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BID—DIVISION OF PURCHASES AND PRINTING, DEPARTMENT OF FINANCE—MAY INCLUDE ON BID FORMS NOTATION: "ONLY CASH DISCOUNTS OF 30 DAYS OR MORE WILL BE OBSERVED."

SYLLABUS:

The Division of Purchases and Printing, Department of Finance, may include on its bid forms the notation that "only cash discounts of 30 days or more will be observed."

Columbus, Ohio, June 14, 1949

Mr. J. W. Bush, Superintendent, Division of Purchases and Printing
Department of Finance, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Yesterday two bids were received on sugar, one total being \$1130.25, the other \$1108.50. Terms quoted on the \$1130.25 bid were 2%-10 days, therefore making the higher bid appear low by about 85c.

"From a practical standpoint, I find that it is almost impossible to have bids completely processed, vouchered and paid for within a 10 days period. Investigation also shows it has been the practice of the State to claim discounts whenever the bills are paid. In many cases the supplying company then requests the State to make a refund of the discounts which have been taken, this the State does. You can see that this causes a great deal of paper work, and, in certain cases allows the bid actually to go to one, other than the low bidder.

"I would like to suggest in the future all bids carry a notation, 'Only cash discounts of 30 days or more will be observed' or, whatever would be the proper wording to accomplish this fact.

"Will your office please give me a ruling as to our authority to include this notation on bids."

Section 196-9 of the General Code provides as follows:

“The state purchasing agent may prescribe such conditions under which bids will be received and terms of the proposed purchase as he deems necessary, provided, however, that all such conditions and terms shall be reasonable and shall not unreasonably restrict competition, and further provided that bidders may bid upon all or any item of the supplies and equipment listed in such notice.”

The purpose of Section 196-9 is to give the state purchasing agent freedom of action in prescribing conditions under which bids will be received. The legislature realized that no one set of rules could be established that would cover each and every situation. They took into consideration the fact that situations might arise in which a set of rigid regulations could not be equitably or economically applicable. Therefore, they gave to the state purchasing agent the power to use his own judgment and prescribe conditions under which bids will be received.

Section 154-37 of the General Code provides in part as follows:

“The department of finance shall *succeed to and exercise all powers of the state purchasing agent* in the office of the secretary of state, and auditor of state with respect to the purchase of supplies and equipment required for the use and maintenance of state officers, boards and commissions, the commissioners of public printing and the supervisor of public printing, and shall exercise all powers and perform all duties as to purchases heretofore vested in the Ohio board of administration under the provisions of section one thousand eight hundred and forty-nine of the General Code.” (Emphasis mine.)

Thus, the Division of Purchases and Printing of the Department of Finance may prescribe such terms and conditions under which bids will be received as they deem necessary, provided, they are reasonable and do not unreasonably restrict competitive bidding.

In view of the situation described in your request, the condition provided by such a notation cannot be said to be unreasonable. It would apply equally to all bidders and would not be discriminatory. The purpose is to reduce the time and expense of processing the bids and would be beneficial to the state and taxpayers. It is not an arbitrary condition but is based on a practical and logical reason.

Under the procedure now followed it would be possible for the bid to go to one who is not actually the low bidder. Assuming that bids may be processed within 30 days, this proposed provision will have the effect of

allowing the bid to go to the *actual* low bidder rather than to the *apparent* low bidder. It seems logical to assume that the competitive bidding will become more keen if the bid goes to the actual low bidder. Thus, the proposed condition will not, as pointed out above, unreasonably restrict competitive bidding.

For the above reasons, I believe that the Division of Purchases and Printing may prescribe the condition "only cash discounts of 30 days or more will be observed" on bids.

Respectfully,

HERBERT S. DUFFY,
Attorney General.