

OPINION
57-47

March 22, 1957 (OPINION)

COMPETITIVE BIDS

RE: Preference - Residence

This is in reply to your letter of March 9, 1957, in regard to the preferences to be applied in the letting of contracts for the furnishing of bridge planks.

The statutes to which you refer are sections 24-0235 and 44-0801 of the 1953 Supplement to the N.D.R.C. of 1943. They provide as follows:

"24-0235. Contracts; For Road and Bridge Work and Materials; Awarding To Residents of North Dakota and Giving Preference To Residents of North Dakota. In letting of any contract for the construction of any road or bridge, road work, or for road material or culvert, by the department or by any political subdivision of the state, preference shall be given to all bona fide contractors who have been continually in business and have resided in the State of North Dakota for a period of at least one year prior to filing his bid, if at least ninety percent of the employees of such contractor engaged in highway construction and maintenance shall have been residents of the State of North Dakota for at least one year, and shall be citizens of the United States or shall have declared their intension to become such. Such preferences shall be to the extent of five percent on contracts not exceeding ten thousand dollars, three percent on contracts exceeding ten thousand dollars and not exceeding fifty thousand dollars, and two percent on contracts exceeding fifty thousand dollars. Such preference shall not apply to federal aid projects."

"44-0801. Preference to North Dakota Bidders and Sellers. The board of administration, or any board, commission, city council, board of city commissioners, board of education, board of park commissioners, school board, board of village trustees or any other governing body of any political subdivision of the state, or of any state institution, in purchasing any goods, merchandise, supplies, or equipment of any kind, shall give preference to bidders or sellers resident in North Dakota. In specifying or purchasing goods, merchandise, supplies, or equipment to be purchased, such board shall not specify any trade-marked or copyrighted brand or name, nor the product of any one manufacturer, nor patented product, apparatus, device, or equipment, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit. Utility, fitness, and quality being equal, the bid or offer of a resident North Dakota bidder or seller shall be accepted, when such bid or offer is not more than two percent higher than that of a low bidder or seller who is not a resident of this state."

You inform us that the foreign corporation involved in this case has been registered with the Secretary of State for many years, giving their place of business as Suite 5, 6 and 7 of Little Building, Bismarck, North Dakota, and their agent for services is the C.I.T. corporation. Apparently the corporation has local sales representatives in Bismarck and Fargo, North Dakota. The Bismarck salesman used a room in his home as an office. He gets all company mail at his Bismarck address and has lived in Bismarck for a number of years.

It is the opinion of this office that the corporation to which you have reference is "a resident North Dakota bidder or seller" as that term is used in section 44-0801 of the 1953 Supplement to the N.D.R.C. of 1943 and as that term is defined by section 44-0802 of the N.D.R.C. of 1943. It is further our opinion that this corporation is "a bona fide contractor who has been continually in business and has resided in the State of North Dakota for a period of at least one year prior to filing his bid", as that term is used in section 24-0235 of the N.D.R.C. of 1943. The proviso in regard to at least ninety percent of the employees of such contractor engaged in highway construction and maintenance being residents of the state of North Dakota and citizens of the United States in said section 24-0235 is inapplicable to the instant situation, in so far as this, in our opinion, involves the furnishing of road material or culverts rather than the construction of any road or bridge or road work.

It is, therefore, our conclusion that the preference specified in section 24-0235 of the N.D.R.C. of 1943 is applicable and will be applicable to the foreign corporation described in paragraph 3 hereof.

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Attorney General