

Opinion No. 53-5664

February 6, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Floyd Santistevan Assistant Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

{*53} On January 29th you addressed a letter to this office requesting an opinion concerning the method of {*54} advertising for and accepting bids under the laws of the State of New Mexico for public school buildings where those school buildings have qualified under Public Law 815 -- 81st Congress, and under the regulations of the Housing and Home Finance Agency based upon that federal law.

Public Law 815 permits the federal agency charged with the responsibility under that law with distribution of funds to school districts which come under the provisions of that law and to regulate the various phases of the purchasing of school buildings, equipment and materials. The Department of Education of the State of New Mexico and the district engineer of the Housing and Home Finance Agency have agreed on certain regulations as hereinafter set out, to wit:

1. Applicants to submit lists of proposed equipment to the State Department of Education in accordance with Volume IV procedures.
2. The State Department of Education to submit lists to the Field Engineer, Housing and Home Finance Agency, for necessary approvals in accordance with Volume IV procedures.
3. When lists are approved, applicants will advertise for bids in accordance with state and local laws. If special circumstances warrant, advertising for bids may be revised by special written authority of the State Board of Finance, the Housing and Home Finance Agency to be furnished with copies of this authority.
4. Applicants to open bids as advertised.
5. Submit to Field Engineer for necessary approvals:
 - (a) Certified tabulation of bids.
 - (b) Resolution of the applicants governing body of intent to award purchases, stating the name of the successful bidders and the items to be purchased.
6. Upon receipt of necessary approvals of Intent to Award, applicant will conclude purchase arrangements by notifying successful bidders by letter to make delivery, etc.

7. Send all invoices to the Field Engineer for approval prior to making payment to vendors.

Paragraph 3 of the regulations as set out above states that when lists of proposed equipment have been approved by the field engineer and by the State Department of Education, the advertising for bids will be in accordance with the state and local laws. The state law governing all bids by any public agency, state institution, board, local and county school boards and boards of county commissioners is set forth in § 6-404, N.M.S.A., 1941 Comp., which law reads as follows:

"Purchases, or contracts for materials or labor, or both materials and labor to be furnished or performed, made at any one time which involve the expenditure of more than \$ 200 but less than \$ 500 shall only be made or entered into after obtaining at least three (3) bona fide written bids. Where goods are to be purchased, such bids shall be from regular dealers in the commodity being purchased.

{*55} "Purchases, or contracts for the construction, repair or improvement of buildings, or for materials or labor to be furnished or performed, which involves the expenditure at any one time of more than \$ 500 shall only be made or entered into after notice, that bids will be received at a time and place designated in the notice, has been published for at least once each week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the purchaser is located.

"The bid of the lowest responsible bidder in either of the above cases shall be accepted, except where the specifications of the goods offered do not meet the specifications of the purchaser, the lowest bid which does meet such specifications shall be accepted, provided, however, a purchaser may reject all bids. Separate purchases of the same or similar goods from the same or different dealers at the same time or about the same time where each purchase does not involve the sum of \$ 200 but the aggregate of such purchases exceeds the sum of \$ 200 shall be considered as a single purchase involving more than \$ 200.

"In any case where a school board, board of county commissioners, governing body of any state institution or governing body of any municipality finds that it is necessary for the preservation or safeguard of life and property to make an expenditure exceeding \$ 500 before the time required for publication of notice for bids as herein provided, such boards, commissioners or governing bodies may by resolution unanimously passed, declare that such an emergency exists and make the necessary purchase, if otherwise permitted by law, without publication of such notice, but in such event the purchaser shall obtain at least three (3) written bids as herein provided for purchases involving more than \$ 200 but less than \$ 500. If three (3) such bids cannot be secured the purchaser may make the purchase or enter into the contract with the approval of the state board of finance.

"Any purchase or sale made in violation of this section shall be void, provided that the requirements with reference to obtaining bids shall not apply where the public interests

will be better served and where it is impracticable to obtain bids. In such cases the purchaser shall secure the written approval of the state board of finance for making such purchases or entering into such contracts without competitive bids."

You will note that this law requires, in the case of any expenditure over \$ 500, that the bids be advertised in a newspaper of general circulation in the county where the purchaser is located for two consecutive weeks. This definition has been construed by previous Attorney General's opinions to mean that at least two consecutive advertisements are necessary; however, in the event the federal agency desires additional advertisements there is nothing in the law which will prevent their so ordering, so long as two consecutive advertisements are made.

The federal regulations, as submitted to this office and as set out above, do not require that the lowest bid be accepted but our state law requires that the lowest "reasonable" bid be {*56} accepted. Thus there should be some bona fide reason set forth for not accepting the lowest bid. This reason can be based on a multitude of circumstances, among which are indicated inability to deliver, personal responsibility of bidder, and many others.

Therefore, it is the opinion of this office that the federal regulations are in no way inconsistent with the laws of the State of New Mexico, and the state law on advertising bids must be followed, but additional regulations by the federal agency are not out of order where not inconsistent with the state law.

We sincerely hope that this answers your inquiry.

By: Fred M. Stanley

Assist. Attorney General