

N.D.A.G. Letter to Ficek (June 10, 1987)

June 10, 1987

Mr. Vince H. Ficek
Dickinson City Attorney
P. O. Box 866
Dickinson, North Dakota 58601-0866

Dear Mr. Ficek:

Thank you for your letter of April 16, 1987, in which you request my opinion as to whether a city may enact an ordinance providing for a five percent preference to local bidders in awarding city contracts. The city commission believes that local bidders, who pay local taxes, should be preferred over nonlocal bidders in times of local economic hardship. I apologize for the delay in responding to you.

Various sections of the North Dakota Century Code require cities to engage in a competitive bidding process and to award its contracts to the lowest responsible bidder or the lowest and best bidder.

44-08-01.1. BIDS TO BE SEALED--DESIGNATION OF TIME AND PLACE FOR OPENING.--Notwithstanding any other provisions of the North Dakota Century Code, the governing bodies of the political subdivisions of the state of North Dakota shall accept only sealed bids, whenever by law or administrative decision they are required to call for, advertise, or solicit bids for the purchase of personal property and equipment. Whenever a political subdivision of this state calls for, advertises, or solicits sealed bids it shall designate a time and place for the opening of such bids. If all of the bids are not rejected, the purchase shall be made from the bidder submitting the lowest and best bid meeting or exceeding the specifications called for.

(Emphasis supplied.)

40-22-29. ENGINEER'S STATEMENT OF ESTIMATED COST REQUIRED--GOVERNING BODY TO ENTER INTO CONTRACTS. . . . If all bids [for improvements by special assessment] are not rejected, the governing body shall award the contract to the lowest responsible bidder, upon the basis of cash payment for the work, if such bidder has furnished the certified check and bidder's bond required under the provisions of this chapter.

(Emphasis supplied.)

48-02-06. OPENING BIDS--AWARD OF CONTRACT--BOND

REQUIRED.--At the time and place specified in the notice, the governing board shall open publicly and read aloud all bids [for the construction of public buildings in which the total cost exceeds \$50,000] received, and may reject all bids or award the contract to the lowest and best bidder. . . . (Emphasis supplied.)

The governing body of a municipality shall have the power "to enact or adopt all such ordinances, resolutions, and regulations, not repugnant to the constitution and laws of this state, as may be proper and necessary to carry into effect the powers granted to such municipality or as the general welfare of the municipality may require, and to repeal, alter, or amend the same." N.D.C.C. § 40-05-01(1) The North Dakota Century Code does not expressly authorize political subdivisions to enact ordinances permitting preferences to local residents in relation to public contracts. In the absence of such authority, a local preference ordinance would conflict with those provisions of the North Dakota Century Code requiring that public contracts be awarded to the lowest responsible or lowest and best bidder.

It is my opinion, therefore, that where state law requires competitive bidding and that the bid be awarded to the lowest responsible or lowest and best bidder, a city may not lawfully enact an ordinance providing for a preference to local residents.

If you have any further questions in this matter, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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