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June 4, 1990

Hon. Hubert Brodell  
Jonesboro Mayor  
City Hall  
Jonesboro, AR 72401

RE: Construction work - Technology Drive East

Dear Mayor:

I have reviewed the provisions of Arkansas Code Annotated § 4-1.11 which, in brief, prohibits any city official from furnishing or giving to anyone else any property belonging to the city.

As I understand the arrangement concerning improvements to be made on the street in the technology park, bids are being asked from contractors to provide labor and fuel to perform this work, and also that the contractor would provide certain equipment with the city providing certain other equipment. The question was asked as to whether the city's providing its own equipment to do this work upon a public street would be in violation of the statute quoted above.

It is my firm opinion that it would not. First of all, this work is being done on a public street which is well within the city's functions. Secondly, I cannot see under this arrangement where any monetary benefit is being gained by these contractors or the successful bidder in this case. Out of this arrangement, the city is simply reducing the cost by using its own equipment. In this manner, the balance of cost to be furnished by the outside contractor will be offered to all contractors on an equal basis and the type of work they are asked to furnish is very specific. In this kind of an arrangement, it is the city (and therefore the public) that is getting the benefit of the use of city equipment, not the private contractor.

Therefore, I see no violation of either the specific terms of the statute nor its intent.

Very truly,

  
Charles Frierson, III

CF:bg

SPECIAL PROVISIONS

A: EQUIPMENT TO BE FURNISHED BY THE CITY OF JONESBORO

1. E-200 INTERNATIONAL 12 CY SCRAPER
2. MODEL 12 CATERPILLAR MOTOR GRADER
3. 1586 INTERNATIONAL DUAL WHEELED TRACTOR
4. 1-20' DISC
5. 1-60" DOUBLE DRUM SHEEPS-FOOT ROLLER
6. 1-PULL-TYPE NEUMATIC WOBBLE WHEELED ROLLER
7. 1-REX MODEL 600 VIBRATORY ROLLER
8. 1-FORD 1500 GAL. WATER TRUCK
9. 1-D-5 CATERPILLAR DOZER

THE CITY OF JONESBORO PROPOSES TO FURNISH TO THE SUCCESSFUL BIDDER ON THIS PROJECT THE EQUIPMENT LISTED ABOVE, TOGETHER WITH MAINTENANCE ON SAME. THE BIDDER SHALL MEET WITH WITH THE CITY AND/OR IT EMPLOYEES OR AGENTS TO DETERMINE, BY SEPARATATE AGGREMENT, PRIOR TO SUB-MITTING A PROPOSAL, THE EXTENT AND TIME FRAME AND TERMS OF SAID MAINTENANCE AGREEMENT.

THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO FURNISH OIL, GREASE AND FUEL FOR THE ABOVEMENTIONED LOANED EQUIPMENT, AND SHALL BE REQUIRED TO TO CARRY INSURANCE ON THE EQUIPMENT IN THE MINIMUM AMOUNTS AS SET OUT IN THE INSURANCE REQUIREMENTS HEREIN.....

THE SUCCESSFUL BIDDER SHALL EXERCISE CARE AND CAUTION WHILE USING THE LOANED EQUIPMENT OWNED BY THE CITY, AND SHALL OPERATE SAME ONLY WITH QUALIFIED AND EXPERIENCED OPERATORS. WILLFUL AND NEGLIGENT ABUSE OF SAID EQUIPMENT ON THE PART OF THE SUCCESSFUL BIDDER AND HIS AGENTS SHALL CONSTITUTE CAUSE FOR BREACH OF CONTRACT.

DAILY ROUTINE SERVICING AND INSPECTION OF THE LOANED EQUIPMENT WILL BE THE OBLIGATION OF THE SUCCESSFUL BIDDER.

B: MATERIAL TO BE FURNISHED BY THE CITY OF JONESBORO

1. 120 L.F. 54" RCP PLUS 2 END SECTIONS (ONE LINE 120' LONG)
2. 106 L.F. 43" X 27" 14 GA. ASPHALT COATED C.M.P. W/ 2-2' CONNECTING BANDS PLUS 4 END SECTIONS (ONE LINE = 50') (ONE LINE = 56')
3. 54 L.F. 50' X 31" 14 GA. ASPHALT COATED C.M.P. W/ 1-2' CONNECTING BANDS PLUS 2 END SECTIONS (ONE LINE 54')
4. 80 L.F. 22" X 13" 14 GA. ASPHALT COATED C.M.P.  
(2 LINES 40' LONG)
5. 108' 24" R.C.P PLUS 2 END SECTIONS (ADD 54' TO EAST AND WEST ENDS OF EXISTING 40' IN-PLACE AT ARKANSAS HIGHWAY NO. 18)
6. 30 L.F. 29" X 18" 14 GA. ASPHALT COATED C.M.P. (ONE LINE 30' LONG)
7. 60 L.F. 48" 14 GA. ASPHALT COATED W/ ARMCO 10-C FLAP GATE, OR EQUIVALENT W/ 1-2' CONNECTING BAND (ONE LINE = 60' LONG)
8. 120 L.F. 42" 14 GA. ASPHALT COATED C.M.P. WITH 2-2' CONNECTING BANDS (2 LINES 60' LONG) PLUS 2 - 42" ARMCO 10-C FLAP GATES, OR EQUIVALENT

SPECIAL PROVISIONS CONTINUED

C: BASIS OF AWARD: LUMP SUM CONTRACT

THIS CONTRACT WILL BE AWARDED TO THE QUALIFIED BIDDER WHO SUBMITS THE LOWEST LUMP SUM BID FOR THE WORK TO BE PERFORMED. WHERE UNIT PRICES ARE CALLED FOR IN THE BID SCHEDULE, THE BIDDER MUST SUBMIT UNIT PRICES FOR ITEMS OF WORK TO BE PERFORMED. THESE UNIT PRICES WILL BE USED ONLY IN THE EVENT THAT ADDITIONAL WORK IS CALLED FOR, OR FOR OMITTED OR CHANGED WORK, OR IN THE EVENT THAT THE ESTIMATED QUANTITIES ARE FOUND TO BE ERROR  $\pm 10\%$ .....

D: LAYOUT OF WORK: THE ENGINEER SHALL FURNISH COMPLETE DETAILED LAYOUT OF WORK TO BE PERFORMED ONE TIME AND ONE TIME ONLY BY OFFSET BASELINES AND GRADE STAKES. SAID STAKES AND GRADES SHALL BE PERSERVED BY THE CONTRACTOR. IN THE EVENT ANY OF THE STAKES OR CONTROL ARE DESTROYED, THE ENGINEER WILL RE-SET SAME AND THE CONTRACTOR WILL BE CHARGED AND WILL PAY THE ENGINEER AT THE RATE OF \$76.00 DOLLARS PER HOUR FOR A THREE MAN SURVEY PARTY FOR RE-SETTING SAID CONTROL STAKES.

E: SCOPE OF WORK: THIS PROJECT BASICALLY INVOLVES THE OBLIDERATION OF AN EXISTING RAILROAD DUMP, THE FILLING AND LEVELING OF EXISTING DITCHS AND FLUMES ADJACENT THERETO AND THE SELECTIVE CLEARING AND GRUBBING OF SAME. THE OPERATION IS APPROXIMATELY 3/4 MILE IN LENGTH.

ADDITIONALLY, THE WORK INVOLVES THE EXCAVATION OF DRAINAGE SWALES APPROXIMATELY 2 MILES IN LENGTH, THE INSTALLATION OF DRAINAGE CONDUITS WITH APPURTENANCES, AND PLACING AND STABILIZATION OF SWALE EXCAVATION ON A PROPOSED ROADWAY APPROXIMATELT' ONE MILE IN LENGTH.