

Opinion No. 24

**BONDS; Bid bonds, city special improvement projects—CITIES
AND TOWNS; Bid Security—Section 6-501, R.C.M., 1947,—
Section 11-2209, R.C.M., 1947.**

**HELD: A city may not consider bids for the construction of special
improvements which are not accompanied by a certified
check.**

November 7, 1963

Mr. Albert E. Leuthold
State Examiner
Mitchell Building
Helena, Montana

Dear Mr. Leuthold:

You have requested my opinion on the following question:

“May a city consider bids for the construction of special improvements which are accompanied by a corporate surety bond rather than a certified check?”

Your question arises from the apparent conflict between two statutes—Section 6-501, R.C.M., 1947 and Section 11-2209, R.C.M., 1947.

Section 11-2209, *supra*, which was originally enacted in 1913 and last amended in 1939, prescribes the procedure to be followed

by cities in awarding contracts for the construction of special improvements.

Subdivision (2) of that statute provides:

“(2) The time fixed for the opening of bids shall be not less than ten (10) days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by a check payable to the city, certified by a responsible bank for an amount which shall not be less than ten per centum (10%) of the aggregate of the proposal. Said proposals or bids shall be delivered to the clerk of the said city council, and said city council shall, in open session, publicly open, examine, and declare the same; provided, however, that no proposal or bids shall be considered unless accompanied by said check. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid.”

Section 6-501, R.C.M., 1947, was enacted as Section I of Chapter 174, Laws of 1951. In part, it directs the state, counties, municipal school districts, irrigation districts, or any other public authority organized under the laws of this state to require that all bids be accompanied by bid security. The pertinent portion of this statute provides:

“... the bidder, offeror, or tenderer shall accompany any bid with either (1) lawful moneys of the United States, or (2) with a cashier’s check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana, or by any banking corporation incorporated under the laws of the state of Montana, or (3) a bid bond or bonds executed by a surety corporation authorized to do business in the State of Montana; . . .”

As is readily apparent, section 6-501, *supra*, is a general statute establishing certain minimal standards which all public bodies

must follow when inviting and accepting bids for public works, supplies, sale of bonds, etc. In contrast, Section 11-2209 is a special statute dealing only with the awarding of contracts, by municipal corporations, for the construction of special improvements.

The law is clear that where one statute deals with a subject generally and another statute deals with a part of the same general subject in a more minute and definite way, in the case of conflict between the two statutes, the special statute will prevail. See, e.g., **In re Kesl's Estate**, 117 Mont. 377, 161 P. 2d 641; **State ex rel Geschwender v. La Rowe**, 136 Mont. 591, 341 P. 2d 906. This is true even though the general act was enacted subsequent to the Special Act. **State v. Holt**, 121 Mont. 459, 194 P. 2d 651.

I am, therefore, of the opinion that a city is bound by the provisions of Section 11-2209, R.C.M, 1947, in considering bids for the construction of special improvements. Since that section provides that no bids shall be considered unless accompanied by a certified check in the amount of ten per cent of the bid, a city may not consider bids for the construction of special improvements which are accompanied by a corporate surety bond rather than a certified check. I so hold.

Very truly yours,

FORREST H. ANDERSON
Attorney General