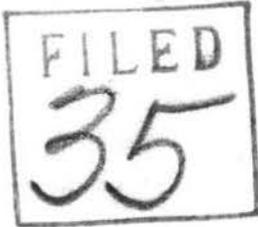


STATE PARK BOARD:
CONTRACT:
PURCHASING AGENT:

Validity of proposed forms for letting concession contracts. State Purchasing Agent has proper authority to purchase used equipment.



December 14, 1953

State Park Board
Jefferson City
Missouri

Attention: Mr. Abner Gwinn, Director.

Gentlemen:

This will acknowledge receipt of your recent request and, for sake of brevity, we shall restate the pertinent part thereof.

You first inquire as to whether the seven attached forms which you propose to use in letting concession contracts at the three State Trout Parks conform to the new State Park Law. You also inquire if the State Park Board may negotiate with and buy the equipment now owned by various concessionaires in the State Parks or must all Park Board purchases be made through the State Purchasing Agent.

The forms attached to your request in which you seek an opinion as to their validity are denoted Transmittal of Data, Notice to Qualified Bidders, Concession Proposal, Information and Check Sheet, Form of Performance and Payment Bond and Contract Requirements.

The 67th General Assembly repealed sections 253.010 and 253.020 under Chapter 235 RSMo 1949, which originally created a State Park Board and vested in that board certain authority and enacted in lieu thereof a new State Park Law known as Sections 253.010, 253.020, 253.030, 253.040, 253.050, 253.060, 253.070, 253.080, 253.090, 253.100, 253.110, Vernon's Annotated Missouri Statutes, June, 1953.

The two following statutes recently enacted under the new State Park Law, Sections 253.080 and 253.090, supra, principally relate to the execution of contracts for management of State Parks and concessions therein.

Sections 253.080 and 253.090 read as follows:

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"1. The board may contract for the management of any of the state parks or for the exercise of any concession, privilege, facility or convenience within any such park for a period of not to exceed two years. Any contract for the management of a state park shall provide for the care, maintenance, repair, conservation and improvement of the park property as may be required by the board, and for the rendition of such services to the public as may be required by the board.

"2. All contracts under this section shall be entered into only upon the basis of competitive sealed bids. A sworn financial statement shall accompany each bid, and all contracts shall be let by the board at a regular meeting. All bids submitted ten days prior to a regular meeting shall be considered. Such advertisements for bids as deemed necessary shall be made by the board.

"3. The bid most favorable to the state from a responsible person shall be accepted by the board. A good and sufficient bond conditioned upon the faithful performance of the contract and compliance with this law shall be required of all contractors.

"4. Any person who contracts under this section with the state shall keep true and accurate records of his receipts and disbursements arising out of the performance of such contract and shall permit the board and the state collector of revenue to audit same upon the expiration of his contract. If upon such audit, it shall appear that the net profits of the contractor under any such contract for any one year have exceeded the sum of ten thousand dollars, such excess shall be paid over to the state collector of revenue and may be recovered from the contractor and his sureties. For the purpose of this subsection no contract shall be deemed to extend to operations or management in more than one state park.

"5. Subsections 2, 3 and 4 shall not apply to contracts or agreements made between the board and any corporation, association, trust or foundation organized and operated solely on a non-profit basis which agrees to operate the park or facility for the purpose of preserving the historic traditions of the area involved."

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Section 253.090:

"1. The board may construct, establish and operate suitable public services, privileges, conveniences and facilities on any land, site or object under its jurisdiction and control, and may charge and collect reasonable fees for the use of same. The board may charge reasonable fees for supplying services on park areas.

"2. All revenue derived from privileges, conveniences, contracts or otherwise, and all moneys received by gifts, bequests or contributions, or from county or municipal sources shall be paid into the state treasury to the credit of the state park fund, which is hereby created. In the event any state park or any park thereof is taken under the power of eminent domain by the federal government the moneys paid for such taking shall be deposited in said state park fund. Such fund shall be used solely for the payment of the expenditures of the board in the administration of this law."

There is little or no similarity between the foregoing statutes under the new state park law and the provisions of the former state park act, so any decision or opinion heretofore rendered construing the provisions of the former act is of no benefit in rendering this opinion. The only suggestion we have to offer as to said forms is that the proposed bond should properly be designated as a surety bond and, in addition to the conditions set forth in said bond, we recommend that it further provide: that the principal shall faithfully comply with all the provisions of Section 253.080, V.A.M.S., and to properly account and pay over to the State of Missouri all sums of money due the state and further provide that said bond may be also sued on by the State of Missouri. We have carefully examined other proposed forms and find nothing therein that might in any manner conflict with any of the provisions of the new state park act.

You next inquire as to whether or not the board may negotiate with and purchase equipment owned by various concessionaires or must such purchases be made through the state purchasing agent?

Section 34.030 RSMo 1949 provides that the state purchasing agent shall purchase all supplies for all departments of the state except as otherwise provided by law. Section 34.010, Subsection 1 RSMo 1949, further defines the word supplies as used in the chapter creating a state purchasing agent and prescribing his duties to mean materials, equipment, contractual services and

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any and all articles or things except as in said chapter otherwise provided.

Section 34.100 RSMo 1949 vests in the state purchasing agent power to authorize any department to purchase directly supplies of a technical nature and also emergency purchases. The articles which you propose to negotiate for and purchase from the present concessionaires cannot by any stretch of the imagination come within the purview of articles of a technical nature, neither could such purchases be considered as emergency purchases.

Section 34.040, V.A.M.S. further provides how purchases shall be made by the purchasing agent and reads:

"All purchases shall be based on competitive bids. On any purchase where the estimated expenditure shall be two thousand dollars or over, the purchasing agent shall advertise for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders at least five days before bids for such purchases are to be opened. On purchases where the estimated expenditure is less than two thousand dollars, bids shall be secured without advertising. In all cases, the purchasing agent shall post a notice of the proposed purchase on a bulletin board in his office. He shall also, on all purchases estimated to exceed two thousand dollars, solicit bids by mail from prospective suppliers. All bids for such supplies shall be mailed or delivered to the office of the purchasing agent so as to reach such office before the time set for opening bids. The contract shall be let to the lowest and best bidder. The purchasing agent shall have the right to reject any or all bids and advertise for new bids, or with the approval of the governor, purchase the required supplies on the open market if they can be so purchased at a better price. All bids shall be based on standard specifications wherever such specifications have been prepared by the purchasing agent as provided in section 34.050. The purchasing agent shall make rules governing the delivery, inspection, storage and distribution of all supplies so purchased and governing the manner in which all claims for supplies delivered shall be submitted, examined, approved and paid. He shall determine the amount of bond or deposit and the character thereof which shall accompany bids.

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It will be noticed under the foregoing provisions that if the purchasing agent can purchase such supplies on the open market at a better price he may do so with the approval of the Governor.

Therefore, we are of the opinion that purchases of such used equipment must be purchased by the State Purchasing Agent under the provisions of Section 34.040, supra. However, if such supplies may be purchased at a better price on the open market he may do so with the approval of the Governor.

CONCLUSION.

Therefore, it is the opinion of this department that the enclosed proposed forms for letting concession contracts in the State Trout Parks are in proper form and conform with the new State Park Act when the foregoing additional suggestions are included in said proposed form of a surety bond.

It is the further opinion of this department that purchases of such used equipment must be purchased by the State Purchasing Agent as provided in Section 34.040, supra. However, if such supplies may be purchased at a better price on the open market he may do so with the approval of the Governor.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Very truly yours,

ARHjr/lw

JOHN M. DALTON
Attorney General