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OFFICE OF THE ATTORNEY GENERAL  
State of California

GEORGE DEUKMEJIAN  
Attorney General

OPINION  
  
of  
  
GEORGE DEUKMEJIAN  
Attorney General  
  
Randy Saavedra  
Deputy Attorney General

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No. 81-610  
  
AUGUST 20, 1981

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THE HONORABLE JOHN A. DRUMMOND, COUNTY COUNSEL,  
COUNTY OF MENDOCINO, has requested an opinion on the following questions:

1. May a county establish bidding procedures pursuant to Government Code section 25454 under which a contractor is entitled to preference solely on the ground that his place of business is located within that county?

2. Under the provisions of Government Code section 25454, may a county refuse to grant a contract to the lowest responsible bidder solely on the grounds that his place of business is not located within that county?

CONCLUSION

1. A county may not establish bidding procedures pursuant to Government Code section 25454 under which contractors are entitled to preference solely on the ground that their places of business are located within that county.

2. A county may not, under the provisions of Government Code section 25454, refuse to grant a contract to the lowest responsible bidder solely on the grounds that his place of business is not located within that county.

## ANALYSIS

Government Code section 25450<sup>1</sup> *et seq.* establishes the conditions and circumstances under which California counties must let to contract the construction, alteration and repair of public buildings. Contracts not assigned in accordance with these Code sections are void (§ 25450).

Section 25454 establishes the criterion for awarding a contract. It reads in full:

*“The board shall award the contract to the lowest responsible bidder, and the person to whom the contract is awarded shall perform the work in accordance with the plans, specifications, strain sheets, and working details, unless the contract is modified by a four-fifths vote of the board. (Emphasis added.)*

We have been asked whether the terms of section 25454 allow preference to be shown to local contractors or allow the lowest responsible bidder to be rejected solely because his business is not located within the county in which the work is to be done.

First we note that the use of the word “shall” makes award of the contract to the lowest responsible bidder mandatory. Not only does the word “shall” usually denote a mandatory obligation (see Webster’s 3rd New Internat. Dict., p. 2085) but the Government Code itself states that “ ‘[s]hall’ is mandatory. . . .” (§ 14) for the purpose of constructing the code.

Therefore, under the plain meaning of section 25454 a county board of supervisors must award a contract to the responsible bidder who makes the lowest bid. The law provides for no exceptions nor for the exercise of discretion beyond that necessary to determine which bidders are “responsible.” In this context, the Supreme Court stated that the term “responsible” “includes the attribute of trustworthiness, . . . [and] also has reference to the quality, fitness and capacity of the low bidder to satisfactorily perform the proposed work.” (*City of Inglewood-L.A. County Civic Center Auth. v. Superior Court* (1972) 7 Cal. 3d 861, 867.) The court went on to hold:

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<sup>1</sup>All unidentified references are to the Government Code.

“Thus, a contract must be awarded to the lowest bidder unless it is found that he is not responsible, i.e., *not qualified so do the particular work under consideration.*” (*Id.*, at p. 867; emphasis added.)

As the bidder’s place of business has no bearing on his qualifications to do the work, it would provide no basis for finding a bidder not responsible.

In earlier opinions we have considered whether preferences may be granted to local bidders in recognition of the convenience of dealing with persons who are readily available if problems arise. We concluded that such preferences were contrary to the basic purpose of competitive bidding which is to protect the best interests of the public.

In 48 Ops. Cal. Atty. Gen. 11(1966), we concluded that in the absence of statutory authorization such a preference granted by a local school board was improper in light of Education Code section 15951 which required contracts to be let to the lowest responsible bidder. In addition, we concluded that a preference for local bidders would improperly promote favoritism and unfairness, in derogation of the public interests competitive bidding was intended to protect.

In Indexed Letter 68–129, an unpublished opinion issued by this office dated May 27, 1968, we concluded that even in the absence of a specific statutory requirement to let a contract to the lowest responsible bidder, a county could not grant a preference to local bidders in purchase contracts as such a preference would be contrary to the public purposes intended to be furthered by competitive bidding.

In both these opinions we suggested that any advantages obtainable by giving preferences to local businesses could be obtained by placing minimum standards of service, repair, or maintenance in those bidding specifications where such standards are relevant.

Our statements in the above-cited opinions concerning the purpose of competitive bidding were confirmed by language in *City of Inglewood*, to the effect that it was in the public interest to have contracts awarded without favoritism and at the lowest price consistent with reasonable quality.

In summary, the plain language of the statute as well as the holding of the California Supreme Court in *City of Inglewood* makes it clear that in awarding a contract under section 25454 the county may only consider the ability of the lowest monetary bidder to “satisfactorily perform the proposed work.” Therefore, bidding procedures cannot be

established which give preference to a contractor based on the location of his place of business. Nor can a county refuse to grant a contract to the lowest responsible bidder based on the location of his place of business.

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