

MEMORANDUM OF LAW

DATE: May 11, 1990

TO: Ralph Shackelford, Purchasing Agent
FROM: City Attorney
SUBJECT: Bids Sent Via Fax Machines

You recently sent a memo requesting an opinion regarding the legal status of bids sent via fax machines. You asked if a faxed quotation would be acceptable either with or without a follow-up quotation that contained an original signature. You also asked whether a faxed response to a formal bid would meet the City's sealed bid requirement. A sealed bid is defined as "a method for submitting a bid to buy or to perform work on a proposed contract. In general, each party interested submits a bid in a sealed envelope, and all such bids are opened at the same time and the most favorable responsible bid is accepted." Black's Law Dictionary 1210 (5th ed. 1979).

It is our opinion that, where sealed bids or proposals are required, faxed bids would not be acceptable. San Diego City Charter section 35 requires advertising for sealed proposals for supplies, materials, equipment, and insurance where the costs exceed a sum established by the City Council. San Diego City Charter section 94 requires advertising for sealed proposals for the construction, reconstruction, or repair of public works, when the cost exceeds a sum established by City Council. In addition, San Diego Municipal Code section 22.0211 states that advertising for bids on public works should be done "under the provisions of Section 94 of the San Diego City Charter." And, San Diego Municipal Code section 22.0504, which outlines purchase limitations, calls for advertisements for sealed proposals where purchases or contracts exceed twenty thousand dollars (\$20,000).

In those cases where sealed bids are required, a fax copy of a bid would definitely not conform to either San Diego City Charter or San Diego Municipal Code requirements. In cases where the monetary amount of the purchase or contract is such that sealed bids are not mandated, a fax may be acceptable. We would, however, encourage caution in utilizing such bids since there

would be no way to guarantee accuracy or authenticity of a faxed bid. Perhaps in those instances it would be advisable to require a follow-up original. Of course, submitted bids may contain fax quotations from subcontractors or others utilized by a prime contractor.

Please let me know if we can be of further assistance to you.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

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