

Mr. George E. Finck, Sewerage Engineer (cont'd)

It is not every failure in bidding to comply with specifications that will make an award illegal, but the variation from the specifications must be substantial so as to give the bidder special advantage before the contract will be held invalid. The test seems to be, Is the irregularity such as will operate to affect fair and competitive bidding? Fuller Co. vs. Elderkin, 160 Md. 660, 665.

Further, it has been held that every instrument is to be construed by what can be seen was the person's intention in writing it and that a bidder can correct a clear mistake. Moffett vs. Rochester, 178 U.S. 373. Therefore, if upon the face of the bid, without any outside evidence, it can be clearly seen that a mistake was made and it can also clearly be seen what the bidder actually intended, the proposal should be read according to the real intention of the bidder.

In this case, in preparing the proposal in duplicate, the bidder indicated the unit price for Item No. 2 in the duplicate copy of the proposal and it is not reasonable to assume that the bidder intended that the original copy of the proposal be different, nor is it reasonable to assume that the bidder intended that the extended total for Item No. 2 be greater than a sum arrived at by multiplying the approximated quantity of Item No. 2 by the unit price bid for said Item.

Although it is true that the prospective contractor did not strictly comply with all of the requirements of the specifications pertaining to the filing of bids, nevertheless, the non-compliance is not such as to affect fair and competitive bidding.

Therefore, it being apparent that the omission from the original copy of the proposal of a price for Item No. 2 is a clerical error and the mistake in the extended total amount for said Item No. 2 is a mathematical miscalculation, and the bidder's real intention clearly appears upon the face of the papers, I am of the opinion that the Board of Awards may, but is not compelled, to award the contract to the Square Construction Company, if it is the lowest responsible bidder, upon the basis of the correct figure.

Attached hereto are all of the papers which you sent to this office.