

C

100 Md. 188, 59 A. 726

Court of Appeals of Maryland.
 NATIONAL BUILDING SUPPLY CO. OF
 BALTIMORE
 v.
 MAYOR, ETC., OF CITY OF BALTIMORE.
 Jan. 12, 1905.

Appeal from Superior Court of Baltimore City.

Action by the National Building Supply Company of Baltimore against the mayor and city council of Baltimore. From a judgment in favor of defendant, plaintiff appeals. Affirmed.

West Headnotes

Municipal Corporations 268 ↻250
[268k250 Most Cited Cases](#)

Proposals for bids to furnish a city with cement for a year gave an "approximate estimate of quantities required." A subsequent section of the specifications provided that the approximate quantities were only given to guide the bidder, and not to bind the city as to the amount which was to be ordered. A contract subsequently entered into with a bidder bound the latter to furnish all the cement which might be required during the year, and bound the city to pay the sum named in the bid for all the cement furnished and accepted by the city engineer. Held, that the city was entitled to all the cement which it required at the price specified in the bid, and was not bound to pay the market price for cement ordered in excess of the approximate quantity specified in the proposals.

Argued before McSHERRY C.J., and FOWLER,
 BRISCOE, BOYD, PEARCE, and
 SCHMUCKER, JJ.

Richard Bernard, for appellant.
 Albert C. Ritchie, for appellee.

BRISCOE, J.

The question presented for our determination in this case arises upon a demurrer to the plaintiff's declaration, and involves the construction of a contract made and entered into between the appellant and appellee. The appellant is a corporation duly incorporated under the laws of the state, and is engaged in the business of furnishing building supplies and material in the city of Baltimore. The appellee, the mayor and city council of Baltimore, in pursuance of the provisions of the fourteenth and fifteenth sections of the Baltimore City charter, on the 9th of January, 1902, advertised for proposals for furnishing cement required by the city for general purposes during the year 1902. On the 22d of January, 1902, the appellant submitted a bid upon one of the printed proposal sheets furnished by the city, agreeing to furnish cement for general purposes for the year 1902, and in accordance with certain specifications, at the following prices: "Domestic Portland cement (Brand) 'Paragon' \$1.53 per bbl. The amount of rebate for each barrel returned 10c. per bbl. The amount of rebate for each bag returned 10c. per bag." The approximate estimate of quantities of Portland cement to be furnished was stated on the bid to be 5,000 barrels. And by section 7 of the specifications it was provided that the approximate quantities are only given as a guide to the bidder, but in no way to bind or limit the city as to the amount which is to be ordered. The bid, as thus submitted, was accepted by the city, and on the 3d of February, 1902, a bond and contract was entered into between the appellant and appellee. By the terms of the contract the appellant agreed with the mayor and city council of Baltimore to furnish and deliver all the cement which may be required for general purposes in the City engineer's department for the year 1902, the material and manner of delivery to conform strictly to the specifications on file in the city engineer's office, and these specifications were made a part of the contract; and it was further

agreed that for all the cement furnished and accepted by the city engineer the appellant company should receive the sum named in its bid. It appears that in pursuance of this contract, proposal, and specifications the appellant furnished and delivered to the city 5,000 barrels of cement under the contract, which was accepted and paid for by the appellee at the contract price, but, cement having advanced in price, the appellant, on the 1st of November, 1902, refused to accept any further orders, or to deliver any more cement under the contract. Subsequently, by an agreement between the parties, the appellant furnished and delivered to the city 1,483 additional barrels during the year 1902 at the contract price, without prejudice, however, to the rights of the parties to be thereafter determined. And this suit is brought to recover the difference between the contract price and the market price of so much of the cement furnished the city by the appellant on and after the 1st of November, 1902.

The action of the court in sustaining the demurrer presents the sole question for our consideration, and that is, was the appellant company, under its contract, bound to furnish and deliver all the Portland cement at the price named in the contract, which was required for general purposes, in the city engineer's department, for the year 1902? There can be but little doubt, we think, as to the answer to this question under a proper construction of the contract. According to its express terms and the bid submitted by the appellant company, it was to furnish and deliver to the city all of the Portland cement, which would be required by it for general purposes in the city engineer's department during the year 1902, at the price named in the contract. The vital and essential requirement of the contract was to furnish and deliver to the city all of the Portland cement which would be required for certain purposes during the year named and at the prices stated. The statement, upon the proposal sheet, that the "approximate estimate of quantities

required was 5,000 barrels," could not, as urged by the appellant, control or change the amount to be furnished and delivered to the city, when, by the seventh section of the specifications, which is a part of the contract, it was provided that the approximate*727 quantities are only given as a guide to the bidder, but in no way to bind or limit the city as to the amount which is to be ordered. It seems to us, then, without stopping to extend this opinion by citation of authorities or further quotation from the contract itself, that it was the plain meaning and intention of the parties, as stated by the contract, that the appellant was to furnish and deliver the cement to the city, as stated in the contract. There is no intimation or contention that the city did not need or require the 1,483 barrels of cement for the purpose stated in the contract, but the declaration avers that all of these barrels were in good faith required by the defendant for general purposes in the engineer's department during the year 1902. The contract appears to be fair and reasonable in all its requirements, and it is quite clear that, if the material contracted to be furnished had fallen, instead of advanced, in price, the appellant company would have received the benefit of the price named in the contract. There was no error, then, in the ruling on the demurrer, and for the reasons given the judgment will be affirmed, with costs.

Judgment affirmed, with costs.

Md. 1905.
National Bldg. Supply Co. v. City of Baltimore
100 Md. 188, 59 A. 726

END OF DOCUMENT