

No. 102

COUNTY COMMISSIONERS — CONTRACTS — LOWEST AND BEST RESPONSIBLE BIDDER DEFINED

Held: In determining who is the "lowest and best responsible bidder" the County Commissioners must consider not only amount of bid, but also business judgment, capacity, skill, responsibility of bidder, and quality of machinery to be furnished, as well as its adaptability to particular use required.

April 26, 1941.

Mr. Wilbur P. Werner
County Attorney
Glacier County
Cut Bank, Montana

Dear Mr. Werner:

You have submitted the following:

"The County Commissioners of Glacier County have asked for bids on certain specified county road machinery which they desire.

"Section 4605.1, R. C. M., 1935, states that no contract shall be entered into for which must be paid a sum in excess of \$1000 without first publishing a notice calling for bids, which notice must be published at least once a week for three consecutive weeks. The section further provides that every such contract shall be let to the lowest and best responsible bidder. There have been some amendments to this particular section but they do not apply to the problem that we have in mind. We would like your opinion as to how lowest and best responsible bidder should be construed."

In determining who is "lowest and best responsible bidder" the County Commissioners must consider not only amount of bid, but also business judgment, capacity, skill, responsibility of bidder, and quality of machinery proposed to be furnished (R. G. Wilmott Co. vs. State Purchasing Commission 54 S. W. (2nd) 634, 635; 246 Ky. 115; 86 A. L. R. 127). In determining who is the "lowest and best responsible bidder" the County Commissioners may take into consideration the quality of machinery, as well as its adaptability to the particular use required (Mitchell vs. Walden Motor Co., 177 So. 151-154, 235 Ala. 34).

The proposition of law here discussed is well covered in 38 C. J., p. 325 (note 28), and again in 86 A. L. R. 127 in the R. G. Wilmott Co. vs. State Purchasing Commission, 246 Ky. 115, hereinabove cited wherein it says:

"To say the least, the words 'lowest and best bidder' as used in our statutes are as comprehensive as 'lowest responsible bidder' used in the statutes of most states, and where, as in this instance, the standard of quality is not definitely fixed, that, too, would be a factor in determining the lowest and best bidder.

"The decision as to the lowest and best bidder in this instance necessarily called for an exercise of judgment and discretion upon the part of the Commission, and the determination of that question involved not only the least expenditure of public funds but also a consideration of the quality of the goods proposed to be furnished and the other factors and elements to which we have heretofore adverted.

"The fact that a bidder executed bond for the faithful performance of the contract did not limit the governing authorities to the lowest pecuniary bid, but it was still their duty and within their discretion to take into consideration all other pertinent factors and elements in determining the lowest and best bid."

The insertion of the phrase "the Board of County Commissioners reserves the right to reject any and all bids" in the notice calling for bids would empower the Board to reserve the right to reject any and all bids—if it thought such a course would be for the public interest—and also to advertise anew for proposals.

And finally, the true intent and purpose of the statute above cited—requiring certain contracts to be let to the lowest and best responsible bidder—are to secure economy and protect the public from collusive contracts, favoritism, or fraud, and to promote actual, honest, effective competition.

Therefore, it is my opinion that in determining who is the "lowest and best responsible bidder" the County Commissioners must consider not only amount of bid, but also business judgment, capacity, skill, responsibility of bidder, and quality of machinery to be furnished, as well as its adaptability to the particular use required.

Sincerely yours,

JOHN W. BONNER
Attorney General