1050.

CONTRACT—BOILERS IN STATE HOUSE—NON-COMPLIANCE WITH SPECIFICATIONS.

SYLLABUS:

1. *Where the specifications for new boilers, stokers and equipment for the State Capitol Building call for 4" boiler tubes, a bid based on the furnishing of 3½" boiler tubes does not comply with said specifications, there being no provision for such substitution among the alternates set out in said specifications, and such bid should be rejected.*

2. *Where the specifications for such boilers, stokers and equipment call for vertical baffles and there is no provision for the substitution of horizontal baffles among the alternates, a substitute bid based on the furnishing of such horizontal baffles may not be considered in awarding the contract.*

COLUMBUS, OHIO, September 24, 1927.

HON. HERBERT B. BRIGGS, *State Architect and Engineer, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your communication dated September 20, 1927, requesting my opinion on certain questions arising out of the proposals submitted for new boilers, stokers and equipment at the State House. Your communication in so far as pertinent reads as follows:

> "I respectfully request an opinion on questions arising from proposals for new boilers, stokers and equipment at the State House based on the following facts:
>
> September 16th, 1927, we received and opened two proposals for the installation of *'New Boilers, Stokers and Equipment* (subject to approval by the Controlling Board)' in the State House under a G-31 $32,000.00 appropriation made in H. B. 502 of the 87th G. A., 1927; one from the J. H. Meyers Plumbing and Heating Company of Mount Vernon, and one from the Joseph L. Skeldon Engineering Company of Toledo.
>
> The Meyers Company bid on Heine boilers and Type 'E' Combustion Engineering Company medium duty stokers. The Skeldon Company bid on Keeler boilers and Westinghouse heavy duty stokers. The base bids of both companies were based on the specified vertical baffle boilers. The Meyers Company submitted a substitute bid on boilers with horizontal baffles.
>
> The following is a comparative tabulation of the essential data of the two proposals:

	Myers	*Skeldon*
Base bid	$24,265 00	$24,280 00
Add for boiler foundation excavation	225 00	310 00
Add for soot blowers	600 00	1,441 00
Add for ash tunnel excavation	190 00	108 00
Add for ash tunnel construction	960 00	294 00
Totals	$26,240 00	$26,433 00
Less (substitution) to use horizontal baffle boilers	1,100 00	
	$25,140 00	

	Meyers	*Skeldon*
Total horsepower, 2 boilers	520	538.2
Square feet boiler heating surface	5200	5382
Average price per horsepower	$46.66	$45.11
Square feet grate surface	90	99.8
Size of tubes	3½"	4"
Size of drums	9'-3" x 3'-6"	9'-9" x 3'-6"
Thickness drum plates	15/32"	18/32"
Thickness drum heads	½"	⅝"

Note: The foregoing horsepowers, surfaces, sizes and thicknesses are quoted from data submitted by the two contractors with their proposals.

Section 10-a, page 14 of the specifications provides: 'TUBES. All tubes are to be of best quality hot-drawn seamless tubing, Shelby or equal, 4" in diameter and properly expanded into drilled holes.'

The 4" diameter tubes were specified as being more desirable from the standpoints of Maintenance of steady water level, of fewer parts to service, and because they are the standard of a majority of boiler manufacturers.

Section 11-a, page 14 of the specifications provides under BAFFLES: 'The baffling shall be of the so-called vertical type and shall be such as to give three passes of the gases, and shall provide for satisfactory operation at 25% overload continuously, and 50% overload for short peaks.'

The base bid of the Meyers Company conforms to the specified requirements in all particulars except as to the size of boiler tubes, they bidding on 3½" instead of 4" diameter tubes.

The base bid of the Skeldon Company conforms in all particulars to the specified requirements. In addition it proposes to furnish, as per its listed data, boilers of 18.2 horsepower, 9.8 square feet grate surface, 182 square feet heating surface more than the horsepowers and surfaces listed by the Meyers Company.

In preparing my report and recommendations on the above proposals I am confronted by these questions:

(1) Is the base bid (Item No. 1 of proposal) of the Meyers Company regular and legal in that this company proposes, as shown by the descriptive data accompanying its proposal, to use 3½" diameter boiler tubes instead of the specified 4" diameter tubes?

(2) If the Meyers Company's base bid (Item No. 1 of proposal) is *not* regular and legal, is its *substitute bid* in which it proposes to use 3½" diameter instead of 4" diameter boiler tubes and horizontal instead of vertical baffles, regular and legal?

(3) If the Meyers Company's base bid (Item No. 1 of proposal) is regular and legal, will the provision of Section 6 of House Bill No. 502 (Appropriation Bill) of the 87th General Assembly apply? Namely, must the contract be awarded to the lowest bidder notwithstanding the fact that the boilers, stokers and equipment bid upon by the Skeldon Company, based on its submitted descriptive data, appear to be of more desirable quality and sizes in the matter of heavy duty stokers, horsepowers, grate surfaces, and heating surfaces, than those bid on by the Meyers Company?

(4) If it should be decided that it will be 'for the best interests of the State' to recommend that the contract be awarded to the Skeldon Company because of the apparently more desirable quality and sizes of its stokers, horse-

powers, grate surfaces and heating surfaces, can the bid of the Meyers Company be rejected and the bid of the Skeldon Company be accepted under the provisions of Section 2320 of the General Code?

I submit with this request the following documents:

Specifications on which the proposals were based.
Submitted proposal of the Meyers Company.
Submitted proposal of the Skeldon Company.

Two boiler and stoker layout blue prints submitted by the Meyers Company, one for vertical baffles and one for horizontal baffles.

One boiler and stoker layout blue print submitted by the Skeldon Company."

I have examined the blue prints and proposals submitted by the respective bidders and the specifications pursuant to which such proposals were made. I find that the requirements of the specifications with reference to boiler tubes are as quoted in your communication, that is, that said tubes are to be of best quality hot-drawn seamless tubing, Shelby or equal, 4" in diameter, and properly expanded into drilled holes. Your letter states, and I am also informed, that the 4" tubes were specified because less tubes are required when a 4" tube is used than when the tubes are of smaller diameter. I am also informed that other reasons for specifying 4" tubes were that using such tubes permits of using heavier gauged tubes of longer wearing qualities and requiring fewer parts to service, and that such tubes minimize the fluctuation of the water in the boilers, thus permitting of the maintenance of a steady water level and resulting in drier steam. If the information obtained from your letter and that obtained from other sources be true, I have no difficulty in reaching the conclusion that a proposal based on 3½" tubes is not such an immaterial variation as would make it a substantial compliance with the specifications. Your department, of course, is the judge of the relative merits and efficiencies of 4" tubes and 3½" tubes, and having determined that 4" tubes meet your requirements, and having so specified, it is my opinion that proposals based on tubes of smaller diameter may not be considered unless the alternates attached to the specifications permit bidding on tubes of smaller diameter. The specifications contain six alternates, none of which permits the substitution of tubes of smaller diameter than those specified. It seems clear, therefore, that 4" tubes having been specified, and there being no provision among the alternates permitting substitution of proposals based on tubes of smaller diameter, a proposal based on furnishing 3½" tubes is not a compliance, either strict or substantial with the specifications and such proposals should be rejected.

It also appears from your communication that the Meyers Company has submitted a substitute proposal based on furnishing horizontal baffles, which is $1100.00 less than the total bid of the Meyers Company based on furnishing vertical baffles and which is $1293.00 less than the total bid of the Skeldon Company based on furnishing vertical baffles. The Skeldon Company has not submitted a proposal based on furnishing horizontal baffles.

With respect to "baffles" the specifications provide:

"11. *BAFFLES.*

(a) The baffling shall be of the so-called vertical type and shall be such as to give three passes of the gases, and shall provide for satisfactory operation at 25% overload continuously and 50% overload for short peaks."

None of the six alternates above referred to permits the substitution of horizontal baffles for those of the vertical type, and there is consequently no authority for submitting a substitute proposal based on the furnishing of such baffles. It is entirely probable that were there such authority, the Skeldon Company would have submitted a similar proposal, which might have been lower than the substitute proposal submitted by the Meyers Company.

For the foregoing reasons, it is my opinion that the substitute proposal submitted by the Meyers Company may not be considered in awarding the contract.

Specifically answering your first and second questions, it is my opinion that inasmuch as the base bid of the Meyers Company does not comply with the specifications in respect of the boiler tubes, and inasmuch as there is no authority for the submission of a substitute proposal based on furnishing horizontal baffles, neither of said proposals may be considered in making the award of the contract.

In view of the foregoing holding, I deem it unnecessary to answer your third and fourth questions.

I am returning herewith all papers submitted by you in connection with the above matter.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1051.

APPROVAL, 3 GAME REFUGE LEASES, DISAPPROVAL 1 GAME REFUGE LEASE.

COLUMBUS, OHIO, September 24, 1927.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—I have your letter of recent date in which you enclose the following Game Refuge Leases, in duplicate, for my approval:

No.	*Name*	*Acres*
958	Kent D. Lehmer, et al., Washington County, Lawrence Township	175
959	A. C. Becker, Washington County, Lawrence Township	40
960	E. H. Steepe, Columbiana County, Middletown Township	10

I have examined said leases, find them correct as to form, and I am therefore returning the same with my approval endorsed thereon.

I am returning herewith Lease No. 957, Peoples Bank and Savings Co., Washington County, Lawrence Township, 175 acres, unapproved for the reason that nothing appears therein or attached thereto to indicate by what authority such lease was executed.

Respectfully,
EDWARD C. TURNER,
Attorney General.