

DECISION

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

FILE: B-219223 **DATE:** September 16, 1985
MATTER OF: Big Joe Manufacturing Company

DIGEST:

Requirement for power steering in specification for Air Force commissary order-pickers is not unduly restrictive of competition where the Air Force presents a reasonable explanation why the restriction is necessary to meet its minimum needs and protester, while disagreeing with the Air Force's technical analysis, does not show that the Air Force's position is unreasonable.

Big Joe Manufacturing Company protests that the specifications in invitation for bids No. DLA 700-85-B-4520 unduly restrict competition in that the specifications exceed the government's minimum needs. The solicitation was issued by the Defense Construction Supply Center (DCSC) for order-picking vehicles to be used at various Air Force commissaries. The protester alleges that the Air Force has not adequately justified the solicitation's speed and power steering requirements as well as specifications relating to collapsed and elevated height. As a result of these alleged unduly restrictive requirements, the protester contends that it was unfairly prevented from offering its product in response to the government's solicitation.

We deny the protest.

The solicitation for this consolidated procurement, based upon Military Interdepartmental Purchase Requests from the Air Force Commissary Service (AFCOMS) at Kelly Air Force Base, was issued by DCSC on November 26, 1984, and contained separate purchase descriptions for each of several groups of order-picking vehicles to be operated at various commissary locations. The solicitation was amended six times and ultimately contained only one purchase description designed to fill the needs at all locations. The solicitation was on a "brand-name-or-equal" basis with five manufacturers' models identified and a list of salient characteristics provided. The protester was not among the brand name manufacturers.

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As early as November 29, 1984, the protester questioned the clarity and adequacy of specifications relating to power steering, collapsed and elevated heights, and load capacity. In addition, the protester recommended adoption of a detailed purchase description similar to one used in a contemporaneous Defense Logistics Agency (DLA) depot procurement for order-picking vehicles. The Air Force provided DCSC with test information and analysis in which the Air Force agreed to amend the load capacity requirement while refusing to amend the power steering requirement. The Air Force also rejected the DLA purchase description as inadequate because it required features AFCOMS Headquarters does not need while failing to describe adequately features otherwise required.

In subsequent contacts with DCSC including an agency level protest dated June 7, 1985, the protester repeatedly alleged that the specifications exceed the government's minimum needs because: (1) the Air Force did not justify its requirement for power steering, which is unavailable with the protester's product, and that the Air Force's needs can be met by manual steering if specific requirements for steering features such as operator effort and wheel pull are prescribed in the purchase description; (2) the requirement for a maximum collapsed height of 95 inches does not correspond with actual height limitations in AFCOMS warehouses; (3) the requirement for a vehicle with an elevated height between 183 inches and 202 inches does not correspond to the actual operating conditions in AFCOMS warehouses; and (4) the speed requirements are not necessary since they exceed the speed requirements established for an earlier DLA procurement. Prior to the July 8, 1985, bid opening, Big Joe Manufacturing Company filed a timely protest of these specifications with this Office.

When a protester challenges specifications as being unduly restrictive of competition, the burden initially is on the procuring agency to establish prima facie evidence for its contention that the restrictions it imposes are needed to meet its minimum needs. If such support is submitted, the burden then shifts to the protester to show that the specifications complained of are clearly unreasonable. Sunbelt Industries, Inc., B-214414.2, Jan. 29, 1985, 85-1 C.P.D. ¶ 113 at 5, 6. The contracting agency's initial burden reflects its statutory obligation to create specifications that permit such full and free competition as is consistent with the agency's actual needs, 10 U.S.C. § 2305 (1982), while the protester's burden of proof stems from the fact that the determinations of the government's minimum needs and the best method of accommodating those needs are

primarily matters of the contracting agency's discretion. Tooling Technology, Inc., B-215079, Aug. 6, 1984, 84-2 C.P.D. ¶ 155.

In view of these considerations, our Office will not question agencies' decisions concerning the best methods for accommodating their needs absent clear evidence that those decisions are arbitrary or otherwise unreasonable, and we will not substitute our judgment for that of the contracting agency absent clear and convincing evidence that the agency's judgment is in error and that a contract awarded on the basis of the specifications would unduly restrict competition. Hydro-Dredge Corporation, B-215873, Feb. 4, 1985, 85-1 C.P.D. ¶ 132 at 5. Because the adoption of any specification or requirement necessarily limits competition to some extent, the question is not whether competition has been restricted, but whether it has been unduly restricted. Id. A mere difference of opinion in this regard between the protester and the agency concerning the agency's needs is not sufficient to upset agency determinations. Id.; see also Bataco Industries, Inc., B-212847, Feb. 13, 1984, 84-1 C.P.D. ¶ 179 at 3.

Concerning the requirement for power steering, the solicitation specifies as follows: "Steering. Power with directional arrow coupled to steering mechanism to show direction of drive wheel." It is reported that the requirement for a directional arrow is a safety feature which indicates the direction of the drive wheel during truck starts, increasing operator awareness and control. It is further reported that the AFCOMS Equipment and Facilities Branch conducted a test to compare the relative steering effort required to operate order-pickers with and without power steering. The results of this testing indicated that the amount of steering force required to turn the wheel of an order-picker without power steering is approximately five times greater than that required on one equipped with power steering. Equipment without power steering normally requires about 50 percent more steering wheel travel to get from the left lock to the right lock steering positions. Also the wheel backlash on equipment without power steering tested at three times greater (three inches) than the backlash (one inch) on order-pickers with power steering. The Air Force reasoned that the test results indicate that both male and female employees would be required to exert greater physical effort and would experience greater fatigue over an 8-hour shift working with an order-picker without power steering. The increased fatigue, increased wheel travel, and increased wheel backlash, the Air Force believes, can result in reductions in vehicle control, operator speed and

productivity, and operating safety, all of which can lead to increases in product and equipment damage and operator injury. Thus, the Air Force concludes that the power steering requirement represents its minimum needs.

The protester responds that AFCOMS comparative testing is irrelevant and that the inclusion of a requirement in the specifications for power steering does not guarantee what operator effort will be required for wheel turns or backlash. The protester contends that the government's needs can be met by manual as well as power steering if specific requirements for steering features such as operator effort and wheel pull are included in the specification. Emphasizing that the DLA had acceded to a similar request in connection with a previous procurement, the protester concludes that the manufacturer's design should determine whether or not power steering is necessary based on established performance characteristics of the steering system.

We find that the Air Force has established a prima facie case for specifying power steering and that the protester has not shown that the Air Force's position is arbitrary or otherwise unreasonable. The Air Force found significant performance differences that directly supported a finding that the use of power steering increased operator control, productivity, and safety. Although the protester contends that its order-pickers without power steering can achieve performance standards for steering that should meet the Air Force's minimum needs, it has not demonstrated in any way that the Air Force's needs are other than what the testing shows is provided by power steering. For example, the protester states that its manual steering design, operable with 15 pounds of effort, is adequate for the Air Force's needs. However, the protester has not shown that AFCOMS test result standard for power steering at 3.5 pounds is excessive. The protester also alleges that power steering generally requires more turns to turn the drive wheel from extreme right to extreme left and return than its manually operated product. Apart from this allegation, however, the protester has offered no evidence to controvert AFCOMS' test results to the contrary, which show power steering wheel turns at 3.8 turns compared to 5.75 turns for manual equipment. Nor has the protester shown that AFCOMS' desire for a 3.8 lock-to-lock steering wheel turn range is excessive for its commissary warehousing needs or that it

is an unnecessary feature, even though it is offered as standard equipment by the four offerors responding to this solicitation. The protester's contention that AFCOMS has overstated its need with a requirement for order-pickers with approximately 1.1 inches of steering system backlash is similarly unsupported by any documentation or other evidence save its own opinion and the specification used by DLA in a different procurement.

Accordingly, we need not further discuss the invitation's other allegedly restrictive specifications, since the protester admits that the requirement for power steering--which we have found does not unduly restrict competition--precludes the protester from offering a conforming order-picker. See The Trane Company, B-216449, Mar. 13, 1985, 85-1 C.P.D. ¶ 306, citing Tooling Technology, Inc., B-215079, supra.

The protest is denied.

Ronald Buay
by Harry R. Van Cleve
General Counsel