

Cities and Towns—Federal Aid Projects—Special Improvement Projects.

Procedure outlined when a federal aid project is a part of a special improvement district.

March 5, 1920.

State Highway Commission,
Helena, Montana.

Gentlemen:

I am in receipt of your letter with reference to the prosecution of Federal Aid projects within the limits of incorporated cities and towns, the local funds of which are made available through the creation of special improvement districts under our special improvement district laws applicable to cities and towns, and in which you request my advice with reference to the following questions:

I. "Assuming that the Chief Engineer of the State Highway Commission has been duly designated by the city or town affected as the 'Engineer,' what are the specific duties and responsibilities of such engineer in connection with the preparation of maps, plans, drawings and estimates of cost?"

The duties of a city or town engineer are prescribed by ordinances of the city or town. The only provision in the special improvement district laws with reference to the duties of the engineer are contained in Sec. 22, Chap. 89 Sess. Laws 1913, which provides that the cost and expense connected with and incidental to the formation of an improvement district, cost of preparation of plans, specifications, maps, plats, engineering superintendence and inspection, and preparation of assessment rolls shall be considered a part of the costs and expenses of making the improvements and requires the city engineer to keep an

account of all costs and expenses incurred in his office and certify the same to the city clerk, and in subdivision 8 of Sec. 31 of the same chapter, which defines the term "city engineer" to mean any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any city, and that in those cities having no engineer the city council may appoint a suitable person to discharge the duties laid down in the law as those of city engineer, and all provisions of such law applicable to the city engineer shall apply to the person so appointed. The contract for the improvement should contain certain provisions with respect to the powers and duties of the engineer, and such would be applicable to the Chief Engineer of this commission when he is appointed by the city council as the engineer.

II. "The plans and specifications for the proposed improvement having been prepared and approved by the Federal Government—the Federal Government participating in the cost of such improvement under the provisions of the Federal Aid Road Act—what proceedings are essential to the proper advertisement and award of contract for the improvements contemplated? Must the advertisement be authorized by the City Council and must the bids be received and contract let by the City Council in open session at the regular place of meeting?"

The special improvement district law (Chap. 89 Sess. Laws 1913 as amended by Chap. 142 Sess. Laws 1915, and Chap. 175 Sess. Laws 1919), contains specific and definite provisions concerning the manner of advertising for bids or proposals, award of contracts, etc. Sec. 8 of Chap. 89 as amended by Sec. 5 of Chap. 142, requires that a notice inviting proposals, and referring to the specifications on file, shall be published at least twice in a daily, semi-weekly, or weekly newspaper, published and circulated in the city or town, which newspaper shall be designated by the council, and if there is no newspaper published in the town, then the notice must be posted in three public places in the city or town. The time fixed for the opening of bids shall not be less than ten days from the time of the final publication of said notice. Proposals or bids must be accompanied by a check payable to the city, certified by a responsible bank for an amount of not less than 10% of the aggregate of the proposal. The proposals must be delivered to the city or town clerk, and the city or town council must, in open session, publicly open, examine and declare the same. The council may reject any and all bids should it deem it best for the public good, and also the proposal of any party who has been delinquent or unfaithful in any former contract with the city or town, and if the council does not reject all bids, but desires to accept one of them, it must reject all bids other than that of the lowest responsible bidder to whom the contract must be let at the prices named in his bid. Sec. 9 of Chap. 89 makes it the duty of the council to enter into a contract with the bidder to whom the contract is awarded at the prices specified in his bid. Section 12 of Chap. 89 requires the contractor at the time of executing the contract, to execute a bond to the satisfaction and approval of the city council, in a sum not less than 25% of the amount of the contract, conditioned for the

faithful performance of the contract and indemnifying the city or town from any detriment, damage or loss growing out of said work, the sureties to be either a surety company authorized to transact business in this state, or two individual sureties who must justify in double the amount mentioned in the bond.

All the foregoing provisions are not merely directory but are mandatory, and must be strictly complied with, consequently, answering your second question, you are advised that the advertisement must be authorized by the council, it must be published or posted in the manner and for the length of time prescribed, the bids must be received by the city or town clerk, accompanied by certified checks in the required amounts, opened in the manner provided, that is in open session of the council which must be at its regular place of meeting, and contract let and bond executed in the manner prescribed. All of these proceedings will terminate in the levying of taxes against property and the creation of liens thereon, consequently the statutory provisions must be complied with in every particular.

III. "Recognizing that this department has prepared Standard Specifications for the guidance of contractors in prosecuting Federal Aid Improvements, which specifications vest certain special powers and authority in the Executive Committee of the State Highway Commission; and assuming that the City Council has sole jurisdiction in the prosecution of improvements effected in a duly created Special Improvement District; and assuming further that the cost and expense of work performed under the Special Improvement District laws can only be met by the issuance of Special Improvement District bonds: Will you kindly advise if the enclosed copy, when attached to the Standard Specifications heretofore adopted by this department, will serve to

- (a) reconcile such Standard Specifications with the requirements of the Special Improvement District laws, and
- (b) adequately inform the contractor as to the conditions under which payments for the work will be made."

In order to enable a city or town council to proceed intelligently, after the district has been created, full and complete plans and specifications covering the proposed work should be prepared and the originals thereof placed on file in the office of the city engineer. When a city or town intends to ask for federal aid, and the co-operation of your commission, the council should adopt and approve all of the plans and specifications prepared and adopted by your commission, except so much thereof as would vest the special power and authority in your Executive Committee instead of in the city or town council, as the plans and specification for such work. I believe that you should insert after the word "progresses", in line 6 of paragraph 2 of the copy of form submitted to me, the following; "and deliver to the contractor". In this form you use the word "bonds". As the special improvement district law provides for the issuance of either bonds or warrants care should be exercised in ascertaining, before proposals are called for, whether the city or town intended to issue "bonds" or "warrants", and after such information has been received the appropriate word should be used

in this form. I believe these should also be inserted in the form some information regarding the rate of interest which the bonds or warrants will bear, and the time when they will become payable. For instance if the assessments are to be spread over a term of eight years, one-eighth of the total amount issued will become payable on the 1st day of January, or such other date as the council may fix, of the year immediately following the completion of the work, and one-eighth thereof on the same date each year thereafter until all are fully paid.

The corrections and amendments will serve to reconcile such Standard Specifications with the requirements of the special improvement district laws, and adequately inform the contractor as to the conditions under which payments for the work will be made.

Respectfully,

S. C. FORD,

Attorney General.