



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 14, 1975

Opinion No. 75- 118

Mr. Bernard V. Borst
Senior Assistant City Attorney
Suite 600 - City Building Annex
Wichita, Kansas 67202

Dear Mr. Borst:

You requested an opinion from this office concerning whether the Board of Park Commissioners, in purchasing automobiles, could specify a particular manufacturer and still be in compliance with the bidding procedure required by K.S.A. 13-1455. You indicated that in Wichita, such a procedure would still result in competitive bidding, as there are approximately four (4) dealerships of each of the major manufacturers.

On this point, K.S.A. 13-1455 provides:

"The city purchasing agency by and in conjunction with the governing body of the city, shall purchase all supplies and equipments for the city for each and every department thereof, and shall keep true and accurate account of all purchases so made and shall make a report monthly to the governing body of all purchases made and the department for which made. Such city purchasing agent shall advertise for bids, in a daily paper to be designated by the governing body, for all purchases which exceed in amount the sum of one thousand dollars." [Emphasis Added]

You stated in our phone conversation that the Wichita City Commission, pursuant to the home-rule statutes, has enacted a charter ordinance which raises the monetary figure set out in the statute to three thousand dollars.

It is of nearly universal acceptance that statutes such as this are based upon the premise that the state has a public interest in securing honest competition and in protecting the taxpayers from the

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evils of favoritism and high prices in the letting of contracts for public works. Housing Authority of the City of Opelousas, La. v. Pittman Construction Co., 264 F.2d 695, (5th Cir. 1959), Grande & Sons, Inc. v. School Housing Committee of North Reading, 334 Mass. 252 135 N.E.2d 6 (1956). 63 C.J.S. Municipal Corporations § 996 et seq. (1950). Implicit in this is the desire to obtain the lowest responsible bidder that uninhibited competition can produce. State v. La Tera, 35 N.J. 75, 171 A.2d 311 (1961). Statutes requiring competitive bidding are designed to benefit the taxpayer and not the potential bidders. Accordingly, these statutes should be construed with sole reference to the public good and should be rigidly adhered to by the courts. Greenburg v. Fornicola, 65 N.J. Sup. 100 167 A.2d 177 (1961). Although, basic to the service of this purpose is the necessity of having a common standard and definite, precise specifications upon which to fully appraise potential bidders, the specifications must be free from restrictions, the effect of which is to stifle full, true competition. Baldwin-Lima-Hamilton Corp. v. Superior Court, 208 C.A.2d 404 25 Cal. Rptr. 798 (1961).

Notwithstanding the above, the requirement of competitive bidding is not violated by the adoption of specifications requiring a particular type of construction or even a particular product provided the city prepared those specifications in the exercise of sound discretion and not arbitrarily and in bad faith. William A. Carey & Co. v. Borough of Fairlawn, Bergnon County, 37 N.J. Sup. 159, 117 A.2d 140 (1955).

The Kansas Supreme Court has not yet had occasion to consider the language of K.S.A. 13-1455. In light of that and the above general principles, it is the opinion of this office that the Board of Park Commissioners, in the bid proposal, cannot specify the manufacturer nor draw the specifications in such a manner as to exclude all but the desired producer.

To conclude otherwise results in a failure to obtain the desired uninhibited competition. Although the proposed hypothetical incorporates certain characteristics of competition between the various retailers of a particular manufacturer, this second-tier type of competition is limited by the amount each retailer is charged by the manufacturer. It is presumed the manufacturer sells the automobiles to each retail dealer at the same basic cost. Accordingly, the only type of competitive bidding that results is in the form of what minimum amount, over manufacturers' cost, each retailer can afford to sell. In other words, the price differential in the bids should be within a very small, predictable range. This type of competitive bidding differs markedly from the situation where various retailers are submitting bids based on different manufacturers' costs.

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In this latter situation, the public is assured that the least expensive product which meets the requirements of the bid specifications is purchased. In the former, the public is assured only that the least expensive retailer of a particular manufacturer receives the contract.

Secondly, it is difficult to conceive of a manner in which the specifications for an automobile could be drawn so as to exclude all but the desired manufacturer and still be considered within the exercise of sound discretion and not arbitrary. Comparison of the various makes of automobiles produced by the three (3) major manufacturers reveals a marked similarity between the specifications. The differences are, for the most part, inconsequential relative to the potential purposes for which the Board of Park Commissioners require these vehicles. There seems to be no appropriate manner to draw the specifications by which all the non-desired manufacturers and retailers are excluded and still retain some reasonable relationship to the requirements of the Board relative to the proposed use of the vehicle.

Accordingly, this office concludes that insofar as the proposed purchase concerns automobiles or other vehicles, the Board of Park Commissioners cannot specify a particular manufacturer nor draw the specifications in such a manner as to affect the same result.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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