

Acceptance of Contract, What Necessary to Constitute. Variance of Terms and Conditions of Award of Contract, Not a Compliance with Terms of Award. Counter Offer, Not an Acceptance.

In order to constitute an acceptance of a contract it is necessary that there be a meeting of the minds of the contracting parties, and that both parties agree to the terms and conditions of the award of the contract. A variance of the terms or conditions of the award by either party is not a compliance therewith, nor can a counter-offer or requested modification of conditions be considered an acceptance.

Helena, Mont., June 4, 1908.

Hon. Edwin L. Norris,
President State Board of Prison Commissioners,
Helena, Montana.

Dear Sir:—

I am in receipt of your favor of the 3rd inst., advising me that

the board of prison commissioners desire my official opinion with respect to the subject of the award of the state prison contract to Messrs. Wyman & Henderson, of Butte, Montana, transmitting to me for my consideration with said request all of the files and records and minutes respecting the subject.

From an examination of the files, records and minutes accompanying the request for an opinion, it is found that in making the award of the contract to Messrs. Wyman & Henderson on the 7th day of May, 1908, the award of the contract was made to them upon the following conditions and regulations, which were required to be fully complied with not later than the 2nd day of June, 1908, to-wit:

First: Said bidders shall, on or before the 2nd day of June, 1908, pay into the state treasury of the state of Montana, in cash, the sum of twenty thousand (\$20,000.00) dollars, with the express understanding and agreement that the board of prison commissioners shall be entitled and authorized to expend the same, or any part or portion thereof, in the purchase of such property and personal effects belonging to Messrs. Conley & McTague, the present prison contractors, as the said board shall determine necessary and desirable to be kept and held for the proper conduct and management of the business and affairs of said institution and the proper care of the prisoners therein confined; the board to determine what property shall be purchased and the price to be paid therefor.

Second: Said bidders must furnish on or before the 2nd day of June, 1908, a good and sufficient bond, to be approved by the board, in the sum of thirty thousand (\$30,000.00) dollars, in addition to the bond required by law and the call for bids for the faithful performance of the contract, which additional bond shall be in form such as is prescribed by the attorney general's office, and conditioned that such bidders will, without cost or expense to the state, receive, accept and pay for such of the property of the present contractors, Messrs. Conley & McTague, as the board may deem necessary or desirable to be used in connection with the conduct of the business and affairs of the said state prison after the said twenty thousand (\$20,000.00) dollars, cash, shall have been exhausted by the board in payment for such property interests."

It appears that a bond has been filed with the board of prison commissioners on the 2nd day of June, 1908, in form such as was prescribed by this office, and further that a certified check for the sum of twenty thousand dollars has been deposited with the state treasurer by said bidders. In the deposit of the money, as well as in the filing of the bond, however, it appears that the same has been done conditionally, and that the bidders required the execution of receipts for the money and the bond, making reference to their letter addressed to the board bearing date June 1st, 1908. In the receipts which they required to be executed upon delivery of the said certified check and

the bond, language in substance the following was used in each receipt required to be given, to-wit:

This check (or bond) is received upon the express condition that the same is to be returned to the said parties if the state board of prison commissioners do not see fit to grant the conditions requested by the said parties in depositing the same and as contained in their letter of June 1st, 1908, with regard to the same to the said board.

It is an elementary principle of law that in order to make a binding contract there must be a meeting of the minds of the contracting parties, and that when an offer is made, in order to constitute an acceptance it must fully comply with all the terms and conditions of the offer. A variance of the terms and conditions of the offer in the award of a contract can in no way be considered an acceptance. A counter-offer, or requested modification of conditions, cannot be considered an acceptance.

Applying these principles of law to the files, records and minutes of the board respecting the award of the contract to Messrs. Wyman & Henderson, it is for the board to determine, as a matter of fact, considering the letter of June 1st, 1908, hereinabove referred to, and the character of receipts required to be executed on the deposit of the certified check and the bond, whether or not there has been a compliance with the terms of the award.

Respectfully submitted,

ALBERT J. GALEN,
Attorney General.