

To the Honorable President and Members of the Board of Estimates (cont'd)

it is stated that -

"It is not every failure in bidding to comply with specifications that will make an award illegal. Variations from specifications must be substantial so as to give the bidder special advantage, to invalidate the contract."

The test seems to be - is the irregularity such as will operate to affect fair and competitive bidding? See also Konig v. Mayor and City Council, 126 Md. 624.

The letter quoted appears to be an integral part of the bid as this was the conclusion of our Court of Appeals in the case of Biddison v. Whitman, where a somewhat similar situation was involved.

Whether the contents of the letter operate as a condition or a qualification of the bid such as would justify the Board in rejecting it and awarding the contract to the next bidder, is the question to be resolved. The Board is put on notice by the terms of the letter that Baltimore Contractors, Inc., expects to require more than the time allotted in the specifications for the completion of the project, which is 180 days. How much more time is contemplated by Baltimore Contractors, Inc., is left entirely to conjecture. Representatives of the Company have advised the Board that the letter was not intended to relieve the Company of its legal obligation to complete the work in the time specified and it would be subject to the payment of liquidated damages. However, there is an implied invitation in the letter that the City provide overtime or bonus payments in an unspecified amount in order to allow the bidder therein to complete the work within the allotted time. This letter shows on its face that it is highly doubtful if Baltimore Contractors, Inc., can respond to the requirements of the contract. To make an award to this company after such a material departure from the advertised specifications would render the contract, in a sense, a private one. To make such an award would be to open wide the door for favoritism and defeat the thing which the law intended to safeguard in requiring the contracts to be let upon bids made on advertised specifications.

As to the bid of the McShane Company, certain irregularities appear in the unit prices, there being a departure in unit prices quoted by this Company from the requirements of the specifications. However, of more important concern is the fact that their bid is over \$200,000 in excess of the bid tendered by Baltimore Contractors,