

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

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FILE: B-194951

DATE: November 23, 1979

MATTER OF: Coast Counties Express, Inc.

DLGO 3233
344**DIGEST:**

1. Quotations of freight rates are considered continuing offers to perform transportation services at quoted rates subject to terms and conditions contained in offers. They are the same as any offer made by a party seeking to form a contract and their interpretation is subject to traditional rules of contract law.
2. Provisions of Section 22 quotation are construed against carrier, party preparing document, and strongly in favor of shipper.

Coast Counties Express, Inc. (CCE) requests review by the Comptroller General of a Settlement Certificate issued by the General Services Administration (GSA) in which GSA disallowed CCE's claim for additional freight charges. Under regulations implementing Section 201(3) of the General Accounting Office Act of 1974, 49 U.S.C. § 66(b) (1976), this settlement action is reviewable by the Comptroller General. 4 C.F.R. §§ 53.1(b)(2) and 53.2 (1978). CCE's letter substantially complies with the criteria for requests for review of such an action. 4 C.F.R. § 53.3 (1978).

AGC 00067

GSA's action was taken on a shipment described on Government bill of lading (GBL) No. K-4077444 as "1 BX ROCKET AMMUNITION W/EXPLOSIVE PROJECTILE (EXPLOSIVES, NOI) CLASS A EXPLOSIVES (NMFC ITEM 64300)," weighing 2,120 pounds, and two boxes of "HARDWARE, NOI I/S (NMFC ITEM 95190)," weighing 2,850 pounds. Although the GBL did not indicate that any particular equipment was ordered or furnished, the box in the GBL marked "KIND" (of car, truck or container) was annotated "BV." Navy regulations define these initials as "Van Closed (Truck or Trailer)." CCE Tender No. 22-B (Tender 22-B) was cited on the GBL. The shipment was picked up by CCE at Naval Weapons Center, China Lake, California, on January 18, 1977, and delivered to Naval Weapons Station, Seal Beach, California, on January 19, 1977.

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[Protester Requests Review of a Settlement Certificate]

CCE assessed transportation charges of \$305.72 on the shipment. Upon a post payment audit, GSA determined that there was an overcharge of \$125.72 by CCE which was collected by deduction. 49 U.S.C. § 66(a) (1976). CCE's claim for the amount deducted was disallowed and CCE requests review.

GSA says that the rates in Tender 22-B apply to the shipment. The tender was issued by CCE under Section 22 of the Interstate Commerce Act, as amended, 49 U.S.C. § 22 (1976), made applicable to motor carriers by Section 217(b) of the Act, 49 U.S.C. § 317(b) (1976). Section 4 of this tender contains the rates to be applied. The rates are subject to several notes including Note 1 which reads:

"Rates covering shipments of 1,000 lbs. or less are restricted to maximum dimensions of 96 inches long 48 inches wide and 42 inches high. Those from 1,001 lbs., to and including 10,000 lbs., must be capable of being loaded in a 20 ft. closed van truck."

Section 7 of the tender states ". . . where this tender is silent in any given instance, the provisions of Western Motor Tariff Bureau U.S. Government Quotation No. 1 (Quotation #1) will apply."

CCE claims that the rates in Quotation #1 apply to this shipment; its justification is based on its contention that the class "A" explosives had to be transported on open flatbed equipment, that the rates in Tender 22-B do not apply to open equipment and that therefore the tender is silent and the rates in Quotation #1 apply. To support this contention CCE states that the ordering installation always specifies a flatbed truck and always cites Volume I of Naval Sea Systems Command Ordnance Publication (NAVSEA OP) 2165, paragraph 4-8, "Loading and Unloading of Long Ordnance Items in Motor Vehicles and Railcars," which states in part:

"The loading of long ordnance items in closed truck vans or box cars is authorized only when flatbed equipment is not available and shipment must be made because of military necessity."

GSA's basis for the overcharge is that Note 1, section 4, of Tender 22-B establishes a restriction on dimensions only (not on type of equipment used) and that therefore the rates established in Tender 22-B apply.

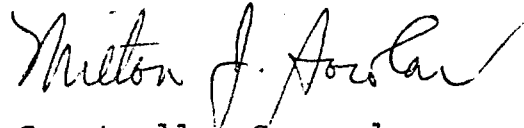
Quotations of freight rates, such as Tender 22-B, are considered to be continuing offers to perform transportation services at the quoted rates subject to the terms and conditions contained in the offers. C & H Transportation Co. v. United States, 436 F.2d 480 (Ct. Cl. 1971). They are the same as any other offer made by a party seeking to form a contract and their interpretation is subject to traditional rules of contract law. Union Pacific R.R. v. United States, 434 F.2d 1341, 1345 (Ct. Cl. 1970).

In accordance with traditional rules of contract law, a Section 22 quotation or tender is construed against the carrier, the party preparing the document, and strongly in favor of the shipper. 56 Comp. Gen. 529, 531 (1977); 39 *id.* 352, 355 (1959). Thus, we agree with GSA that the rates in Tender 22-B apply here whether open or closed equipment was used.

Even though we agree with GSA's interpretation of Tender 22-B, we note that CCE has not met its burden of proving that the shipment actually moved on open flatbed equipment. The GBL evidences the use of a closed van (truck or trailer) thus raising the presumption that a closed vehicle was used to transport the shipment.

To rebut the presumption CCE states that based on the Navy regulations, cited above, open equipment was ordered and furnished. However, GSA reports that the route order shown on the GBL did not contain a request for any specific type of equipment. We do not believe CCE has overcome the evidence of record supporting the use of a closed truck.

Based on the present record, GSA's settlement action on the shipment moving under GBL No. K-4077444 is correct and it is sustained.

A handwritten signature in cursive script, reading "Milton J. Arnold", with a checkmark at the end.

For The Comptroller General
of the United States