

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

October 25, 1962

To: John R. Dyer, Purchasing Agent

Re: Tires on Trucks Purchased for Highway Department

On June 11, 1962, request for bids to be opened on June 25, 1962 was sent out. On the latter date the bids were opened and a low bid was accepted for item #6. The item was stated as:

"F.O.B. Augusta, Maine: State Highway Garage, 13 only, 1962 Truck, Chassis, Cab and 3 cu.yd. dump body, up to 18,000 GVW, per specification attached and made a part of this bid."

The specification for item #6 consists of a whole page and covers 18 separate parts of the trucks to be supplied. The part of the specification relevant to the matter at hand concerns the tires and is as follows:

"*Tires* — Nylon tube type, 8.25-20 10 PR (Min) front; 8.25-20 10 PR (Min) rear duals; 8.25-20 10 PR spare tire, mounted, under frame carrier (prefer same size tires all around.)"

No other specification relates to the tires and there is nothing in the general conditions and instructions on the back of the bid request form applicable to the situation.

When the successful bidder delivered the trucks it appeared the tires were not a make that is generally used on new trucks. The purchasing agent has raised the question whether or not he can, without specifying such in his specification, expect to receive so-called "manufacturers original equipment" tires on new trucks.

The purchasing agent explains that the phrase "manufacturers original equipment" has a very definite meaning in the trade, has been always received in purchasing motor vehicles, and that specifications have never carried this requirement as it has not been deemed necessary.

The purchasing agent contends that the specification relating to tires was only made to tell the bidder the size, material, and that tubes were to be supplied rather than tubeless. The successful bidder contends that he only has to furnish tires that meet the specifications and that he has done so. There seems to be no question but what the tires furnished do meet the written specifications.

The request for bids, the bid, and the acceptance of the bid by the State, constitute a contract between the State and the successful bidder. If the matter were brought to court, both parties would be bound by the terms of the contract. Parol evidence of the intent of the purchaser would not be admissible to vary the terms of the contract.

We agree with the position of the purchasing agent and do not condone the action of the successful bidder but from a strictly legal point of view we must say that the State has to accept the trucks insofar as the tires are concerned.

We recommend that in the future the specifications clearly indicate that "manufacturers original equipment" is required on all motor vehicles purchased by the State.

GEORGE C. WEST

Deputy Attorney General