

N.D.A.G. Letter to Slorby (Aug. 6, 1990)

August 6, 1990

Mr. Tom P. Slorby
Ward County State's Attorney
County of Ward
Minot ND 58701

Dear Mr. Slorby:

Thank you for your May 11, 1990, letter requesting my opinion whether a county may receive sealed bids once each year based upon a unit price for each different type of work.

N.D.C.C. § 24-05-04 requires the board of county commissioners to advertise for bids for contracts for highway improvements if the cost is estimated to exceed \$15,000. If the proposed contract involves a bridge project exceeding \$400 the project must be placed out on bids. N.D.C.C. § 24-08-01.

Because counties are created by statute, the board of county commissioners may only do those things which have been authorized by statute. Dornacker v. Olson, 248 N.W.2d 844, 849-50 (N.D. 1976). However, when authorized, the board may exercise its own discretion as to how a particular duty is carried out. Haugland v. City of Bismarck, 429 N.W.2d 449 (N.D. 1988).

I am unable to find any statutes or case law which prohibit a board of county commissioners from requesting bids on a unit basis and contracting on that basis for the work which will be completed that year. Thus, it is my opinion that a board of county commissioners may request bids on a per unit basis for an entire year's work. Care should be taken in following this course of action however. In the situation you describe bidders would not have a contract with the county and could not be bound to the bid price unless they were given some consideration to bind them.

Furthermore, a bidder's bond in most cases would only guarantee the bid price for a reasonable period of time, usually thirty days. If the surety were to guarantee the price for a longer period of time, the bidder's cost for the bond would increase. Additionally, the bidder might be unable to obtain bonds for other bids or projects because of the outstanding "obligation" on this bond.

These concerns could possibly were to enter into a contract supply materials or do work for be alleviated if the board with the winning bidder to that year.

I trust that this answers your question.

Sincerely,

Nicholas J. Spaeth

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