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Legal Opinion 2016-027

TO: Mayor John Engen, Dale Bickell, Leigh Griffing, Scott Paasch, Steve Johnson, Marty Rehbein, Kirsten Hands, John Wilson, Doug Harby, Monte Sipe, Donna Gaukler, Morgan Valiant, David Selvage, Chris Boza, Mike Brady, Scott Hoffman, Jason Diehl, Jeff Brandt, Chad Nicholson, Rod Austin, Tiffany Brander, Ellen Buchanan, Chris Behan, Lori Hart, Mike Haynes, Kevin Slovarp, Don Verrue, Carl Horton, Ginny Merriam

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE: December 14, 2016

RE: Government competitive bidding laws are for the purpose to obtain competitive pricing as well as for protection and benefit of public and government and not for the benefit of an unsuccessful bidder

FACTS:

Several times a calendar year, a potential competitive bidding issue is identified by city staffs. It is important to remind city staffs that the purpose of competitive bidding laws is for obtaining competitive prices as well as for the protection and benefit of the public government and the taxpayers that financially support the public government and not for the benefit of an unsuccessful bidder. However, the competitive bidding process must still be engaged in, in a fair and legal manner in order to have credibility.

ISSUE(S):

Are the purposes of public government competitive bidding intended for the benefit of the public government and its taxpayers?

CONCLUSION(S):

The primary purpose of public government competitive bidding is 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:

Often the expenditures of public money require competitive bidding pursuant to laws applicable to a purchase or construction project, etc. prior to awarding a contract. Basically, laws require competitive bidding for many expenditures of public monies for several purposes, such as to invite competition as well as to guard against favoritism, wastefulness, fraud and corruption. See *CLAIMS & THE CONSTRUCTION OWNER*, 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 possible bidder, MCQUILLIN, MUNICIPAL CORPORATIONS, 3rd edition revised, volume 10, section 29.81 at pages 654-655 states:

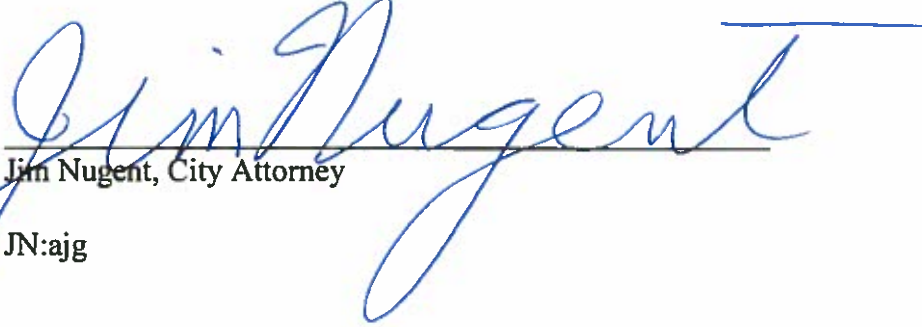
“The fact that a governmental authority declined to award a contract to the lowest bidder does not give rise to a presumption that the decision was somehow improper. Thus, UNLESS A PLAINTIFF CAN DEMONSTRATE IMPROPER INFLUENCE OR A FRAUDULENT SCHEME TO ELIMINATE FAIR COMPETITION, THE HONEST EXERCISE OF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

Thus, it is well established law that 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):

The primary purpose of public government competitive bidding is 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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Jim Nugent, City Attorney

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