



110 Md. 397, 72 A. 833, 17 Am. Ann. Cas. 649

Court of Appeals of Maryland.  
 MARYLAND PAVEMENT CO. OF  
**BALTIMORE CITY**

v.  
 MAHOOL, **Mayor**, et al.  
 March 22, 1909.

Appeal from Superior Court of Baltimore City;  
 Thos. Ireland Elliot, Judge.

Action by the Maryland Pavement Company of Baltimore City against J. Barry Mahool and others. From an order refusing mandamus and dismissing petitioner's application therefor, petitioner appeals. Affirmed.

West Headnotes

**Mandamus 250 ↪92**

[250k92 Most Cited Cases](#)

The duty of public officers, intrusted with the letting of contracts for public improvements to the lowest bidder involves the exercise of such official discretion as to place them beyond the control of courts by mandamus, in the absence of fraud or collusion.

**Municipal Corporations 268 ↪336(2)**

[268k336\(2\) Most Cited Cases](#)

An advertisement for bids for street improvements reserved the right of the board to reject any bids, and the specifications stated that each bidder must deposit a sample concrete block, stating at what quarry it was manufactured, and agree to furnish such blocks, an equal to the sample. Petitioner's bid was the lowest, but it did not comply with the requirements as to the deposit of a sample block. Held, that petitioner had no right to have its bid considered, as the reasonable requirements of a proposal for bids must be complied with.

Argued before BOYD, C. J., and BRISCOE,  
 PEARCE, SCHMUCKER, BURKE,

WORTHINGTON, THOMAS, and HENRY, JJ.

Wm. S. Bansemer and Richard B. Tippet, for appellant.  
 Sylvan H. Lauchheimer, for appellees.

BRISCOE, J.

This appeal is from an order of the superior court of Baltimore City, refusing a mandamus and dismissing the petitioner's application therefor. A statement of the facts will be necessary for an understanding of the case. By ordinance No. 258 of the mayor and city council of Baltimore, passed on the 9th day of April, 1907, the city engineer was authorized and directed to have all that part of Monroe street, from the southeast side of the Baltimore & Ohio Railroad tracks to the northwest side of Columbia avenue, graded and paved with Belgian blocks and curbed, or recurred, where necessary, with 6-inch granite, gneiss, armored concrete or other curb approved by the city engineer. All of said work was to be done in accordance with specifications to be prepared by the city engineer, who should advertise for proposals for doing the work. On the 4th of March, 1908, Mr. Fendall, the city engineer, published in the Baltimore Sun the following advertisement, calling for proposals: "Department of Public Improvements. Sub-department of city engineer. Baltimore, March 4, 1908. Separate sealed proposals, addressed to the board of awards, care of the city engineer, will be received by the city register, at his office, city hall, until 11 a. m. Wednesday, March 18, 1908, to grade, curb and pave the following streets: With belgian blocks, Monroe street from the southeast side of the B. & O. R. R. tracks to the northwest side of Columbia avenue. With vitrified brick, Lakewood avenue from the south curb line of Eastern avenue to the north curb line of Canton avenue. Specifications and proposal sheets will be furnished upon application to this office. The board of awards reserves the right to reject any and all bids. A certified check

on a clearing-house bank for an amount as recited in the specifications, made payable to the mayor and city counsel of Baltimore, must accompany each bid. B. R. Fendall, City Engineer. Approved: J. Barry Mahool, President Board of Awards." The specifications, which were subsequently presented to the bidders, contained this provision: "None but the best materials of the several descriptions shall be used, and all material shall be equal in every respect to the requirements of the specifications and to the samples furnished. Each bidder must deposit with his proposal a sample granite block, stating at what quarry it was manufactured, and agree if the contract is awarded to him to use only blocks made at said quarry and equal to the sample."

It appears there were three bids submitted to the board of awards, and the contract, for the paving of the street was on the 25th of March, 1908, awarded to P. Flanigan & Sons. The report of the city engineer stated they were the lowest bidder, who had complied with the specifications. While, it will be seen, that the appellants bid was the lowest in amount for the paving, it did not comply with the requirements of the specifications that each bidder must deposit with his proposal a \*834 sample granite block, stating at what quarry it was manufactured, and agreeing, if the contract was awarded to it, to use only blocks made at said quarry and equal to the sample. The case was heard in the court below, upon petition, answer, traverse, and joinder of issue to the defendant's answer to the paragraphs of the petition and proof. The court rejected the prayers on behalf of the petitioner and granted the prayer on behalf of the respondent, to the effect that no evidence has been offered legally sufficient under the pleadings to entitle the petitioner to the writ of mandamus, and that the verdict of the court sitting as a jury must be for the defendant.

The questions presented for our consideration by the rulings of the court upon the prayers and

necessary for the determination of the case, on this appeal, practically come to this: (1) Was the failure of the appellant to comply with the specifications and proposals a sufficient reason for the refusal of the appellees to award the contract, on the bid presented by it? (2) Is not the letting of contracts by the board of awards, like the one in question, to the lowest bidder, in the absence of fraud, absolutely final and beyond the control of the courts by mandamus?

Now, in answer to the first inquiry, it is only necessary to say that it is a rule of very general application, where reasonable requirements have been prescribed as to the manner of bidding, such requirements must be complied with, in order that a bid shall be entitled to consideration. While slight irregularities in a bid not affecting its substantial characteristics may be disregarded, yet the bid may be rejected for such reason, and the court will not interfere, in the absence of fraud or collusion. 20 A. & E. Ency. of Law, 1167, 1168; [Weed v. Beach, 56 How. Prac. \(N. Y.\) 470](#); [People v. Croton, 26 Barb. \(N. Y.\) 241](#); [Wiggin v. Phil., 2 Brewst. \(Pa.\) 444](#). There is no evidence in this case to show that the requirements in the proposal that each bidder should deposit a sample granite block, stating at what quarry it was manufactured, etc., was an unreasonable requirement. On the contrary, it appears from the testimony of Mr. Fendall, the city engineer, that this provision in the specifications was not only a reasonable one, but was inserted for the benefit and for the protection of the best interest of the city. It is conceded that the appellant did not comply with the conditions of the specifications prepared and published by the city engineer in this respect, and, failing to so comply, we are of the opinion it had no right, under the authorities cited, to even have its bid considered by the board of awards. 28 Cyc. 559; [Smith v. City, 2 Brewst. \(Pa.\) 443](#); [Case v. Trenton \(N. J. Sup.\) 68 Atl. 58](#). But, apart from this, the advertisement in this case by the city engineer expressly provided that "the

board of awards reserves the right to reject any and all bids.” In [Chicago Sanitary Dist. v. McMahon](#), 110 Ill. App. 510, it is distinctly held that it is not unlawful, where the lowest bidder has not conformed to the advertised requirements, to let the contract to the next lowest bidder. *Louchheim v. City of Philadelphia*, 15 Pa. Dist. R. 311 ; [State v. Cincinnati Bd.](#), 4 Ohio Cir. Ct. R. 76. While the requirement 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, will not be controlled by the courts except for arbitrary exercise, collusion, or fraud, and they need not be guided in this 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. 28 Cyc. 1031; *Keogh v. Wilmington*, 4 Del. Ch. 491.

As to the second proposition, but little need be said. The subject has been frequently considered by this court, and all the cases hold that, when the awarding of a contract like the one here in question has been committed to a board, in the absence of fraud or collusion, its decision is final and conclusive and cannot be controlled by the courts. The case of [Madison v. Harbor Board](#), 76 Md. 395, 25 Atl. 337, is directly in point and is decisive of this case. 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 intrusted 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. [Devin v. Belt](#), 70 Md. 354, 17 Atl. 375; [Baltimore, C. & Pt. R. R. Co. v. Latrobe](#), 81 Md. 246, 31 Atl. 788; [Henkel v. Milliard](#), 97 Md.

[30, 54 Atl. 657](#); [Baltimore City v. Flack](#), 104 Md. 143, 64 Atl. 702; 28 Cyc. 663; 20 Encyc. of Law, 1169.

There is no allegation or suggestion of fraud in the awarding of the contract in this case, and, without prolonging this opinion, by a discussion of well-settled principles of law, we will affirm the order refusing the mandamus and dismissing the petition.

For the reasons stated, there was no error in the rejection of the petitioner's prayers, and in granting the respondent's prayer that no evidence had been offered legally sufficient under the pleadings to entitle the petitioners to the writ of mandamus.

Order affirmed, with costs.

Md. 1909.

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