

File No. 46845 Continued

for the construction of the Colored High School, the Public Improvement Commission gave its approval to the same modification of that contract provided the City Solicitor was satisfied as to its legality. There seems, however, to have been no formal opinion rendered by the City Solicitor upon that contract. Mr. Ferring has now asked this office for an opinion concerning the legality of making the proposed modification in the terms of the Western High School contract.

The requirement of competitive bidding for contracts involving over five hundred dollars (\$500.00), as provided for by the Statute above referred to, is mandatory upon the City and constitutes a limitation upon the City's power to contract. The purpose of the requirement, of course, is to prevent favoritism and to insure fair competition upon equal terms to all who choose to compete in the bidding. To this end, the advertisement invites bids based upon specifications which have already been formed, and it is upon the requirement of the specifications that the various bidders determine what is the lowest they can afford to bid. Hence it has been distinctly decided by the Court of Appeals that contracts may not be made which differ in any essential or material way from the terms of the specifications referred to in the advertisement for bids.

See Packard vs. Hayes, 94 M. 233, where the Court said:

"The effect of these provisions to produce the result intended would be greatly impaired, and the purpose of them might be entirely defeated if the method of awarding contracts under them, which was pursued in this case, could be sustained. The absence of any definite and precise basis for competition among bidders; the allowing of each bidder to submit his own independent proposition as to what would form an important element of the contract; and the reservation of a discretion to be exercised by a municipal authority as to an essential of the contract after bids had been submitted, make the contract here the subject of controversy violative of the intent and purpose of the provisions of the law in question as well as of the essential character of competitive bidding".

See also Konig vs. Mayor and City Council of Baltimore, 126 Md. 606, where the Court, on page 624, adopts the approval the following quotation from the case of Inge vs. Board, 135 Ala. 187: