



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

May 16, 1957.

Honorable Wm. J. Burke,
Executive Director,
State Board of Control,
Austin, Texas.

Opinion No. WW-134

Re: Does the Board of Control have authority to waive performance under a construction contract awarded on bids when the contractor later claims that he did not include certain items in his bid which were shown on the drawings made a part of the bid invitation?

Dear Mr. Burke:

You have requested our opinion on the following question:

"Does the Board of Control have authority to waive performance under a construction contract awarded on bids when the contractor later claims that he did not include certain items in his bid which were shown on the drawings made a part of the bid invitation?"

In reply to our request for additional information, you have stated:

"Bids were originally received for this project on June 9, 1955 and were rejected due to the fact that they exceeded the appropriation. The window schedule on Sheet 506-3 of drawings in Group 5, Division A calls for venetian blinds in certain windows of Building 506. Venetian blinds were not indicated in any other part of the plans and specifications. However, in the second paragraph under Art. 9 of the General Conditions of the Specifications is the following statement, 'Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.'

"Bids were received on the revised plans and specifications on July 14, 1955, and the contract was awarded to S. O. & C. D. Yarbrough Construction Co. The plans and specifications relating to the venetian blinds were not changed in any way in the revised set.

"If the plans and specifications concerning venetian blinds were changed, they were changed by the Architects prior to the original advertisement for bids and issuance of the plans and specifications to bidders."

Under agreement dated August 16, 1955, S. O. and C.D. Yarbrough Construction Co. has agreed to provide all the materials and perform all of the work as shown by the drawings and described in the specifications prepared by Fehr and Granger, and Niggli and Gustafson, associated Architects, and under the agreement the drawings and specifications prepared by such Architects are made a part of the contract for all purposes.

In the drawings of Group V, Division A, Sheet 3, the window schedule contained therein requires that venetian blinds shall be affixed to the windows of Building No. 506. In the written specifications there are no specific details written concerning these venetian blinds. However, in the second paragraph of Article 9, of the General Conditions of the specifications, the following statement is found:

"Unless otherwise specified, all materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials."

Since the Contractor has agreed to install venetian blinds to the windows of Building 506 by agreeing to perform all of the work and furnish all materials called for in the drawings and since this was a condition upon which all bidders were required to bid, it is our opinion that the Board of Control does not have the authority to waive the performance of this condition of the contract, and that the Contractor is required to install venetian blinds in accordance with the provisions of the General Conditions above quoted.

The above answer to your question is not to be construed as preventing the Board of Control from entering a change order for removing the venetian blinds from the contract, provided appropriate credits are given by the Con-

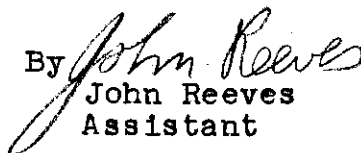
tractor, pursuant to the specifications.

SUMMARY

The Board of Control does not have authority to waive performance under a construction contract awarded on bids, when the contractor later claims that he did not include certain items in his bid, which were shown on the drawings made a part of the bid invitations.

Yours very truly,

WILL WILSON
Attorney General

By 
John Reeves
Assistant

JR:pf:rh

APPROVED:

OPINION COMMITTEE

H. Grady Chandler,
Chairman

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Grundy Williams

REVIEWED FOR THE ATTORNEY GENERAL

By: Geo. P. Blackburn