

1963

Hyde T. Clayton v. Salt Lake City et al : Brief of Respondents

Utah Supreme Court

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Homer Holmgren; Jack L. Crellin; Grover A; Giles; Attorneys for Defendants-Respondents;
Arthur A. Allen, Jr.; Attorney for Plaintiff-Appellant;

Recommended Citation

Brief of Respondent, *Clayton v. Salt Lake City*, No. 9903 (Utah Supreme Court, 1963).
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APR 16 1964

IN THE SUPREME COURT OF THE STATE OF UTAH

HYDE T. CLAYTON,

Plaintiff-Appellant

VS.

SALT LAKE CITY, SALT LAKE
COUNTY, J. BRACKEN LEE,
L. C. ROMNEY, CONRAD HAR-
RISON, HERBERT F. SMART,
JOE L. CHRISTENSEN, C. W.
BRADY, MARVIN JENSON and
EDWIN Q. CANNON,

Defendants-Respondents.

FILE

AUG 6 - 1963

Clerk, Supreme Court,

Case No.
9903

BRIEF OF RESPONDENTS

Appeal from the Judgment of the Third District Court
for Salt Lake County, Hon. A. H. Ellett, Judge

UNIVERSITY OF UTAH

M - 1965

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HOMER HOLMGREN
Salt Lake City Attorney
JACK L. CRELLIN
Assistant Salt Lake City Attorney
414 City & County Building
Salt Lake City, Utah
Attorneys for Defendants-
Respondents Salt Lake City,
J. Bracken Lee, L. C. Romney,
Conrad Harrison, Herbert F.
Smart and Joe L. Christensen

GROVER A. GILES
Salt Lake County Attorney
513 City & County Attorney
Salt Lake City, Utah
Attorney for Defendants-
Respondents, Salt Lake County,
C. W. Brady, Marvin Jenson and
Edwin Q. Cannon

ARTHUR A. ALLEN, JR.
1020 Kearns Building
Salt Lake City, Utah

Attorney for Plaintiff Appellant

UNIVERSITY OF UTAH

MAY 3 - 1965

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IN THE SUPREME COURT OF THE STATE OF UTAH

HYDE T. CLAYTON,

Plaintiff-Appellant

vs.

SALT LAKE CITY, SALT LAKE
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L. C. ROMNEY, CONRAD HAR-
RISON, HERBERT F. SMART,
JOE L. CHRISTENSEN, C. W.
BRADY, MARVIN JENSON and
EDWIN Q. CANNON,

Defendants-Respondents.

Case No.
9903

BRIEF OF RESPONDENTS

STATEMENT OF CASE

This action was filed by the appellant against the respondents to enjoin and prohibit the letting of a contract to Southern Steel Company for the furnishing and installation of jail equipment in the new Public Safety and Jail Building to be built by Salt Lake City and Salt Lake County. The petition of the appellant alleges want of authority and abuse of discretion by the respondents in awarding the contract to Southern Steel

Company but does not allege any fraud whatsoever. The respondents filed a motion for summary judgment based upon the petition of the appellant, the affidavits of Roy W. McLeese, Salt Lake City Engineer, and Harold K. Beecher, Architect of the said Public Safety and Jail Building, the bid proposals submitted by Southern Steel Company and Herrick Iron Works, the specifications for jail equipment together with accompanying architectural drawings, the affidavits of Frank Bland, Sheriff of San Bernardino County, California, Albert R. Oehl, Area Inspector of Institutions in the office of the San Bernardino County Sheriff, Elmore Urban Ernst, Architect for the construction of the French Camp Jail in San Joaquin County, California, John H. Browning, partner in the firm of Folger-Adams Prison Equipment Company of Joliet, Illinois, and a certified copy of a resolution of the Board of Commissioners of Mahoning County, Ohio, awarding the jail equipment contract for their new county jail to Stewart Iron Works. Respondents' motion for summary judgment was granted by the lower court after hearing on April 5, 1963.

ADDITIONAL STATEMENT OF FACTS

The following statement of facts is submitted to supplement the appellant's statement of facts on matters which are necessary for a decision by this court.

The respondents' motion for summary judgment was based upon the following: (1) the Herrick bid

was invalid for its failure to comply with the advertised specifications, and (2) the bid proposal of Herrick Iron Works was for an alternate type of jail equipment to that specified and the joint city and county authority had discretion to determine which type of equipment to select and to award the contract to the lowest responsible bidder for that type of equipment.

The appellant's brief makes no mention of the undisputed allegations of fact in the affidavits (R. 27-37) relating to jail installation references contained on page 2 of the Herrick bid proposal (Exhibit "B", R. 154) which establish conclusively the misrepresentation of that bidder and its non-compliance with the bid requirements as more specifically set forth in the argument under Point I. As for the basis of the second point relied upon by the respondents there is likewise no dispute of facts. Paragraph 24 of the Instructions to Jail Equipment Bidders and Section JJ of the Jail Equipment Specifications contained in Exhibit "A" attached to the affidavits of Roy W. McLeese and Harold K. Beecher (R. 154) called for jail equipment which would provide both manual mechanical and electrical operation for remote fully selective movement and control of sliding cell doors and their automatic keyless locking and unlocking as a basic function. Section 24a of said Instructions provided that proposals could be submitted upon an alternate type of equipment which would provide an electrically selective system with a standby mechanical system which was not required to provide remote fully selective movement and control of

sliding cell doors and their automatic keyless locking and unlocking. The Herrick bid proposal was the only bid received by the joint city and county authority upon the alternate type of equipment. (See paragraphs 13 and 14 of the McLeese and Beecher affidavits, R. 9-10, 18, and Exhibit "B", R. 154). Paragraphs (c) and (d) of the Herrick substitute specifications contained in said Exhibit "B" clearly provide that the only way the cell doors thereunder could be operated independently of electrical power would be by means of manual operation at each door itself. It is undisputed that the Southern Steel Company bid was the low bid on the specified dual electro-manual remote controlled system without variation which required 1 inch tool resistant steel grating whereas the Herrick bid on alternate equipment called for $\frac{7}{8}$ inch tool resistant steel grating. (Paragraphs 7, 8, 9 and 13 of McLeese and Beecher affidavits, R. 9-10, 17-18; Section "I" of Jail Equipment Specifications in Exhibit "A", R. 154; and the bid proposals of Herrick Iron Works, and Southern Steel Company designated as Exhibits "B" and "C", R. 154). It is also undisputed that the bid of Southern Steel Company provided for the installation of 19 electric motors with switches for the operation of 198 cell doors, said motors and switches to be located outside the security sections of the various cell blocks, whereas the Herrick bid provided for the installation of separate motors and switches above each of the 198 cell doors within the security sections of the various cell blocks. (Paragraphs 10 and 11 of McLeese and Beecher affi-

davits, R. 9, 18). Furthermore, the specified system bid by Southern Steel required tool resistant steel grating from the top of the horizontal cover boxes to the underside of the ceiling (Exhibit "A" and drawings attached thereto, R. 154) whereas paragraph (f) of the Herrick substitute specifications provides for a steel plate housing extending "from the top of the cell doors up to the underside of the structural concrete slab." (Exhibit "B", R. 154, and paragraphs 18 and 19 of McLeese and Beecher affidavits, R. 10-11, 19).

In addition to the foregoing there are numerous other undisputed differences in construction and function between the systems proposed by Herrick and Southern Steel, which will be set forth in the argument hereinafter. The statement by appellant's counsel on page 12 of his brief, that paragraph 7 of Conrad R. Mader's affidavit states that the Herrick bid was not an alternate proposal, is absolutely false (R. 40). A detailed analysis of the remaining deliberate misrepresentations contained in the appellant's brief with respect to claimed conflicts between the Beecher and Mader affidavits would unduly lengthen this brief, but the respondents urge the court to compare the actual contents of the affidavits and not Mr. Allen's statements as to what they, in effect, provide. A classic example has been cited above in the false assertion that paragraph 7 of Mader's affidavit (R. 40) states that the Herrick bid was not an alternate proposal.

STATEMENT OF POINTS AND ARGUMENT

POINT I

THE TRIAL JUDGE PROPERLY GRANTED RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT FOR THE REASON THAT THE BID OF HERRICK IRON WORKS WAS INVALID AND DID NOT COMPLY WITH THE ADVERTISED SPECIFICATIONS FOR JAIL EQUIPMENT.

The general rule relating to compliance with specifications and bidding requirements is set forth in 43 *Am. Jur., Public Works and Contracts*, § 40, as follows:

“It is a general rule that the bid of one proposing to contract for the doing of a public work must, in order to secure the contract, respond or conform substantially to the advertised terms, plans, and specifications; otherwise the board or official whose duty it is to award the contract may properly refuse to give the bid consideration. Indeed it is the duty of the public authorities to reject all bids which do not comply substantially with the terms of the proposal, for any other rule would destroy free competition. A contract entered into on terms more favorable to the contractor than indicated by the advertised plans or specifications, or incorporating material changes in and additions to those plans and specifications, is void.” (Citing cases and an *Annotation* in 65 *A.L.R.* commencing at page 835).

In applying the general rule it has also been held that a bid may be rejected by a public body for even

slight irregularities and the courts will not interfere therewith, even though such irregularities may have been overlooked by the public body had it seen fit to award the contract to such a bidder. Thus in *Maryland Pavement Company vs. Mahool*, 110 Md. 397, 72 A. 833, 844, 17 Ann. Cas. 849, wherein the specifications required that each bidder must deposit with his proposal a sample granite block, stating in what quarry it was manufactured and agreeing to use only blocks made at said quarry equal to the sample if he were the successful bidder, the court held as follows:

“ * * * 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.”

The holding in the *Mahool* case has been reaffirmed by the Court of Appeals of Maryland in the subsequent cases of *Fuller Co. vs. Elderkin*, 160 Md. 660, 154 A. 548, and *Biddison vs. Whitman*, 183 Md. 620, 39 A.2d 800.

In view of the undisputed rule that a bid must be in substantial compliance with the advertised proposal to warrant its consideration, let us now examine the advertised proposal involved in this action together with the bids submitted in response thereto by Herrick Iron

Works and Southern Steel Company as shown by the affidavits and exhibits filed with the lower court in support of respondents' motion for summary judgment.

With respect to the sufficiency of the Herrick bid (Exhibit "B", R. 154) as to jail installation references contained therein, the court's attention is directed to paragraphs 29 and 30 of the Instructions to Jail Equipment Bidders contained in Exhibit "A" (R. 154) which reads as follows:

"29. Door operating and locking mechanisms shall have been proven satisfactory by at least three years of actual jail use in no less than three county jail installations. This applies to the design, quality and construction of the remote controlled sliding door operating and keyless locking mechanism in the horizontal covering or track boxes above such doors and within the vertical lock bar housing at each door."

"30. Bidders shall have made and be able to refer to a minimum of three county jail equipment installations made during the six year period immediately prior to the bidding date hereof which were manufactured and installed by the bidder, and each of which shall have been in actual jail use for no less than three years. These installations shall embody the same design, construction and function of sliding door operating and keyless locking mechanism as that which the bidder proposes to furnish hereunder. Each bidder shall list the name, location, year and month of completion and the prisoner capacity of each installation where provided for in the proposal form."

Attention is also directed to the last paragraph on page 2 of the Herrick bid proposal which reads:

“Listed below are three (3) county jail installations of Jail Equipment, embodying the same design and construction of cell door operating and locking system, and which functions the same as exemplified in our model submitted hereunder, made during the last six years and in actual jail use for at least three years as required by the instructions to Jail Equipment Bidders:

San Joaquin County, California—French Camp Jail

Complete October 1957—Total Capacity 500

San Bernardino County, California—Glen Helen Jail

Complete June 1958—Total Capacity 640

Mahoning County Jail—Youngstown, Ohio
Complete August 1957—Capacity 168.”

With respect to the installation at the French Camp Jail in San Joaquin County, California, which the Herrick Iron Works submitted as a reference to satisfy the above requirements, the affidavit of Elmore Urban Ernst (R. 33-34), the architect for the construction of that facility, clearly reveals that only 13 of the 159 electrically operated cell doors in that institution consist of the Folger-Adam Type “B” locking device which was the type proposed for the Salt Lake Jail Building in the Herrick bid. All other doors were either manually operated or were solenoid controlled doors incorporating the Folger-Adam Type “K” device which does not provide for remote fully selective movement

and control of the cell doors and does not have a motor installed in the track box above each cell door. The real significance of that affidavit consists of the following facts contained therein which are undisputed by the plaintiff: (1) the 13 doors containing the Folger-Adam Type "B" locking device were installed in the women's jail facility of the French Camp Jail by Herrick Iron Works and have been in operation since June, 1955, and (2) the steel grating used in the cell front and cell door construction at the French Camp Jail, including those cells incorporating the Folger-Adam Type "B" locking device, is mild steel and is not tool resistant steel. Both of the foregoing conditions extant in the French Camp Jail fail to meet the requirements of paragraph 30 of the Instructions to Jail Equipment Bidders in that such installation was not "made during the six year period immediately prior to the bidding date" of November 29, 1962, and did not "embody the same design, construction and function of sliding door operating and keyless locking mechanism as that which the bidder proposes to furnish * * *." Furthermore, it should be pointed out that Herrick Iron Works deliberately misrepresented the date of completion of the only portion of the French Camp Jail which could have any relevancy to their bid (the women's jail facility) by indicating a completion date of October, 1957, when such doors have been in actual operation since June, 1955. If their stated completion date had reference to the receiving jail or the maximum security section of the French Camp Jail it would be totally

inapplicable to their bid proposal inasmuch as the jail equipment employed therein did not provide for remote fully selective movement and control of the cell doors either electrically or manually. Suffice it to say that their represented capacity of 500 under the circumstances is not entirely candid either.

Next consider the reference to the Glen Helen Jail in San Bernardino County, California, which was represented in the Herrick bid as having been installed and completed by it in June, 1958, with a total capacity of 640. The affidavits of Frank Bland, San Bernardino County Sheriff (R. 29-30), and Albert R. Oehl, Area Inspector of Institutions in the office of the San Bernardino County Sheriff (R. 31-32), establish without controversy the following facts: (1) there are *no cell doors* in the Glen Helen Rehabilitation Center which provide for remote fully selective movement and control and automatic keyless locking and unlocking, (2) the only electrically operated doors utilizing the Folger-Adam Type "B" locking device with an individual motor installed in the track box above the door and providing for remote fully selective movement and control of such doors and their automatic keyless locking and unlocking are located at sally port locations and to divide dormitories from day rooms with no inter-relationship to other doors. Furthermore, such doors were not placed in operation until July 1, 1960, thereby being disqualified as a valid bid reference for the reason that such doors had not been in actual jail use for no less than three years as required by the Instructions to

Jail Equipment Bidders and as purportedly shown in the Herrick bid. In addition to the foregoing the steel grating used in the Glen Helen Jail is $\frac{3}{4}$ inch diameter mild steel and is not tool resistant steel, again indicating the non-compliance of the Herrick bid with paragraph 30 of the Instructions to Jail Equipment Bidders. The indicated capacity of 640 at the Glen Helen Jail as shown in the Herrick bid also appears somewhat less than objective in light of the fact that there is not one single cell door in that jail of the type proposed for installation in the new public safety and jail building by Herrick Iron Works.

The third installation referred to by Herrick Iron Works in its bid proposal is the Mahoning County Jail at Youngstown, Ohio. The affidavit of John W. Brown-ing (R. 35-36), a partner in the firm of Folger-Adam Prison Equipment Company of Joliet, Illinois, which manufactured the jail equipment for such jail, clearly establishes that such equipment was installed by Stewart Iron Works of Cincinnati, Ohio, *and that it was not installed by Herrick Iron Works of Hayward, California*. This evidence is completely supported by the certified copy of a resolution of the Mahoning County Jail and Office Building Commission dated February 3, 1956, the original of which is on file in the office of John C. Cox, Clerk of the Board of County Commissioners of Mahoning County, Ohio, awarding the jail equipment contract for the Mahoning County Jail and Office Building to Stewart Iron Works (R. 37). Certainly this reference is spurious and was known to be

so by its sponsor. Paragraph 30 of Instructions to Jail Equipment Bidders unequivocally required that a bidder's references must be to installations "which were manufactured and installed by the bidder." Such blatant disregard for compliance with bidding instructions would most surely be a forewarning to any public body of the predisposition of such a bidder to comply with subsequent contractual detail. The point is emphasized in 43 *Am. Jur., Public Works and Contracts*, §42, wherein it is stated that "What the public desires is a well constructed work, for which a lawsuit even against a (financially) responsible defendant is a poor substitute."

It is evident from the foregoing that Herrick Iron Works totally failed to comply with the bidding requirements pertaining to references. On Page 1 of the Herrick bid proposal, which is signed by H. W. Dornise, President of that company, it is declared that the bidder "has read the Notice to Jail Equipment Contractors, Instructions to Jail Equipment Bidders, Jail Equipment General Conditions, Jail Equipment Special Conditions, and the form of Contract and Bond, the Specifications, * * * (and) that he agrees to all of the requirements herein contained, * * * ." The only logical conclusion which presents itself in explanation of Herrick's non-compliance with the reference requirements in the bidding documents is its total lack of installation experience in the field of jail equipment contemplated for respondents' Hall of Justice. Thus it could only list a total of 13 cell doors installed by it

of the type which it proposes to install in Salt Lake City and these doors failed to meet the additional requirement of having been installed within the past six years. Of the few remaining sally port locking devices installed by Herrick which are similar to the type it proposed for installation locally, they failed to meet the requirement of at least three years jail use. Furthermore, Herrick did not refer to a single installation made by it incorporating tool resistant steel grating in the construction thereof. The deficiency evident in this lack of experience was compounded beyond the bounds of moral integrity by Herrick Iron Works through the willful employment of untruths intended to mislead the public bodies which joined in the solicitation of jail equipment bids. That the honesty and integrity of a bidder, together with his experience and facilities for carrying out the contract and the quality of his previous work, are matters of discretion with which the courts will not interfere is clearly set forth in 43 *Am. Jur., Public Works and Contracts*, §42. In discussing the requirement that a contract for public work shall be let to the "lowest responsible bidder" the rule is there stated as follows:

"The term 'responsible' as thus used is not limited in its meaning to financial resources and ability. What the public desires is a well-constructed work, for which a lawsuit even against a responsible defendant is a poor substitute; and authorizations of this kind are held to invest public authorities with discretionary power to pass upon the honesty and integrity of the bidder

necessary to a faithful performance of the contract — upon his skill and business judgment; (citing cases) and the quality of previous work (citing cases)—as well as his pecuniary ability, and when that discretion is properly exercised the courts will not interfere. (Citing cases.)”

Thus in the case of *Williams vs. Topeka*, 85 Kan. 857, 118 P. 864, 38 L.R.A. (N.S.) 672, Ann. Cas. 1913A 497, the court, citing many authorities directly in point, held that the word “responsible” in the phrase “lowest responsible bidder” implies skill, judgment and integrity necessary to a faithful performance of the contract, as well as sufficient financial resources and ability, and further held that such determination by a public body cannot be set aside by a court, unless the action of such tribunal is arbitrary, oppressive, or fraudulent. For other cases holding that public officials have broad discretion in determining the “responsibility” of bidders on public works, and that honesty, fidelity, integrity, judgment, skill, quality of previous work, reliability and trustworthiness are proper elements in making such a determination, see *Annotation in 38 L.R.A. (N.S.) 672*.

Although there is no statutory requirement in this state that contracts for public improvements must be let to the “lowest responsible bidder” our Supreme Court has adopted a rule similar in all respects to those jurisdictions having statutes, with the possible exception that the discretion allowed public officials in awarding public contracts in this state may be broader than that

permitted in such other jurisdictions. Thus in *Schulte vs. Salt Lake City*, 79 U. 292, 10 P.2d 625, at page 628, the law of this state was stated as follows:

“The general rule deducible from the adjudicated cases and textwriters is to the effect that, *where there is no statutory limitation upon the power of the proper officers of a city to let contracts for public improvements, such officers have a broad discretion.* A similar rule prevails in most jurisdictions under statutes which require that contracts for public improvements be let to the lowest responsible bidder. In such case the officers whose duty it is to award the contracts are vested with discretion in determining who is the most responsible and best bidder. *Responsibility is not, according to the weight of judicial authority, confined to financial responsibility. It includes the experience, skill, ability AND HONESTY OF* the bidders. Courts will not interfere with the decision of the city authorities in awarding a contract if such decision is founded upon such facts that it is not a manifest abuse of discretion, is exercised in good faith, is in the interest of the public and is without collusion or fraud, and is not influenced by motives of personal favoritism or ill will.” (Emphasis added.)

It would appear without further argument that the invalidity of the Herrick bid is conclusively proven by the undisputed affidavits and documents relating to installation references and that the joint authority's decision to disregard the Herrick bid on advice of its legal counsel that said bid was invalid was properly upheld by the district court. It is deemed advisable, however, to point out further inadequacies and failures

of the Herrick bid proposal to comply with the bid requirements sufficiently to permit of subsequent contractual clarity and obviate the need of additional negotiation between the parties. These matters are carefully set forth in the affidavits of Harold K. Beecher, Architect for the Public Safety and Jail Building, and Roy W. McLeese, Salt Lake City Engineer. They consist of the following:

1. The irreconcilable conflict between Section "R" of the Jail Equipment Specifications (Exhibit "A", R. 154) and the door jamb details shown on Drawing 71-A attached to the Herrick bid proposal (Exhibit "B", R. 154)—the former requiring tongue and grooved T-Bar construction of all sliding doors operated from control cabinets, and the latter not so providing and failing to clearly describe such substitute functions.

2. The irreconcilable conflict between the bidding specifications and those contained in the Herrick bid relating to tool resistant steel grating above the horizontal cover box housing to extend all the way to the ceiling. (See paragraphs 18 and 19 of Beecher and McLeese Affidavits, R. 10-11, 19-20.)

3. The absolute failure of the Herrick bid proposal to submit substitute drawings or specifications relating to the length of horizontal cover box sections and the type and design of splices relating thereto which was necessitated by the deletion of Section "NN" of the Jail Equipment Specifications (Exhibit "A") from

the Herrick bid proposal (Exhibit "B"). (See paragraphs 20 and 21 of Beecher and McLeese Affidavits.)

4. The irreconcilable conflict between Section "KK(a)(6)" of the Jail Equipment specifications and the Herrick bid proposal (which deleted paragraph "JJ" of said specifications) relating to power requirements for the operation of independent sliding doors—the former calling for a 3-phase, 4-wire, 208 volt, 60 cycle power supply and the latter calling for a single phase, 2 wire 115 volt, 60 cycle current. (See paragraphs 22 and 23 of Beecher and McLeese Affidavits, R. 11-12, 20-21.)

5. The irreconcilable conflict between door type 9 as shown on Drawing No. 71A submitted with the Herrick bid proposal (Exhibit "B", R. 154) and as shown on the Jail Door Schedule of Drawing 71 and Section "KK" of the Jail Equipment Specifications (Exhibit "A", R. 154)—the former providing no key lock for door type 9 and the latter providing for such key locks. (See paragraph 24 of Beecher and McLeese Affidavits, R. 12, 21.)

6. The irreconcilable conflict between Herrick's Drawing 71A and the Jail Door Schedule shown on Drawing 71, together with Section "KK" of the Jail Equipment Specifications relating to door type 1 and particularly door B at Sally Port C-112—the former providing no manual key lock for such door and the latter specifically requiring an electro-mechanical lock

for such door. (See paragraph 25 of Beecher and McLeese Affidavits, R. 12, 21).

7. The absolute failure of Herrick's drawing 71A, purporting to show substitute door jamb details, to indicate thickness, sizes and types of material for door jamb components, locking columns and key lock boxes. (See paragraph 26 of Beecher and McLeese Affidavits, R. 12-13, 21.)

8. The absolute failure of the Herrick bid proposal to provide that the quality of materials and details of construction for its proposed equipment would "equal that shown in the model submitted" by its deletion of Section "JJ" from its substitute specifications. (See paragraph 32 of Beecher Affidavit, R. 14.)

9. The deletion by Herrick Iron Works of its obligation to comply with applicable electrical codes and to pay for all permits, inspections, connections, etc., relating to the electrical work to be done by the Jail Equipment Contractor under paragraph 23 of Section "JJ" of the Jail Equipment Specifications. (See said paragraph and the Herrick bid proposal which deletes all of said Section "JJ", R. 154.)

Taken individually most of the above acts of non-compliance on the part of Herrick Iron Works are indeed serious omissions which would require negotiation between the parties for clarification. Taken collectively there can be little question that the bidder made a studied effort to present such a proposal as would,

in the event the contract were awarded to it, require such extensive renegotiation and change orders as to render the amount of its original bid meaningless in the end analysis. Clearly this would permit that bidder to bid upon terms more favorable to it than the terms accorded to other bidders, thus destroying competition. The courts have uniformly disallowed such practices. See *Annotation in 65 A.L.R.* 835, 836- 838. Thus in the case of *Urbany vs. Carroll*, 176 Iowa 217, 157 N.W. 852, the court held that a bid for a public improvement must be in substantial compliance with the proposal to warrant consideration; otherwise bidding would not be on equal terms, and the advantages of competition would be lost; and unless the bid is responsive to the proposal in all material respects, it is not a bid at all, but a new proposition. And in *Lupfer vs. Atlantic County*, 87 N.J. Eq. 491, 100 A. 927, the court held that the lowest responsible bidder must be one who proposes to do the work in the manner prescribed by the advertisement for bids and it is the duty of the public authorities to reject all bids not in compliance with the terms of the proposal. In *Konig vs. Baltimore*, 126 Md. 606, 95 A. 478, the view was expressed that if bids or contracts awarded for public work could depart from the specifications on which the bids were invited, the result would be the defeat of the competition which it is sought to obtain by such bidding. Indeed there is authority for the position that bids may be declined for failure of literal compliance with specifications. *Rockland Haulage, Inc. vs. Village of Upper Nyack*, 13 App.Div.

2d 819, 216 N.Y.S. 2d 308. And we have pointed out heretofore that a bid may be rejected by a public body for even slight irregularities and the courts will not interfere therewith, even though such irregularities may have been overlooked by the public body had it seen fit to award the contract to such a bidder. See *Maryland Pavement Company vs. Mahool*, supra. In fact, there is a serious question as to whether alternate bids based upon specifications to be submitted by the bidder, as permitted under paragraphs 23 and 24a of the Instructions to Bidders, can have any validity at all. The rule is stated as follows in 43 *Am. Jur., Public Works and Contract*, §35:

“Public authorities cannot lawfully ask each bidder to make his own plans and specifications and to base his bid thereon, and then, after bids are received, adopt one of the offered plans with its specifications and accept the accompanying bid. Such a procedure would be destructive of competitive bidding and would give public officials an opportunity to exercise favoritism in awarding contracts. A contract cannot be said to have been let to the lowest and best bidder unless all bidders have been invited to bid upon the same specifications.”

And in the next succeeding section, relating to the form and sufficiency of plans and specifications for public works, it is said:

“Specifications inviting bids for public contracts must be sufficiently detailed, definite, and precise upon all the essential elements that enter into the contract, so as to afford a basis for full

and fair competitive bidding upon a common standard, and they should be free from any restrictions the effect of which would be to stifle competition; unless they are definite, so that all bids shall be upon the same proposition, there will be no real competition and no basis on which to determine which bid is the lowest, and thus the door to favoritism and improvidence will be opened. They properly should be complete within themselves.”

In reviewing the specifications and bids received in this action, the only truly competitive bids were received upon the specified electro-manual system for remote fully selective movement and control of sliding cell doors and their automatic keyless locking and unlocking. The three bids received upon this system were without variation from the specifications. The very danger observed by the courts and legal authorities in permitting bids to be based upon the bidder's own specifications is most apparent in this case. It is established without dispute from the depositions of Commissioner C. W. “Buck” Brady and Harold K. Beecher that the Herrick Iron Works Company was the only bidder in this area that could bid an electric system without a standby remote fully selective manual system (R. 65-66, 123). This in and of itself indicates the possible favoritism inherent in the bid advertisement. Herrick Iron Works, as the sole contractor which could bid on the type of alternate equipment designated in the advertisement for bids, was thereby permitted to write its own specifications and now, through the devious method of a taxpayer's suit, seeks to have its bid declared competi-

tive with the other bids. Such an attempt is void under the above authorities. The most that can be said for the Herrick bid is that it was a bid proposal upon an alternate type of equipment to that specified in the advertisement for bids and is subject to the law applicable thereto as briefed under Point II to follow.

It clearly follows from the foregoing that the Herrick bid proposal did not measure up to the dignity of a legally enforceable bid. Not only did it fail to comply with the advertised specifications in the above particulars, but constituted an attempted fraud when considered in its entirety with the construction references contained therein. Its rightful rejection on the grounds of its invalidity left the Southern Steel Company the lowest responsible bidder notwithstanding the law applicable to bids upon alternate types of equipment as hereinafter set forth under POINT II.

POINT II

THE TRIAL JUDGE PROPERLY GRANTED RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT FOR THE FURTHER REASON THAT THE HERRICK BID PROPOSAL WAS BASED UPON AN ALTERNATE TYPE OF JAIL EQUIPMENT TO THAT SPECIFIED AND THE JOINT CITY AND COUNTY AUTHORITY HAD DISCRETION TO DETERMINE WHICH TYPE OF EQUIPMENT TO SELECT AFTER OPENING

OF BIDS AND TO AWARD THE CONTRACT TO THE LOWEST RESPONSIBLE BIDDER FOR THAT TYPE OF EQUIPMENT.

There can be no dispute under the pleadings and documents which constitute the record in this case that the bid proposal of Herrick Iron Works called for the installation of an electric fully selective system without a standby mechanical system which would provide for remote fully selective movement and control of sliding cell doors and their automatic keyless locking and unlocking. The bid proposal of Southern Steel Company called for the installation of such type of jail equipment as would provide both mechanical and electrical operation for remote fully selective movement and control of sliding cell doors and their automatic keyless locking and unlocking, which was the type of equipment called for in the Specifications for Jail Equipment. The bid proposal of Herrick Iron Works upon an alternate type of equipment to that specified in the bid advertisement was permitted under paragraphs 23, 24 and 24a of Instructions to Jail Equipment Bidders. The bid of the Southern Steel Company included tool resistant steel grating with 1 inch diameter as specified under Section "I" of the Jail Equipment Specifications whereas the bid of Herrick Iron Works included tool resistant steel grating with $\frac{7}{8}$ inch diameter as a permitted substitute under said Section "I". The bid of Southern Steel Company provides for the installation of 19 electric motors, together with switches, to be located in

control cabinets *outside the security sections of the various cell blocks*, whereas the Herrick bid provides for the installation of 198 electric motors, together with switches, for the operation of 198 cell doors with said motors and switches to be located above each cell door *within the security sections of the various cell blocks*. Other differences between the specified system and the alternate system under the Herrick proposal have been treated under POINT I and consist of such matters as (1) tongue and grooved T-Bar construction of sliding cell doors as specified vs. open bumper construction proposed by Herrick, (2) tool resistant steel grating above cover boxes as specified vs. open hearth steel plate and #10 gauge sheet steel as proposed by Herrick, (3) cover box sections of designated length with designated type of splicing as specified vs. no designation of lengths and type of splicing for cover box sections under the Herrick bid, (4) 3-phase, 4-wire, 208 volt, 60 cycle power supply as specified vs. single phase, 2 wire, 115 volt, 60 cycle power supply proposed by Herrick, (5) key locks on door type "9" as specified vs. no key locks on door type "9" under the Herrick bid, and (6) designated thicknesses, sizes and types of materials as specified for door jamb components, locking columns and key lock boxes vs. no designation of thicknesses, sizes and types of such materials in the Herrick bid. The only bid received by the Joint City and County Authority upon an alternate type of equipment to that specified in the bid advertisement was from Herrick Iron Works whereas there were three bids

submitted to said Joint Authority on the specified electro-manual system. The lowest bid submitted to the Joint Authority on the specified electro-manual system was submitted by Southern Steel Company in the amount of \$597,746.00 and the bid of Herrick Iron Works on the alternate electric system amounted to \$542,425.00. (See paragraphs 13 and 14 of the Beecher and McLeese affidavits, R. 9-10, 18.)

To argue that the Herrick bid was not based upon an alternative type of equipment would appear to be frivolous and it is submitted that the facts as presented in the record of this case could sustain no other conclusion than that the Herrick bid proposed an alternate type of jail equipment to the electro-manual system specified in the advertisement for bids.

The general rule under these circumstances is set forth in *McQuillin, Municipal Corporations*, 3rd Edition, §29.55:

“The fact that the authorities specify different kinds of material—putting the materials, in a sense, in competition with each other—does not constitute hindrance to competition, even though the authorities cannot decide which material to use until after all the bids are presented. They may specify different kinds of asphalt for street improvement, or free or limestone flagging and artificial cement stone. So, too, they may specify brick or bituminous macadam, and may decide after all bids are received to adopt one or the other and they need not select the cheaper of the two.”

In 3 *Page on the Law of Contracts*, 2d Edition, §1946, p. 8323, the rule is stated as follows:

“If bids have been advertised for on two different specifications, intended as alternative for the same work, a provision requiring the letting of the contract to the lowest bidder does not bind the city to select that specification on which the lowest bid is given.”

To the same effect as the above is the text contained in 43 *Am. Jur., Public Works and Contracts*, §37, p. 778. See also *Annotation in 27 A.L.R. 2d* 917, 932-935.

The leading case in this type of action is *Trapp vs. Newport*, 115 Ky. 840, 74 S.W. 1109, decided in 1903. Bidders were there invited to make proposals both for brick pavement and bituminous macadam. The low bid on brick was approximately 12½% less than the only bid on bituminous macadam. The petitioner in that case sought an injunction as a bidder and taxpayer to prevent the award of the contract by the city officials for the bituminous macadam. In holding against the petitioner, the court stated:

“Appellant assumes that, because on the original proposal his was the least sum, therefore it was the lowest and best bid. It will be observed that the proposals were to be in the alternative, either brick or bituminous macadam. The right thus to select two materials of which a public improvement may be made, and submit them for bids in the alternative, is fully recognized in the case of *Barbar Asphalt Company v. Garr* (Ky.) 73 S.W. 1106. It does not follow, therefore, that, because a bidder's proposal is for the least sum,

he is the lowest bidder. The fact as to whether he is, or not, depends upon a proper consideration of other questions besides the price. One class of material may make a much more durable and satisfactory highway than another, and may be, therefore, really cheaper at a higher price than the inferior at a lower. These matters are peculiarly within the province of those vested by law with the power of making such improvements. The court should proceed with great caution when asked to interfere with the discretion conferred by law upon municipal officers in regard to such matters. By the provisions of the ordinance under which the work was to be done, the contract was not to be let to the lowest, but to the lowest and best, bidder; and the question, therefore, which presented itself to appellees, when the bids were opened, inspected, and compared, was whether or not it was better to adopt the bituminous macadam as the material with which to construct the highway at the greater price, or the brick pavement at the lower price. It may have been that the bituminous macadam, because of its superiority and its greater durability, the ease with which breaks can be mended, the smoothness of its surface, and the greater cheapness with which it can be kept clean, would make it, in the long run, less expensive than the brick street at a lower price. If so, then we can see no reason why the municipal officers should not have the right to award the contract to the bidder whose proposal, upon a survey of all the questions involved, seemed to them the cheapest. We have been cited to no authority which militates against the principle here announced, and we believe that none can be found, which, in the absence of the charge of fraud or corrupt motive,

neither of which is made here, would authorize interference by the court with the exercise on the part of the municipal officers of their judgment as to which of two materials for the construction of a highway would be the cheapest and the best, although costing different sums."

In a more recent case, *L & M Properties Co. vs. Burke*, 152 Ohio St. 28, 86 N.E. 2d 768, the Ohio Supreme Court held that where municipal specifications for an airport runway provided in the alternative for asphalt or concrete construction and the city was required to award the contract to the lowest responsible bidder, an award of the contract for concrete construction at an expense of more than \$68,000 greater than the bid for asphalt construction was valid. The plaintiff taxpayer in that case contended that the public officials had no authority after the bids were received and opened to determine which of the alternative constructions they would adopt and then award the contract to the lowest bidder for the material selected. In addition the plaintiff also alleged that the construction of the runway with asphalt would produce a runway of at least equal quality with a concrete runway, that such materials were highly competitive and equal in quality and that the selection of concrete at a higher price constituted an abuse of discretion and was unlawful. That case is practically identical with the case before this court inasmuch as all of the plaintiff's allegations and contentions in that case have their near identical counterparts in this action. In sustaining the demurrers to the plaintiff's petition, the Ohio court relied upon the

authorities mentioned hereinabove in addition to an earlier Ohio case, *Waltz vs. Green*, 13 Ohio Law Rep. 108, sustaining a Court of Appeals decision reported in 22 Ohio Cir. Ct. R., N.S., 1, 29 C.D. 636, and cited the following paragraph of the syllabus of the Appeals court opinion in the *Waltz* case:

“Plans and specifications which provide in the alternative for different materials and methods of construction, and are full, accurate and complete as to each alternative in accordance with the requirements of G.C. Section 2343, and afford the opportunity for full competition as to each alternative, are valid; and an award to the lowest bidder on such alternative as may be finally adopted, after the bids have been opened and considered, will be sustained.”

In a case remarkably similar to the *Burke* case, *L. G. De Felice and Son, Inc. vs. Argraves*, (1959) 19 Conn. Sup. 491, 118 A.2d 626, injunctive relief was sought against the State Highway Commissioner to prevent an award of contract for construction of a portion of the Connecticut Turnpike. The court held that, where the Highway Commissioner asked for alternative bids, one for reinforced concrete pavement and one for bituminous concrete pavement, he could, after receiving alternative bids, determine the type of pavement he would use and award the contract to the lowest responsible bidder for that type of construction, and a lower bidder on the rejected type of pavement was not entitled to enjoin an award to the lowest bidder for the approved type of pavement under a statute requiring an award

of the contract to the lowest responsible bidder. *Furthermore, the court stated that it would not interfere with the exercise of such discretionary power vested in a public official in the absence of fraud, corruption, improper motive or influences, plain disregard of duty, gross abuse of power or violation of law, and that courts will act with extreme caution where the granting of injunctive relief will result in embarrassment to the operations of government.*

In accordance with the foregoing it was also held, in *Cestone vs. Evans*, 281 App. Div. 359, 121 N.Y.S. 2d 89, that where a Town Board's advertisement for bids for the construction of a sewer system provided a base plan for laying the sewer under sidewalk and an alternate route for laying the sewer under highway curbing, the decision regarding selection of the base or alternate route was solely within the province of the Town Board in the absence of fraud or bad faith.

An exhaustive search of the authorities and court decisions has resulted in the discovery of only one appellate decision relating to the letting of a contract by a public body for the installation of jail equipment to a bidder other than the lowest bidder, but it is distinctly in point in this action and graphically portrays the competition which has historically existed in the jail equipment field, particularly with reference to varying types of locking devices. That case, *West vs. City of Oakland*, 30 Cal. App. 556, 159 P. 202, involved the letting of a jail equipment contract to the second low

bidder at approximately 20% more than the lowest bid. In a taxpayer's suit seeking the same remedies as those sought here by the plaintiff, the California court held as follows:

“ * * * The term ‘lowest responsible bidder’ has been held to mean the lowest bidder whose offer best responds in quality, fitness, and capacity as to the particular requirements of the proposed work, and that where, by the use of these terms, the council has been invested with discretionary power as to which is the lowest responsible bidder, having regard to the quality and adaptability of the material or article to the particular requirements of its use, *such discretion will not be interfered with by the courts, in the absence of direct averments and proof of fraud.* 2 *Dillon on Municipal Corporations* (5th Ed.) §811, p. 1223, and cases cited.” (Emphasis added.)

In this action, as in the California case, there are no averments of fraud or corruption on the part of the defendants.

Application of the foregoing principles to the facts in the instant case would compel a decision by this court affirming the summary judgment granted by the lower court. This is a clear case of bids on alternate types of jail equipment. There is no allegation by the plaintiff of fraud, undue influence, corruption or bad faith on the part of the Joint Authority in awarding the contract to Southern Steel Company. All the plaintiff has alleged is an abuse of discretion in that the bid on the alternate electric system was \$55,000 less than the low

bid on the electro-manual system. Such a contention is clearly insufficient under the doctrine of the above cases, and particularly that of the *Burke* case which is so identical in fact and procedure to this case, to warrant judicial intervention into the orderly processes of an extensive capital improvements program in Salt Lake City and County.

Under the rule of the *Schulte* case, *supra*, notwithstanding the fact that the element of alternative bids was not there involved, the appellant has no litigable claim. In the *Schulte* decision, referred to and quoted from under POINT I, the Utah Supreme Court held that public officers have a broad discretion in determining who is the most responsible and best bidder and that responsibility includes experience, skill, ability and honesty of the bidders as well as financial responsibility. And the court further held that in the determination of the foregoing matters by public officials, the courts will not interfere in the absence of a manifest abuse of discretion or fraud. We have heretofore noted the deceit exercised by Herrick Iron Works with respect to the references contained in its bid, its near total lack of skill and experience in installing the type of equipment it proposed as evidenced by the references it gave, and its total lack of demonstrated experience, skill and ability in installing jail equipment incorporating tool resistant steel. Certainly it cannot be asserted that the Joint Authority evidenced a palpable abuse of discretion in disregarding the Herrick proposal under such circumstances even had their bid been based upon the

specified electro-manual equipment rather than the alternate electric system. When the alternate types of equipment are compared as to function, durability, utility, material content and safety features relating to jail personnel and authorized utility repairmen the claimed abuse of discretion even becomes more absurd as the following will more clearly reveal: (1) The electro-manual system provided remote fully selective movement and control of sliding cell doors and their automatic keyless locking and unlocking by mechanical, as well as electrical, means, whereas the equipment proposed by Herrick did not provide such a mechanical system. (2) A simple mathematical computation ($\pi \times \text{radius}^2$) will conclusively establish that the 1 inch steel grating provides 23.44% more steel than the $\frac{7}{8}$ inch steel grating proposed by Herrick. (3) With 4 inch center spacing on the steel bars as required by paragraphs (b) and (c) of Section "I" of the Jail Equipment Specifications the open space between bars is reduced from $3\frac{1}{8}$ inches with $\frac{7}{8}$ inch grating to 3 inches with 1 inch grating thereby providing greater security with the latter type grating. (4) The steel housing required to enclose the T-Bar type of cell door construction as specified materially increases the amount of steel required for such construction as compared to the open bumper system proposed by Herrick with a resultant and distinctive security advantage provided by the former. (5) The fact that the electro-manual system as specified and included in the bid of Southern Steel Company provided for the installation of only

19 electric motors with switches in control cabinets *outside the security sections* of the various cell blocks whereas the system proposed by Herrick called for the installation of 198 electric motors with switches *within the security sections* of the various cell blocks, specifically one such motor with switches above each cell door, graphically portrays the security gap between the two systems. The resultant hazard under the latter system necessitated by the exposure of motor repairmen and authorized jail personnel to the pre-sentenced prisoners incarcerated within such security sections during periods of repair, which would also be markedly increased with 198 lighter duty motors and switches as opposed to 19 heavier duty motors and appurtenant switches, is obviously apparent. (6) The absence of electrical wiring in the horizontal cover boxes enclosing the locking and operating mechanism for cell doors, as specified and provided under the Southern Steel Company bid, is distinctly advantageous from a security standpoint to the system proposed by Herrick Iron Works, which required electrical wiring for each separate motor to be installed in such cover boxes. (7) The failure of the Herrick bid to provide tool resistant steel grating above the horizontal cover boxes as specified by substituting therefor open hearth steel plate and #10 gauge steel constitutes a vast difference in quality, security and comfort for the prisoners, the latter resulting from the impediment to air circulation which would result from the extension of the horizontal cover boxes to the underside of the ceiling as proposed in the Herrick bid. (8)

Lastly it should also be pointed out that the Herrick bid proposal did not provide designated thicknesses, sizes and types of materials for door jamb components, locking columns and key lock boxes nor did it provide for lengths and types of splicing for cover box sections thereby establishing complete uncertainty with respect to the quality, function, utility or security of the materials ultimately adopted absent negotiations with the Joint Authority.

The items of tangible difference between the bids of Southern Steel Company and Herrick Iron Works as evidenced by the foregoing analysis are indeed substantial and would certainly overcome any claimed palpable abuse of discretion on the part of the Joint Authority in awarding the contract to Southern Steel even in the absence of legal considerations applicable to bids on alternate types of equipment. When intangible factors, such as the honesty and integrity of a bidder, his experience, skill and capability to do the work, the possible loss of human life or serious injuries to innocent persons occasioned by reduced safety and security factors, as well as prisoner comfort, all of which have been drawn in issue in this case as it now stands are considered there would seem to be little doubt that this court would conclude, as did the lower court, that there has been no such manifest abuse of discretion on the part of these public officials as to warrant the intervention of this court in the discharge of governmental duties by these defendants.

In addition it should be here pointed out that, while the acts of public officials will be set aside on the ground of fraud or mistake, every reasonable intendment of good faith and regularity will be indulged where they appear to have acted within the scope of their powers. *McQuillin, Municipal Corporations, 3rd Edition*, §10.37, p. 664. Such indulgence, although absolutely proper, would seem unnecessary under the facts of this case to cast an aura of lawfulness over the actions of these defendants which are so bitterly attacked by the appellant. Furthermore, the authorities are in uniform agreement that, in determining who is the lowest responsible bidder, public officials are vested with wide discretion, and their decision, when based upon an honest exercise of the discretion thus vested in them, will not be interfered with by the courts, even if erroneous. *43 Am. Jur., Public Works and Contracts*, §44, pp. 786-787. This citation is not intended to intimate in any manner that these respondents have made an erroneous decision in awarding the subject jail equipment contract, but is included for the express purpose of illustrating the scope of discretion vested in such officials, the bounds of which are not even remotely jostled by the facts in this case.

POINT III.

THE SUMMARY JUDGMENT ENTERED BY THE LOWER COURT WAS PROPER UNDER RULE 56(c) OF THE UTAH RULES OF CIVIL PROCEDURE.

The appellant relies upon Rule 56(c) of the Utah Rules of Civil Procedure, its counterpart of the federal rules and various cases decided under both rules to sustain his erroneous conclusion that summary judgment is not properly granted if there is *any* dispute of fact. The authorities cited by the appellant do not support such a contention. Rule 56(c) clearly provides that such a judgment shall be rendered forthwith if the pleadings, affidavits, etc. "show that there is no genuine issue as to *any material fact* and that the moving party is entitled to a judgment as a matter of law." In 3 *Barron and Holtzoff, Federal Practice and Procedure, Rules Edition*, §1234, at page 131, it is stated that "(a) question of fact which is immaterial does not preclude summary judgment." Cited thereunder is the case of *Elbow Lake Co-op Grain Co. v. Commodity Credit Corp.*, C.A. 8th, 1958, 251 F.2d 633, holding that an issue of fact is not genuine unless it has legal probative force as to a controlling issue. In *Burton v. U.S.*, D.C. Utah 1956, 139 F. Supp. 121, 124, U.S. District Judge Christenson held as follows:

"It is not every uncertainty or dispute or every failure of the parties to agree, which precludes the disposition of a case by summary judgment. Where the determinative facts are without dispute or are clearly established by the record so that one of the parties is shown to be entitled to judgment as a matter of law, it is the duty of the Court to grant summary judgment accordingly; this notwithstanding that there may be a dispute as to immaterial points."

And this court, in the case of *Dupler v. Yates*, 10 U.2d 251, 351 P.2d 624, 636-637, held that where defendants in an action in deceit based upon misrepresentation, produced evidence that pierced the allegations of the complaint and the plaintiff did not controvert, explain or destroy that evidence by counter-affidavit or otherwise, the court would be justified in concluding that no genuine issue of fact was present and that summary judgment should be rendered for the moving party.

The application of the above rules to the record in this case leads irrefutably to an affirmance of the lower court's ruling. The evidentiary matters contained in the respondents' affidavits relating to installation references contained in the Herrick bid proposal establish without hint of controversy that the Herrick bid proposal was invalid for the reason that it did not comply with the advertised specifications as more particularly set forth under POINT I. The numerous other undisputed particulars in which the Herrick bid was found wanting are also set forth under POINT I. As to the alternate nature of the equipment proposed by Herrick Iron Works, the facts are undisputed that the Herrick equipment did not provide a standby mechanical system for remote full selective movement and control of sliding cell doors and their automatic keyless locking and unlocking as did the specified equipment proposed by Southern Steel Company. Numerous other differences such as the size of steel grating to be used, the electrical system to be employed, cell door construction and type of housing above cover boxes, are also

undisputed by the appellant as shown under POINT II above. Indeed, any contention that the Herrick proposal was not based on alternate equipment to that specified would be clearly frivolous in light of the Herrick bid proposal itself (Exhibit "B", R. 154) which, in deleting Sections JJ, LL, MM, and NN of the architect's specifications, proposed as a variation "Furnishing fully automatic system for operating, locking, unlocking, and selecting sliding doors, *in lieu of that specified.*" (Emphasis added.) It follows from the foregoing that there was no genuine issue of material fact before the lower court and the respondents were entitled to judgment as a matter of law under the authorities cited in POINTS I and III.

CONCLUSION

It seems judiciously ironic that a taxpayer, seemingly fronting for an unsuccessful and irascible bidder for a public contract, should blindly level charges at public officials on behalf of his malcontent partner only to suffer the boomerang of his associate's undisclosed deceit. Such is the case at bar. The invalidity of the Herrick bid proposal has been established beyond doubt through the deliberate misrepresentations contained therein as well as in numerous other matters, any of which would justify the Joint Authority's action. Even assuming the Herrick bid to be valid, it could only be considered as an alternate type of equipment to that specified and the determinatoin of which type of alter-

nate equipment to select was solely for the Joint Authority to make without intervention by the courts. And in the final analysis, considering the honesty, integrity, ability, experience and responsibility of the Herriek Iron Works as evidenced in its bid proposal and the quality, security, safety, durability and function of the two systems of jail equipment, it is clearly established that there has been no such palpable or manifest abuse of discretion exercised by the Joint Authority in awarding the contract to Southern Steel Company as to warrant equitable intervention by the lower court. The defendants' motion for summary judgment upon the pleadings and record in this case was properly granted.

Respectfully submitted,

HOMER HOLMGREN

Salt Lake City Attorney

JACK L. CRELLIN

Assistant Salt Lake City Attorney

ATTORNEYS FOR DEFENDANTS

Salt Lake City, J. Bracken Lee, L. C.

Romney, Conrad Harrison, Herbert F.

Smart and Joe L. Christensen

GROVER A. GILES

Salt Lake County Attorney

ATTORNEY FOR DEFENDANTS

Salt Lake County, C. W. Brady, Marvin

Jenson ,and Edwin Q. Cannon