

Opinion No. 68-34

March 15, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Albert T. Cochran State Purchasing Agent State Capitol Building Santa Fe, New Mexico

QUESTIONS

Is it legal for any agency or commission, department or institution of the State of New Mexico to insist in its requisition as a part of its specifications, terms and conditions, that a Union statement be required for acceptance of Invitation to Bid for printing and subsequent award of Purchase Order or contract?

CONCLUSION

No.

OPINION

{*60} ANALYSIS

The Public Purchases Act, which applies to the purchase of some public printing provides in Section 6-5-26, N.M.S.A., 1953 Compilation in part as follows:

"Except as otherwise provided by law, all purchases of materials and services shall be made in accordance with the following provisions:

A. the central purchasing office **shall purchase all materials and services by issuing purchase orders based on the lowest responsible bid when bids are required** and at the best obtainable price when bids are not required." (Emphasis added).

The definition of "responsible bid" and responsible bidder" are defined as follows in Section 6-5-18, N.M.S.A., 1953 Compilation:

"H. 'responsible bid' means a written offer to furnish materials or services in conformity with standards, specifications, delivery terms and conditions, and other requirements established by the user or central purchasing office;

I. 'responsible bidder' means a bidder who submits a responsible bid, and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, service reputation and experience are adequate to make satisfactory delivery of the materials or services on which he bids; and who has not violated, or attempted to violate, any provision of the Public Purchases Act."

The Public Purchases Act requires that purchases be based on the lowest responsible bid. The act defines responsible bidder without stating that union labor is required. It is our opinion that it would not be legal to require a union statement in the acceptance of an invitation to bid for printing because to do so would possibly shut out bidders who qualify under the plain language of the Act.

It should be noted that Sections 10-1-8, N.M.S.A., 1953 Compilation, et seq., contain nothing to the contrary. These sections apply to public printing. They provide generally for the award of printing contracts to New Mexico firms. New Mexico firms as defined therein are not required to utilize union labor.

By: Roy G. Hill

Assistant Attorney General