

File No. 46845 Continued

Baltimore, December 3, 1926

Charles C. Wallace, Esq.
City Solicitor
Baltimore, Md.

IN RE: Modification by the parties of a
construction contract which has
been entered into after competitive
bidding.

Dear Mr. Wallace:

14234

After competitive bidding, as required by the Act of 1908, Chapter 163, codified in Section 15 of the Charter of Baltimore City, the contract for the erection of the Western High School was awarded to the P. C. Streett Engineering Company, and a formal contract for the work was entered into on the 15th day of September, 1926, which said contract is now in force. By Section 19 of the Specifications it was provided:

" (a) Payment under this contract shall be made monthly. At the first of each month the contractor shall submit an itemized statement of the cost of all work and materials erected in the building.
* * *

" (b) After the Supervising Engineer has approved the statement and releases as called for, he shall deduct 10% therefrom and cause to be issued a warrant for payment which shall be made within ten (10) days following his approval. The ten percent (10%) shall be deducted until seventy thousand dollars (\$70,000.00) is retained, after which no further deductions will be retained, and the said seventy thousand dollars (\$70,000.00) will be held until final payment is made".

The proper construction of the above provision would indicate that the monthly payments should be made based upon materials actually erected in the building and not upon the amount of materials erected in the building and also furnished upon the premises but not erected.

The Supervising Engineer of the Public Improvement Commission, Mr. H. G. Perring, would like, if possible, to modify this contract so as to be able to make monthly payments to the contractor based upon building materials furnished upon the premises, as well as materials erected in the structure. It seems that in the case of the contract