes of public government competitive bidding are to obtain competitive pricing for the benefit of the public government and its taxpayers as well as to guard against favoritism, improvidence, extravagance, wastefulness, fraud and corruption, and not for the benefit of an unsuccessful bidder.

LEGAL DISCUSSION:

The July 6, 2021 attorney letter requesting public information only specifically requests Missoula county public information. While an inter-local agreement exists between the county and the city; Missoula County is the lead entity with respect to the administration of this effort. Basically, laws require competitive bidding for many expenditures of public monies for several

purposes, such as to obtain competitive bids as well as to guard against favoritism, wastefulness, fraud and corruption.

See CLAIMS & THE CONSTRUCTION OWNER, Federal Publications Inc., pages 6 and 7.

MCQUILLIN, MUNICIPAL CORPORATIONS, 3rd edition revised, volume 10, section 29.34 entitled PURPOSE OF REQUIRING BIDS states at pages 476-481 that:

“29.34 PURPOSE OF REQUIRING BIDS. The provisions of statutes, charters, and ordinances requiring competitive bidding in the letting of municipal contracts are for the PURPOSE OF INVITING COMPETITION TO GUARD AGAINST FAVORITISM, IMPROVIDENCE, EXTRAVAGANCE, FRAUD, AND CORRUPTION AND TO SECURE THE BEST WORK OR SUPPLIES AT THE LOWEST PRICE PRACTICABLE, AND THEY ARE ENACTED FOR THE BENEFIT OF PROPERTY HOLDERS AND TAXPAYERS, AND NOT FOR THE BENEFIT OF ENRICHMENT OF BIDDERS, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest. . . .” (*Emphasis added*)

Later, when discussing the awarding of contracts to the lowest or lowest responsible bidder, MCQUILLIN, MUNICIPAL CORPORATIONS, 3rd edition revised, volume 10, section 29.81 at pages 654-655 states:

“The fact that a governmental authority declined to award a contract to the lowest bidder does not give rise to a presumption that the decision was somehow improper. Thus, UNLESS A PLAINTIFF CAN DEMONSTRATE IMPROPER INFLUENCE OR A FRAUDULENT SCHEME TO ELIMINATE FAIR COMPETITION, THE HONEST EXERCISE OF DISCRETION IS PRESUMED PROPER SINCE COMPETITIVE BIDDING STATUTES ARE FOR THE PROTECTION OF THE PUBLIC NOT THE BENEFIT OF AN UNSUCCESSFUL BIDDER . . .” (*Emphasis added*)

Public government competitive bidding laws are primarily intended for the benefit and protection of the government and its taxpayers and not for the benefit of an unsuccessful bidder.

CONCLUSION(S):

Primary purposes of public government competitive bidding are to obtain competitive pricing for the benefit of the public government and its taxpayers as well as to guard against favoritism, improvidence, extravagance, wastefulness, fraud and corruption, and not for the benefit of an unsuccessful bidder.

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/s/ Jim Nugent

Jim Nugent, City Attorney

JN:jb