

Honorable Arthur B. Price, Mayor Ex Officio (cont'd)

exercise of the powers conferred upon them by the Charter must of necessity exercise a discretion as to the responsibility of the bidder.

Under the Charter, therefore, the Board of Estimates must award the contract to the lowest bidder unless it has evidence that would justify a belief on the part of fairminded and reasonable men that the lowest bidder would be unable to perform its contract. The question now before you for determination is whether the low bidder lacks the experience, financial ability, machinery, and facilities necessary to perform the contract. To reject the bid of the lowest bidder there must be such evidence of the irresponsibility of the bidder as would cause fairminded and reasonable men to believe that it was not for the best interests of the municipality to award the contract to the lowest bidder. Paterson Contracting Co. vs. Hackensack, 99 N.J. L. 260.

In the case of Maryland Pavement Company vs. Mahool, 110 Md. 397, at page 408, the Maryland Court of Appeals stated:

"While the requirements of a charter that a contract be awarded to the lowest bidder is mandatory, yet the authorities are uniform in holding that in determining who is the lowest responsible bidder the municipal authorities have a wide discretion which will not be controlled by the courts except for arbitrary exercise, collusion or fraud, and they need not be guided in their determination solely by the question of the pecuniary responsibility of a bidder, but may consider his ability to respond to the requirements of the contract and his general qualifications to properly execute the work."

Other Maryland cases dealing with this subject include Madison vs. Harbor Board, 76 Md. 395, wherein it was held:

"The better doctrine, however, as to all cases of this nature, and one which has the support of an almost uniform current of authority, is that the duties of officers entrusted with the letting of contracts for works of public improvements to the lowest bidder are not duties of a strictly ministerial nature, but involve the exercise of such a degree of official discretion as to place them beyond the control of courts by mandamus."

Citing also: Devin vs. Belt, 70 Md. 354; Baltimore C. & P. B. Railway Company vs. Latrobe, 81 Md. 246; Henkel vs. Millard, 97 Md. 24; City of Baltimore vs. Flack, 104 Md. 107.

Further in Fuller vs. Elderkin, 160 Md. 660, wherein the Madison case, supra, was cited, together with the above mentioned authorities, the court stated: