

**OPINION
47-139**

March 1, 1947 (OPINION)

HIGHWAYS

RE: Purchase of Material - Necessity for Bids

Your letter of February 27, addressed to the attorney general, has been received and contents duly noted.

You desire the opinion of this department upon the following proposition which is now before your office:

You have a proposal from the Minot Sand and Gravel Company to supply the State Highway Department with all of the necessary materials which you anticipate as being required in 1947, at a fixed price per ton. You enclose a copy of the proposal which you state in no way obligates you to purchase any required amount, but does stipulate a fixed price. The material would be delivered to the Highway Department in quantities which would involve the expenditure of from \$2,000.00 to \$3,000.00 a month during the summer months, which payments might be in excess of the statutory limitations for informal bidding. You state further that the prices quoted on the proposal are reasonable and much lower than you are compelled to pay in many other parts of the state. If you were to request formal bids in this specific instance, the Minot Sand and Gravel Company would be forced to qualify as to their ability to bid, would be required to post a certified check, and would later be required to post a surety bond, and the Highway Department would be obligated actually to purchase whatever tonnage was specifically specified in the award.

You desire the opinion of this office as to whether or not you could enter into this arrangement with the Minot Sand and Gravel Company for the furnishing of the gravel without advertising for bids.

Section 24-0219 N.D.R.C. 1943 provides:

Whenever the cost of any improvement of the purchase price of equipment or materials and supplies shall exceed the sum of three thousand dollars, the state highway department shall proceed to advertise the same, request bids, and award such contracts in the manner provided in this chapter. Whenever any proposed contract, purchase, or work of the state highway department shall be for a sum less than three thousand dollars, it shall be discretionary with the state highway department whether the same shall be awarded after advertising for bids. The department shall award such contracts in the manner provided in this chapter, but where contracts are in excess of one thousand dollars, the state highway department shall request informal bids from as many contractors, manufacturers, and dealers as can be requested conveniently."

The proposal from the Minot Sand and Gravel Company is in the following form:

Minot, North Da

February 19, 19

To: North Dakota State Highway Department

Bismarck, North Dakota

Proposal of Minot Sand & Gravel Company, Minot, N.D. for 1947 S

5000 tons more or less of 1/2 inch washed chips at \$1.52 per ton
dry weight, loaded at plant

15,000 tons more or less of 3/4 inch crushed and screened pit
run material at \$0.60 per ton loaded at plant, and

10,000 tons more or less at \$0.90 per ton delivered at Highway
Shop in Minot

1000 tons more or less of sand at \$0.50 per ton loaded at plant.

Total

Minot Sand & Gravel Company

By: /s/ C. E. Wood.

The proposal of the Minot Sand and Gravel Company is for a total of \$26,100.00. It follows that if you are to accept this proposal, it necessarily comes within the requirement for advertisement for bids. Under the section quoted, where a proposed contract is for a sum less than \$3,000.00, it is discretionary with the State Highway Department whether the same shall be awarded after advertising for bids, but if the amount of the contract is in excess of \$1,000.00, the department is required to request informal bids from as many contractors, manufacturers and dealers as can be requested conveniently.

The proposal of the Minot Sand and Gravel Company appears to be for a total sum of \$26,100.00. It follows, therefore, that if this proposal is to be accepted as a whole, then it would come within the provisions of section 24-0219 and section 24-0220 requiring advertisement for bids.

On the other hand, if it is practicable for the department to enter into separate contracts in amounts less than \$3,000.00, then under the provisions of section 24-0219 it would be discretionary with the department whether bids should be called for by advertisement. It is probable that your department could find it convenient to make such arrangements with the Minot Sand and Gravel Company so that contracts could be made periodically or monthly in amounts of less than \$3,000.00, in which case the only requirement would be for informal bids, as provided by section 24-0219.

NELS G. JOHNSON

Attorney General