

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of SECURITY FORD TRACTOR, INC. )  
Under DGS Request for Quotation ) Docket No. MSBCA 1127  
#P22522 )

July 27, 1983

Responsiveness - Descriptive Literature - Unsolicited descriptive literature submitted with a bid may not be disregarded. A bid will be considered responsive, however, if it offers to provide precisely what the solicitation requires, and the descriptive literature submitted with the bid neither qualifies the bid nor makes it ambiguous.

Specifications - Equipment which was designed and fabricated by a manufacturer for use with its product was considered standard factory equipment.

APPEARANCE FOR APPELLANT:

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APPEARANCE FOR RESPONDENT:

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APPEARANCE FOR INTERESTED PARTY:

Mr. Barclay Tucker  
President  
Tucker Equipment Co.  
Havre de Grace, MD

OPINION BY MR. KETCHEN

This appeal is from a Department of General Services (DGS) final decision confirming award of the captioned contract to Tucker Equipment Company (Tucker) for the purchase of ten (10) front end loaders. Appellant maintains that Tucker's bid was non-responsive since the unsolicited descriptive literature it included showed that the counterweight necessary to meet the minimum weight and load requirements for its front end loader was not standard factory equipment.

Findings of Fact

1. A request for quotations (RFQ) was issued by the Department of General Services on September 8, 1982 for the procurement of ten (10) rubber tired, front end loaders, S.A.E. rated, meeting State Highway Administration Specification 102-A, revised July 1982.

2. The RFQ, in pertinent part, provided as follows:

"Operating Weight not less than 19,000 pounds.

Weight of Rollover Protective Cab may be included in operating weight.

Counter weights [sic] other than factory standard are not acceptable. Liquid ballast in tires not acceptable under any conditions to meet specified weights." (Underscoring added).

3. The following specification requirements were pertinent to the calculation of loader operating weight and loads under the RFQ:

a. A 2.0 cubic yard bucket capacity was required.

b. A straight ahead tipping load of not less than 14,000 pounds, and a tipping load of 12,000 pounds in full turn or at 40 degrees were specified.

c. Tire size was specified as 17.5 x 25, 12 ply rated. (SPEC FORM 102-A).

4. Bids for the ten loaders were opened on October 22, 1982. The three lowest bids were:

Tucker	\$35,676.00 each
Suit & Wells Equipment Co.	36,646.00 each
Appellant	36,720.00 each

5. Tucker's bid described the front end loader it offered as follows:

"Case W18B - Rubber Tire Front End Loader, Articulated Type, 2 cubic yard. S.A.E. Rated. Total weight 21,154 lb."

Additionally, Tucker's bid included unsolicited descriptive literature describing the Case W18B Loader which contained a chart of performance specifications indicating pertinent loader ratings as follows:

<u>Bucket Type</u>	<u>General Purpose</u>
SAE Rated (Nominally heaped)	2.0 yd <sup>3</sup> (1.53 m <sup>3</sup> )
SAE Tipping Load, Straight, lbs (kg)	17,477 lbs. (7,927 kg)
40° Turn [Load]	16,542 lbs. (7,050 kg)
SAE Operating Weight, lbs (kg)	22,574 lbs. (10,239 kg)

The explanatory footnote to the performance specifications chart stated that:

"For select items, add to or deduct from the machine operating weight and tipping loads as given in the chart below. All dimensions and specifications based upon unit with 17.5 x 25, L2 12PR tires, with 1218 lbs. (552 kg) CaCl<sub>2</sub> solution in rear tires, ROPS cab, fenders, counterweight, fully serviced and with 175 lb (79 kg) operator." (Underscoring added.)

6. The descriptive literature also contained a second chart referenced in the performance specifications chart showing various operating weight and tipping load adjustments that had to be made to the performance specifications if certain selected items, including counterweight, were not ordered. (Tr. 45). An edited version of this chart shows the following:

<u>Selected Items</u>	<u>Operating Weight Adjustments (lbs.)</u>	<u>Tipping Load Adjustments</u>	
		<u>Straight (lbs.)</u>	<u>40° Turn (lbs.)</u>
W[with] ROPS Canopy	-530	-443	-443
17.5 x 25, L2, 12PR (tires)	-1218	-1752	-1547
17.5 x 25, L2, 12PR W/75% CaCl <sub>2</sub> (tires)	0	0	0
W/O [without] counterweight	-1252	-2264	-2000
W/O Fenders	-202	-183	-168

7. By using the above charts, the operating weight for the Case W18B Loader without CaCl<sub>2</sub> ballast, fenders, and counterweight can be derived as follows:

SAE Operating Wt. (lbs.) (with 2.0 cubic yard bucket)	22,574 lbs.
CaCl <sub>2</sub> (ballast in tires not permitted)	<u>-1,218</u>
Operating Wt. without CaCl <sub>2</sub>	21,356 lbs.
Fenders	<u>-202</u>
Operating Wt. without CaCl <sub>2</sub> & Fenders (Tucker's bid)	21,154 lbs.
Without Counterweight	<u>-1,252</u>
Operating Wt. without CaCl <sub>2</sub> , Fenders, and Counterweight	<u>19,902 lbs.</u>

9. The straight ahead load and 40° turn tipping load for the Case W18B Loader without CaCl<sub>2</sub> ballast in the tires and without counterweight also can be derived from the performance specification charts set forth in the Case W18B Loader descriptive literature. (Findings of Fact Nos. 5 & 6). The

straight ahead load is 13,278 lbs. and the 40° tipping load is 11,827 lbs. The Case W18B Loader thus required counterweight to meet the specification requirements of a straight ahead tipping load of 14,000 lbs. and a 40° turn, tipping load of 12,000 lbs. (Tr. 41, 47).

10. By letter dated October 28, 1982, Appellant protested to the procurement officer that Tucker's bid was non-responsive to the RFQ since the descriptive literature submitted by Tucker for the Case W18B Loader bid showed that the counterweight, required to meet the minimum operating weight specified, was not standard factory equipment.

11. The DGS procurement officer denied Appellant's protest by letter dated December 7, 1982.

12. Appellant submitted a timely appeal by letter dated December 17, 1982.

### Decision

In competitive sealed bid procurements, Maryland law requires acceptance of the low bid that on its face offers to conform in all material respects to the requirements of the invitation. Md. Ann. Code, Art. 21, §3-101 (i) (1981 Repl. Vol., 1982 Supp.); COMAR 21.05.02.13A. Compare Excelsior Truck Leasing Co., Inc., MSBCA 1102 (May 6, 1983); Prestex Inc. v. United States, 162 Ct.Cl. 620, 320 F.2d 367 (1963); M-S and Associates, Comp. Gen. B-183282, 75-1 CPD ¶296. In this regard, the intent of the bid must be determined from a reasonable construction of its entire contents, including any unsolicited descriptive literature furnished with the bid. 49 Comp. Gen. 851 (1970).

Here Tucker expressly did not except to the requirements of the specifications. (Findings of Fact No. 5). However, the descriptive literature Tucker submitted with its bid may not be disregarded if it clearly appears that the Case W18B model described in that literature did not conform to a material requirement of the RFQ, or the description made the bid ambiguous. Toms River Plumbing Co., Inc., Comp. Gen. B-192909, 73-1 CPD ¶52, at p. 2; 49 Comp. Gen. 851, 852 (1979); Dominion Road Machinery Corp., Comp. Gen. B-186737, 77-1 CPD ¶89; 46 Comp. Gen. 315, 318 (1966); 48 Comp. Gen. 306, 308 (1968).

With these considerations in mind, we turn to the issue of whether the unsolicited descriptive literature provided by Tucker qualified its bid so as to make it non-responsive. In this regard, Appellant argues that the counterweight was represented in the descriptive literature as being an option rather than an integral part of the Case W18B Loader. We disagree. Our reading of the descriptive literature reveals that the counterweight was shown to be part of the base unit bid upon. Although the descriptive literature did indicate that a purchaser could request that counterweight be deleted from the manufactured unit, it was clear on the face of the bid documents that Tucker was providing precisely what the RFQ required. Tucker offered to provide a Case W18B rubber tire front end loader with a two cubic yard bucket weighing 21,154 pounds. The descriptive literature indicates that the manufacturer's basic unit with counterweight and without loaders or caCl<sub>2</sub> in the tires is 21,154 pounds. Accordingly, the DGS procurement officer reasonably determined that Tucker's bid was unqualified and responsive.

Appellant also argues that because counterweight can be deleted from the manufactured front end loader, it is not standard factory equipment. We conclude, however, that factory standard equipment is that equipment which is designed and fabricated by a manufacturer specifically for use with its own product. The RFQ requirement that counterweight be factory standard was intended to preclude the practice of "dummyrigging"<sup>1</sup> in order to meet the required operating weights and loads. The counterweight to be provided by Tucker clearly was standard factory equipment under this definition.

For the foregoing reasons, the captioned appeal is denied.

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<sup>1</sup>Dummyrigging is the practice of attaching miscellaneous objects such as cinderblocks, heavy chains or other material to keep a crane from tipping over.

THE STATE OF TEXAS, COUNTY OF DALLAS, ss. I, the undersigned, being a duly qualified Notary Public for said County and State, do hereby certify that the within and foregoing instrument was duly executed and acknowledged before me on this 15th day of June, 1964, by the parties therein named, and that the contents of the same are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of my office at Dallas, Texas, this 15th day of June, 1964.

Notary Public in and for the State of Texas