

Bridges, Contract for Construction Of. Bridges, Plans and Specifications Of. Contract, Plans and Specifications Necessary Before Letting.

Section 1413, Revised Codes of 1907, as amended, provides method of letting contract. Plans and specifications must be prepared by board of county commissioners before submitting to public for bids thereon in order that contract may be let for lowest price obtainable, and competition insured.

Helena, Montana, June 9, 1910.

Board of County Commissioners, Sanders County,
Thompson Falls, Montana.

Gentlemen:—

Your letter of June 7th, requesting an opinion as to whether or not it is necessary for the board of county commissioners to first adopt plans and specifications before advertising for bids for the construction of a public bridge, or whether you may state generally in your advertisement the character of bridge and estimated cost thereof and allow prospective bidders to furnish their own plans and specifications and bids thereon, has been received, and in reply will say:

Section 1413 of the Revised Codes of 1907, as amended by the Eleventh Legislative Assembly of the state of Montana, reads as follows:

"No bridge, the cost of construction or repairs of which exceeds the sum of four hundred dollars, must be constructed or repaired except on the order of the board of county commissioners; and when ordered to be constructed or repaired it shall be done by contract. Before any contract shall be let as provided herein the board of county commissioners shall advertise for bids therefor at least once a week for two successive weeks in a newspaper of general circulation in the county, and a contract shall then be awarded to the lowest responsible bidder. The successful bidder shall, before entering into the performance of the work, execute and deliver to the board of county commissioners, an undertaking, with at least two or more sureties, to be approved by the board, in a sum not less than one-half the amount for which the contract is awarded, provided, however, that no such undertaking shall be for a less sum than five hundred dollars."

The manifest purpose of this section is to obtain the lowest responsible bidder for the construction of the bridge, and in order to do so there must be an offering to the public an opportunity for a competition and a basis for an exact comparison of bids, otherwise one bidder may base his estimate upon one set of plans and data, while another may fix his bid upon an entirely different set of plans and specifications.

As is said in the case of Fones Bros. Hardware Co. v. Erb, 17 S. W., p. 7:

"When it is determined to build a bridge within a given time, and the location, plans, and specifications have been adopted, all the terms of the contract are fixed except the price to be paid; the obligation to build a bridge according to the terms thus fixed is the thing to be offered to competition; and until it is formulated by the defining of those terms so that they, in connection with the bid to be thereafter accepted, will comprise a complete contract, there is nothing to be let, and nothing to which competition can be directed. It is idle to talk of competition where the minds of bidders are not directed to the thing offered. When the subject of competition is undefined and uncertain, and left to be moulded by the various competitors, it will assume as many forms as they have conceptions, and each will bid upon the thing of his own creation,—a thing upon which no other can bid."

To permit each bidder to propose the plans and specifications according to which he will construct the building, not only prevents competition in bidding for the work, but gives to the board an opportunity for the exercise of favoritism in awarding the contract, instead of being required to let it to the lowest responsible bidder; for, since neither of the bidders can know of the plans and specifications under which others are making their bids, there is no standard by which the board can determine which is the lowest bidder.

Ertle v. Leary, et al, 46 Pac. 1.

Andrews v. Board of Commissioners, 63 Pac. 592.

People v. Commissioner, 4 Neb. 150.

Any arrangement which excludes competition prevents the letting to the lowest bidder, and unless all parties offering bids base the same upon the same plans and specifications there certainly could not be any competition between them.

In Volume 11, *Encyclopedia of Law and Procedure*, p. 481, the text reads as follows:

"In requesting or advertising for bids upon which to let a contract to perform work for a county, it is the duty of the county commissioners to adopt in advance of the letting, plans and specifications so definite and detailed as to disclose the thing to be undertaken with circumstantial fullness and precision as a basis on which bids may be received. Such commissioners have no authority to require each bidder to accompany his bid with his own plans and specifications, adopting such plans as they see fit and accepting the accompanying bid, since this would do away with all competition or comparison of bids, which is the object of requiring a public letting, and would open the way to corruption, favoritism, and fraud, and a statute authorizing such a letting is in violation of a constitutional provision that

all such contracts shall be given to the lowest bidder. The fact that a board of county commissioners have adopted what they denominate "general specifications" will not satisfy the requirement of detailed specifications where the board at the same time invite proposals and competitive plans and specifications."

There is no question in our mind but what the board of county commissioners must first prepare definite plans and specifications before submitting them to the public for bids thereon, otherwise Section 1413 could not be complied with, as the intention of this section is to obtain the lowest responsible bid for the work in question.

Yours very truly,

ALBERT J. GALEN,

Attorney General.