

257.

CONTRACT—STATE WITH GRAVER TANK AND MANUFACTURING COMPANY, INC., CLEVELAND, FEED WATER HEATING, WATER SOFTENING, ETC., PUMP, MIAMI UNIVERSITY, OXFORD.

COLUMBUS, OHIO, March 7, 1939.

HONORABLE CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a contract by and between Graver Tank and Manufacturing Company, Inc., a Delaware corporation with its place of business in Ohio located at Cleveland, and the State of Ohio, acting through you as Director of the Department of Public Works, for the Board of Trustees, Miami University, Oxford, Ohio, for the construction and completion of Feed Water Heating, Water Softening and Deaerating Equipment as set forth in Item 2 of the Form of Proposal, and the construction and completion of Back Wash Pump as set forth in Item 4, alternate 1, of the Form of Proposal. The Form of Proposal herein referred to is dated October 18, 1938, and the contract expenditure totals \$8169.

You have submitted the following papers and documents in this connection: contract encumbrance record 1720, dated December 15, 1938; estimate of cost; division of contract; notice to bidders; proof of publication; Workmen's Compensation Certificate showing the contractor to have complied with the laws of Ohio relating to compensation; the form of proposal containing the contract bond signed by the Fidelity and Casualty Company of New York, its power of attorney for the signer, its financial statement and the certificate of compliance with the laws of Ohio relating to surety companies; the recommendation of the State Architect; request of the Department of Public Welfare as to letting contracts; recommendation of the Director, Department of Public Works; Controlling Board Release; approval of PWA and a letter from the Auditor of State showing that all the necessary papers and documents are on file in said office; and the tabulation of bids on this project.

In passing upon this contract, I note a difference between the amount set forth in the contract and the encumbrance record No. 1720, with the explanation in the form of a letter from the Board of Trustees of Miami

University setting forth the fact that the items enumerated in the substitution sheet of the form of proposal were included in the encumbrance record No. 1720, which was issued before the close of the biennium, but which substitution was not permitted under PWA regulations at that time, but which will be approved by PWA in the form of an extra order.

I also find from License Certificate No. 175600, issued by the Secretary of State of Ohio, that Graver Tank & Manufacturing Company, Inc., is authorized to do business in the State of Ohio.

From the revised notice to bidders and revised publications, I assume that the original bids exceeded the original estimate.

I have examined the specifications made part of the contract by reference and find that a prevailing wage schedule is attached to said specifications in compliance with Section 17-4 of the General Code of Ohio.

I find no clause in the contract complying with Section 2366-1 of the General Code of Ohio, but by reason of the penal provisions of said section am of the opinion that any aggrieved person has an adequate remedy at law and the absence of said provision is not such as to invalidate said contract.

Finding said bond and contract in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other documents submitted in this connection.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*