

April 6, 1949

To the Honorable President and Members of the
Board of Estimates of Baltimore City
City Hall
Baltimore - 2, Maryland

Gentlemen:

You have asked for my opinion as to the legal aspects of the bid submitted by the Baltimore Contractors, Inc., on the first phase of the reconstruction of the stadium.

The above company's bid figure on this project is \$1,245,000, and was the lower by more than \$200,000 of the two bids submitted.

The acceptability of this bid has been questioned for reason that the sealed envelope in which it was received also contained an envelope addressed to the Board within which was a letter signed by the Chief Engineer of the Company, which letter reads as follows:

"We are submitting herewith our bid on the Baltimore City Stadium.
"We have figured this job in accordance with plans and specifications. However, we call to your particular attention that there is no overtime allowed in this estimate, and unless overtime is used, it is our opinion that it will be impossible to get this job out in the time allotted."

Section 38 of the Baltimore City Charter, as amended, provides that contracts for work of this nature shall be awarded "to the lowest responsible bidder." It is well established in the law that the determination of the lowest responsible bidder is within the discretion of the Board, and where the ability of the lowest bidder to meet the requirements of the contract to be awarded is reasonably in doubt, then it is within the power of the Board to reject such a bid in the exercise of such discretion, and to award the contract to the next lowest bidder. (Biddison v. Whitman, 183 Md. 620; Maryland Pavement Co. v. Mahool, 110 Md. 397). The cases just cited further indicate that our courts are reluctant to interfere with such a decision by the awarding body in the absence of fraud, or unless its action has been arbitrary or capricious. Under Section 38 of the Charter it is also clear that the Board may reject all bids. Another principle of law deemed applicable to the present instance is found in the case of Fuller Co. v. Elderkin, reported in 160 Maryland at page 665, wherein