

**DECISION**

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**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:**

B-210667

**DATE:** December 23, 1983**MATTER OF:**

Silent Hoist &amp; Crane Co., Inc.

**DIGEST:**

Although shipping information (forklift truck weight and dimensions) exceeded specification limitations, bid could properly be accepted as responsive since shipping data may reflect the use of blocking and bracing materials as well as the truck itself and other circumstances indicated bidder did not intend to qualify its bid.

Silent Hoist & Crane Co., Inc. protests the award of a contract for seven forklift trucks with an option for seven more trucks to Hyster Company under invitation for bids (IFB) No. DLA700-82-B-1777, issued by the Defense Construction Supply Center. Silent contends that Hyster's bid should have been rejected as nonresponsive because the shipping weights and dimensions set forth in its bid exceed the maximum weights and dimensions required by the specifications. We deny the protest.

The agency determined that of the two bids received, Hyster's was low. By letter to the contracting officer, Silent contended that Hyster's bid was nonresponsive because Hyster indicated in the solicitation clause entitled "Guaranteed Maximum Shipping Weights and Dimensions" that each truck had a maximum shipping weight of 33,000 pounds and was 130 inches high and 98 inches wide while the solicitation specifications required a truck with a maximum weight of 30,800 pounds, maximum collapsed mast height of 128 inches and width of 96 inches. The contracting officer reports that the agency's transportation expert and Hyster both informed her that the maximum shipping weight and dimensions used by Hyster included both the trucks and packing materials. Consequently, she denied Silent's protest and made award to Hyster as the low responsive bidder. The contracting officer later reported that there had been a misunderstanding between her and the agency transportation expert and that since Hyster stated

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in its bid that the trucks would be shipped "loose," the excess weight and dimensions in Hyster's bid could not be attributed to packing material. Nevertheless, the contracting officer maintains that Hyster's bid was properly accepted because she believes that shipping weights and dimensions are material only for the calculation of transportation costs and are not relevant to a bidder's responsiveness to the specification requirements.

The shipping data clause provided that each bid would be evaluated by adding to the F.O.B. origin price all transportation costs to the destination specified. It further informed bidders that if the supplies delivered exceeded the guaranteed maximum shipping weight or dimensions, the contract price would be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on the bidder's guaranteed maximum shipping weights or dimensions and the transportation costs that should have been used for evaluation purposes based on correct shipping data. Finally, the clause stated that if the bidder failed to supply the necessary shipping data, the agency would use the estimated data it listed in the clause for transportation cost evaluation. The agency's estimated shipping weight was 34,000 pounds, and the dimensions were 153 inches high and 98 inches wide. The solicitation stated that the agency's estimate was based on "loose" shipment.

The purpose of this type of clause is to enable the government to ascertain its total cost for a proposed contract and to establish the basis for a contract price reduction in the event the maximum guaranteed shipping weights or dimensions are exceeded. We have recognized that bidders may use guaranteed shipping weight and dimensions which are less than the actual weight and dimensions as an alternative to reducing the price for the item itself, Capital Industries, Inc., B-190818, July 7, 1978, 78-2 CPD 17; General Fire Extinguisher Corporation, B-186954, November 15, 1976, 76-2 CPD 413. Similarly, we have noted that bidders may provide guaranteed shipping weight and dimensions which are greater than the actual weight or dimensions to eliminate the obligation to pay excess transportation costs in case the item delivered for shipment exceeds the guaranteed weight or dimensions. See 48 Comp. Gen. 357 (1968). While bidders may understate or overstate guaranteed weight or dimensions, they must take care to do so only in circumstances where they do not

create doubt as to their intent to comply with the specifications. In the cited cases, there was no evidence that the figures inserted by the bidders in the shipping data clauses represented a deviation from any specification requirements. Where, however, the furnished shipping data suggests that the specifications will not be met, the bid must be rejected. See Star-Line Enterprises, Inc., B-210732, October 12, 1983, 83-2 CPD 450, where the shipping data indicated that the vehicle offered would be narrower and longer than the specifications allowed.

Here, Hyster's indicating in the shipping data clause that its trucks would be shipped "loose" but that the shipping weight and dimensions would exceed what the specifications permitted for the trucks on its face raises some doubt as to whether Hyster was offering to comply with the specifications. We think that doubt is easily resolved in favor of Hyster under the circumstances of this case, however. First, even though the trucks are to be shipped "loose," it is not unreasonable, as Hyster explained to the agency, that "packing, blocking and bracing materials" would be used to protect the vehicles during shipment. The use of such materials, of course, would be consistent with shipping weight and dimensions exceeding the actual weight and dimensions of the trucks themselves. This view is reinforced by the fact that the agency's own estimated shipping weight and dimensions set forth in the shipping data clause exceeded the specification requirements.

Second, the record shows that Hyster requested the agency during the solicitation process to increase the maximum weight of the trucks from 30,000 pounds to 30,800 pounds and to increase the height from 120 inches to 128 inches. These changes were incorporated into the solicitation by amendment. We think it hardly likely that Hyster would have asked for those changes to the specifications and then offered a product that would not meet the specifications revised at its own request.

Accordingly, we do not believe the agency acted unreasonably in concluding that Hyster did not intend to qualify its bid by the information it included in the bid's shipping data clause.

The protest is denied.

*for* *Harry R. Van Clava*  
Comptroller General  
of the United States