

Bidding

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Bidding

TO: Citizen John Pejko
FROM: David V. Gliko, City Attorney
DATE: June 29, 1998
SUBJECT: American Agri-Technology Project

The union's request that the City's contract in the American Agri-Technology Project be exclusively limited to union labor and/or goods bearing the union label, has been referred to me for review.

Public contracting by municipalities is entered into pursuant to 7-5-4302 MCA and "must be let to the lowest responsible bidder." Early on, in 1901, the Montana Supreme Court addressed the issue holding such exclusive union bidding and contracting void. In *State Ex. Rel. R.M.F. Co. v. Toole*, 26 Mont. 22, the Court said:

Letting the contract to the "lowest responsible bidder" necessarily implies equal opportunity to and freedom in all whose interests or inclinations might thus impel them to compete at the bidding. No one may be compelled to bid at such a letting but there must be entire fairness and freedom in competition. ***the manifest purpose in requiring the contract to be let to "the lowest responsible bidder" is to protect the state against imposition and extortion. A contract entered into by the acceptance of a bid for public work tendered pursuant to an advertisement limiting the right to bid to person employing or who will in the future employ union labor only, is necessarily void; the advertisement is illegal, for it tends to defeat the very purpose it was intended by the legislature to subserve....Stipulation in a public contract for employment of union men only is illegal. *Toole*, supra, 34, 35.

The same rule applies in virtually all other jurisdictions regarding public contracts. *McQuillin on Municipal Corporations*, 29-48.

Therefore, the request for exclusive union consideration in the public bidding and/or contracting of this project cannot legally be considered by the City of Great Falls.

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