

**Opinion No. 46-4854**

February 12, 1946

**BY:** C. C. McCULLOH, Attorney General

**TO:** C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*187} We are in receipt of your letter of February 11, 1946 to which is attached a letter by the electric light and power department manager of the Tucumcari municipal light department, the bids of the Worthington Pump and Machinery Company and the Nordberg Manufacturing Company, an analysis of the bids in the form of a letter from R. W. Beck and associates to the Mayor and city council of the City of Tucumcari, power board minutes of January 10th and 11th, city attorney's letter of January 12, power and light department letter of January 17, letters of January 17 and 23, city attorney's letter of January 25, and minutes of the special meeting of the Tucumcari city council of January 26.

It appears that the City of Tucumcari called for bids receivable until January 10, 1946, for certain engines, generators and exciters; that both of the above named companies submitted bids and that the Worthington bid was considerably lower than the Nordberg bid. From the letter of Mr. Beck it appears, however, {\*188} that the Worthington bid did not meet specifications. In view of the foregoing, you ask our opinion as to whether the statutory procedure has been followed and whether the city council may accept the Nordberg bid.

Section 6-404 of the 1941 Compilation provides in part as follows:

"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."

In view of the foregoing, since it appears that the Nordberg bid was the lowest bid which met specifications, it is my opinion that the city may properly accept the same. I, of course, am not passing on whether the Worthington bid did meet specifications, but am merely relying on the letter from Beck et al.

I have examined the enclosures and find that the provisions of Section 6-404 have been fully complied with.

By ROBERT W. WARD,

Asst. Atty. General