

COUNTIES: Design and construction of county hospital addition - competitive bidding. Iowa Code §§ 331.341(1), 347.13(2), 384.96, 384.97, 384.102 (1993). The plans, specifications and entire contract for a proposed building must be available to enable contractors to competitively bid on the project and allow for inspection by all interested parties and bidders. Soliciting a package bid to both design and build a county hospital addition is not authorized and would be contrary to the competitive bidding process. (Olson to Lytle, Van Buren County Attorney, 4-5-94) #94-4-2(L)

April 5, 1994

Richard H. Lytle
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Dear Mr. Lytle:

We have received your request for an opinion addressing competitive bidding procedures for construction of an addition to a county hospital. Specifically, you ask whether a single bidding process may encompass one contract for both design and construction of the improvement. Upon review of relevant legal principles, we find that the answer is no.

County hospitals organized pursuant to Iowa Code chapter 347 are creatures of the legislature, and therefore they have only such powers as the legislature grants. 1980 Op.Att'yGen. 388, 390-91. The power of a county hospital board of trustees regarding construction of buildings is set out in Iowa Code section 347.13(2) (1993) as follows:

[Said board of hospital trustees shall] cause plans and specifications to be made and adopted for all hospital buildings, and advertise for bids, as required by law for other county buildings, before making a contract for the construction of a building.

Iowa Code section 331.341(1) provides that when the estimated cost of a public improvement, except improvements which may be paid for from the secondary road fund, exceeds twenty-five thousand dollars, the contract letting procedures in sections 384.95 to 384.103 must be followed. The definition of "public improvement" in section 384.95(1) includes a county building.

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Presumably, the board of trustees in this case has determined that the building will cost more than \$25,000. That being the case, before entering into a contract for the public improvement, Code section 384.102 requires the board to hold a public hearing on "the proposed plans, specifications, and form of contract, and estimated cost for the improvement." Prior to the hearing the entire contract must be filed in the county clerk's office along with the plans and specifications. Dunphy v. City Council of City of Creston, 256 N.W.2d 913, 919 (Iowa 1977). After considering objections from any interested party at the hearing, the board shall by resolution enter its decision on the plans, specifications, contract and estimated cost. Iowa Code § 384.102.

Filing the plans, specifications and contract is not only for the benefit of the general public, but for contractors who wish to competitively bid on the project as well. For projects which are estimated to cost more than \$25,000, the project must be advertised soliciting sealed bids. Iowa Code § 384.96. The notice to bidders must be published in a newspaper in accordance with sections 362.3 and 384.96, and must include the information items in section 384.97. Some of those items are the time and place for filing sealed proposals, the time and place the proposals will be opened and considered, the general nature of the public improvement on which bids are requested, and any other information the governing body deems appropriate.

The general rule on competitive bidding is as follows:

Public authorities cannot lawfully ask each bidder to make his own plans and specifications and to base his bid thereon, and then, after the bids are received, adopt one of the offered plans with its specifications and accept the accompanying bid. Such a procedure would be destructive of competitive bidding and would give public officials an opportunity to exercise favoritism in awarding contracts. A contract cannot be said to have been let to the lowest and best bidder unless all bidders have been invited to bid upon the same specification.

64 Am. Jur. 2d Public Works and Contracts § 50, at 901-02 (1972).

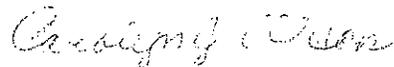
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Competitive bidding in granting public improvement contracts is for the protection of the public. Istari Construction, Inc. v. City of Muscatine, 330 N.W.2d 798, 800 (Iowa 1983); 1983 Op.Att'yGen. 57, 61. To allow truly competitive bidding, the proposed plans and specifications on file for the project should be prepared by a disinterested competent engineer and available for inspection by interested parties and all bidders. Northwestern Light & Power Co. v. Town of Grundy Center, 220 Iowa 108, 261 N.W. 604, 609-10 (1935). The plans and specifications should be sufficiently specific in accordance with established and recognized standards to enable all bidders to bid upon the same identical proposition. Id. It is the duty of bidders to base their bids on the plans and specifications on file. Brutsche v. Incorporated Town of Coon Rapids, 220 Iowa 1295, 264 N.W. 696, 698 (1936).

There is no basis for competitive bidding where a successful bidder prepares the plans and specifications upon which that bidder submits a proposal, when those plans and specifications are not open to inspection nor available to other bidders. Town of Grundy Center, 220 Iowa at 120, 261 N.W. at 610. Such a procedure "would in effect abolish the rule entirely which requires competitive bidding" and would "open the door to fraud and favoritism, and in effect nullify the very purpose of the law requiring competitive bidding." Id.

We therefore conclude that soliciting a package bid to both design and build the hospital addition is not authorized and would be contrary to the competitive bidding process.

Sincerely,



CAROLYN J. OLSON
Assistant Attorney General

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