

1945

1. SPECIFICATIONS — TOLEDO STATE HOSPITAL — ARTICLE 3 (a), CLEAR AND SPECIFIC—CONTRACTOR, SUCCESSFUL BIDDER CHARGED WITH OBLIGATION TO FURNISH AND INSTALL SPECIFIED EQUIPMENT—OBLIGATION TO TRANSPORT EQUIPMENT FROM OWNER'S RAILROAD TO POINT OF INSTALLATION.
2. VARIOUS ARTICLES OF SPECIFICATIONS CONSIDERED AS A WHOLE—NO CONFLICT OR AMBIGUITY EXISTENT BETWEEN ARTICLE 3 (a) AND ARTICLE 4 (a) OF SPECIFICATIONS.
3. SAME DECISION AS TO EQUIPMENT PROJECTS FOR TOLEDO STATE HOSPITAL AND GALLIPOLIS STATE INSTITUTE.

## SYLLABUS:

1. Article 3 (a) of the specification for the Toledo State Hospital is clear and specific in charging the contractor-successful bidder with the obligation of furnishing and installing the equipment as mentioned therein, including the obligation of transporting such equipment from the owner's railroad siding to the point of installation.

2. When the various articles of the specification are considered as a whole, there is no conflict or ambiguity existing between Article 3(a) and Article 4(a) of said specification.

3. The same opinion reached regarding the specification relating to the equipment for the Toledo State Hospital, also applies to the specification relating to the equipment for the Gallipolis State Institute.

Columbus, Ohio, June 26, 1950

Hon. J. H. Lamneck, Director Department of Public Welfare  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"We would like for you to give us an informal opinion in writing regarding a controversy which has arisen between the Contractor and the State of Ohio.

"The Contractor has taken exceptions to our specifications

for the delivery of two (2) steam turbine generators at Toledo State Hospital, Toledo, Ohio, and one (1) steam turbine generator at Gallipolis State Institute, Gallipolis, Ohio. The Contractor claims that the specifications are conflicting and that it is not their responsibility to deliver the equipment from the railroad to our Institutions.

“Attached hereto is a sheet of the specifications for each separate job. In Article 3—(TURBO-GENERATOR SET—a). ‘This Contractor shall furnish and install on foundations provided by Owner,’ etc. In Article 4—(PRICE—a). ‘Each bidder is to state the price for which he will deliver the complete equipment on the Purchaser’s railroad siding including the services of a supervising engineer.’

“The turbines have been delivered at Toledo State Hospital but in order to avoid a greater amount of demurrage, we took it upon ourselves to move the turbines from rail siding to power house. The moving bill was forwarded to Contractor for payment which he refused to pay. The turbines have not been paid for and we will hold up payment until you give us your opinion.”

At the outset I shall quote in full the Articles referred to in your letter. Article 3 (a) reads as follows:

“This Contractor shall furnish and install on foundation provided, by Owner, two (2) 400 KW package type turbo-generator unit, incident piping, valves and controls. All of the foregoing to conform to the following detailed specifications.”

Also article 4(a) reads thus:

“Each bidder is to state the price for which he will deliver the complete equipments on the Purchaser’s railroad siding including the services of a supervising engineer to supervise the installation. All common labor will be furnished by the Purchaser. It shall be the duty of the supervisor to instruct the Purchaser’s Operators for one (1) week after the equipment is put into commercial service.”

One of the primary rules of construction of contracts is, “contracts should be construed so as to give effect to the intention of the parties.” The full intent of the specification considered herein as it affects the parties, is found in Article 1 (a), which reads:

“It is the intent of this specification to describe in detail as accurate as possible, for the Manufacturer to furnish in its entirety, and complete supervision of its installation and delivery to Power House of the Toledo State Hospital, Toledo, Ohio, of two (2) 400 KW Steam Turbine Generators in accordance with the following specifications.”

It is apparent in interpreting said article that the successful bidder, also referred to in the specification as the manufacturer and contractor, under said specification, will not only be expected to *furnish* the two generators, but will also be expected to *deliver* these generators to the power house of said hospital, and completely install them. Delivery is contemplated as being completed when the generators have been placed on the site provided for their installation at the power house, and delivery cannot be considered as completed when said generators are merely transported to the railroad siding of the hospital. It is also a paramount rule of construction that there is no need for construction where the words used in a contract are clear and unambiguous as to their meaning.

Again, in Article 1(a) the use of the words "deliver to power house" can allow for no other interpretation except that which is set out above.

In Article 3(a) the express intent of the parties is again set out as to the obligation devolving upon the contractor, when it is stated that he "shall *furnish and install on foundation provided, by owner*" two (2) 400 KW generators mentioned in the specification. This obligation is in the nature of a mandatory provision, for it uses "shall" which is usually construed to be a mandatory requirement.

There is little room for confusion in interpreting Article 4(a) if the first sentence is read in its entirety and not broken at the words "railroad siding." Giving interpretation to the whole sentence, the meaning is clear in setting out that bidders shall include in the price they submit, a figure which will include transportation to the owner's railroad siding and an installation figure. It is elementary that if the successful bidder-contractor is to deliver the equipment and install the same, submitting a price to include these items, that such price includes and anticipates complete delivery to the installation site. It is obviously true that there can be no installation of the equipment while it remains on the owner's **railroad siding**. It is clearly the intent of this article, that delivery shall not stop at the siding of the owner, but shall end only when such equipment is delivered ready for installation at the site of installation.

It is further provided in Article 2(a) that the manufacturer "shall furnish a competent and skilled erecting superintendent to supervise the *unloading, erecting, aligning* and the *grouting* in of this equipment." Here again it is only reasonable to assume that the words "*unloading and erecting*" are to be understood in their ordinary meaning, and conse-

quently, these two words clearly denote that the unloading of the equipment shall be done in its entirety under the supervision of the superintendent furnished by the manufacturer.

Again in Article 13(a), it is stated :

“Since this installation will be so far from the regular service points and since reliability is so absolutely essential, *bids will be accepted from only established builders of complete turbine generator sets.* \* \* \*”  
(Emphasis added.)

This article gives actual notice to the successful bidder that installation will be at a point far removed from regular service points, and implies that the successful bidder must make preparation, under his duty to install said equipment, to transport the equipment to the installation site.

Therefore, after due consideration of the specifications, I am of the opinion that :

1. Article 3(a) of the specification for the Toledo State Hospital is clear and specific in charging the contractor-successful bidder with the obligation of furnishing and installing the equipment as mentioned therein, including the obligation of transporting such equipment from the owner's railroad siding to the point of installation.

2. When the various articles of the specification are considered as a whole, there is no conflict or ambiguity existing between Article 3(a) and Article 4(a) of said specification.

3. The opinion reached regarding the specification relating to the equipment for the Toledo State Hospital, also applies to the specification relating to the equipment for the Gallipolis State Institute.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.