

LETTER OPINION
99-L-110

November 18, 1999

Honorable Tom Fischer
State Senator
2823 64th Ave. S.
Fargo, ND 58104-7407

Dear Senator Fischer:

Thank you for your letter asking whether Fargo City Code § 13-0509 conflicts with state bidding statutes.

The portion of Fargo City Code § 13-0509 that you question is as follows:

13-0509. Awarding of bid contracts - Bond required - The contract or contracts [for the collection, transportation or disposal of solid waste], as the case may be, shall be awarded to the lowest responsible bidder or bidders, if to be let by competitive bids, except as provided as follows: if the solid waste operations manager concludes that acceptance of the lowest responsible bid may result in a disproportionate amount of the service being provided by a single entity, the solid waste operations manager, in that person's sole discretion, may choose to assume responsibility directly by the City, using its own personnel and equipment, for the services required, or to award the contract to the next lowest responsible bidder, under the proviso that the next lowest responsible bidder match the bid submitted by the lowest responsible bidder.

Your concern is whether allowing the solid waste operations manager to reject the lowest bid conflicts with state bidding statutes. However, there is no state law that requires a city to competitively bid solid waste removal services. "It is well established that, in the absence of charter or statutory requirement, municipal contracts need not be let under competitive bidding." Price v. City of Fargo, 139 N.W. 1054, 1058 (N.D. 1913). Thus, since there is no statutory requirement that Fargo competitively bid solid waste removal

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services, it is my opinion that Fargo City Code § 13-0509 does not conflict with state bidding statutes.

This office is frequently asked whether N.D.C.C. § 44-08-01.1, which states general bidding requirements, applies to specific situations. However, by its terms N.D.C.C. § 44-08-01.1 only applies to the purchase of personal property and equipment. N.D.C.C. § 44-08-01.1 does not apply to contracts for the purchase of services. Accord Letter from Attorney General Nicholas Spaeth to the Honorable Rod Larson (Feb. 2, 1992). Thus, it is my further opinion that N.D.C.C. § 44-08-01.1 has no impact on Fargo's acceptance or rejection of bids for the provision of solid waste removal services.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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