

CITIES AND TOWNS - Lease with option to purchase subject to requirement of competitive bidding;  
CONTRACTS - Municipal government must competitively bid contract which is a lease with option to purchase;  
MUNICIPAL GOVERNMENT - Requirement to competitively bid contract which is a lease with option to purchase;  
MONTANA CODE ANNOTATED - Section 7-5-4302;  
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 101 (1980).

HELD: A lease with an option to purchase is subject to the requirement of section 7-5-4302, MCA, that it be competitively bid.

4 August 1986

Philip F. Walsh  
City Attorney  
P.O. Box 588  
White Sulphur Springs MT 59645

Dear Mr. Walsh:

You have requested my opinion concerning the validity of a lease-purchase contract entered into by the City of White Sulphur Springs and a private equipment dealer. The contract provides that the City will lease a front-end loader on an annual basis, and that after five successive years of such lease payments the equipment will become the property of the City. The contract was not competitively bid. You further advise me that under the terms of the contract, the City is free to terminate the contract by failing to make any of the annual payments.

If it were a simple purchase, the contract here clearly would be subject to a competitive bid requirement. Section 7-5-4302(1), MCA, provides, in pertinent part:

Except as provided in 7-5-4303, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, or equipment, for any materials or supplies of any kind, or for construction, repair, or maintenance for which must be paid a sum exceeding \$10,000 must be let to the lowest responsible bidder after advertisement for bids.

See also 38 Op. Att'y Gen. No. 101 (1980) where I held that a similar provision for counties (§ 7-5-2306, MCA) requires that the entirety of the contract, not the annual amount, is looked at to determine whether the threshold for bidding has been reached. That question is not involved here since both the annual amount and the total exceed the bidding threshold.

The question here is whether a lease, with an option to purchase, should be treated as a purchase for purposes of the statute requiring competitive bids. In 38 Op. Att'y Gen. No. 101 (1980) I also held that a lease with an option to purchase should be treated the same as a purchase for the purpose of bidding requirements. While that opinion was, in part, based on a specific statute (§ 7-5-2307, MCA) in county contract law, I believe the principle it expresses should also apply here.

The Legislature has established competitive bidding as the primary method to make public purchases. The purpose of such a requirement is stated by the McQuillin text on municipal corporations:

The provisions of statutes ... 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 ....

10 McQuillin, Municipal Corporations § 29.29 (3d ed.).

This important purpose should not be subverted by the use of a device which gets around the competitive bidding requirement. Under the facts presented here, the lease with an option to purchase is essentially similar to a purchase, and the purpose behind the Legislature's requirement of competitive bidding is equally valid when applied to a lease with an option to purchase. As the Montana Supreme Court noted in the case of Dover Ranch v. County of Yellowstone, 609 P.2d 711, 715 (1980):

A statute will not be interpreted to defeat its object or purpose, and the objects sought to be achieved by the legislature are of prime consideration in interpreting it. Doull v. Wohlschlager (1963) 141 Mont. 354, 377 P.2d 758.

609 P.2d at 715.

The South Dakota case of Fonder v. South Sioux Falls, 71 N.W.2d 618, 53 A.L.R.2d 493 (1955), is instructive. The South Dakota statute exempted purchases of less than \$500 from the competitive bidding requirement, and the city council made a series of purchases from the same contractor, each of which was for less than the \$500 threshold. It appeared that the city council was making piecemeal purchases in order to evade the bidding requirements. The South Dakota court condemned this practice, first noting that "[F]amiliar principles require us to look beyond the words of a statute in an effort to understand the meaning of the legislature." The court went on to say:

The intention to regulate the purchase of all materials, supplies and equipment by public corporations is made manifest by the express terms of this statute. For obvious reasons small contracts were excepted from its provisions. However, by introducing this exception dealing with small contracts, it is inconceivable that the lawmakers intended to provide a lawful means by which its prime objective to require the major needs of the public for materials, supplies or equipment be met through competitive lettings could be circumvented by multiple small open-market purchases .... To arrive at a different

conclusion, we would be compelled to ignore the object and spirit of this legislation.

53 A.L.R.2d at 496.

While the factual basis of the South Dakota case is different from the one here, the principle it expresses, that the competitive bidding requirement serves an essential public purpose and should not be narrowly construed, is one with which I strongly concur.

THEREFORE, IT IS MY OPINION:

A lease with an option to purchase is subject to the requirement of section 7-5-4302, MCA, that it be competitively bid.

Very truly yours,

MIKE GREELY  
Attorney General