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Comptroller General  
of the United States  
Washington, D.C. 20548

11:0206

# Decision

**Matter of:** Caterpillar Inc.  
**File:** B-252537  
**Date:** June 28, 1993

Dale E. Steinke for the protester.  
Major William R. Medsger, and Tony K. Vollers, Esq.,  
Department of the Army, for the agency.  
Barbara C. Coles, Esq., and Christine S. Melody, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

## DIGEST

Protest that solicitation unduly restricts competition by calling for larger-sized railway spotter cars capable of achieving minimum traction needed to move railcars through use of only one coupler, without permitting as an option smaller-sized railway spotter cars (i.e., those requiring two couplers to achieve minimum required traction), is denied where the record shows that use of smaller-sized spotter cars would create inefficient loading and unloading procedures; restrict the agency's ability to have the entire load pushed or pulled from either end of the train; and create a situation where mounting and dismounting the track to break up the train may damage older tracks.

## DECISION

Caterpillar Inc. protests the terms of invitation for bids (IFB) No. DAAK01-93-B-0, issued by the Department of the Army, on behalf of the Department of the Air Force, for eight railway spotter cars.<sup>1</sup> Caterpillar contends that the specifications are unduly restrictive of competition because they require the spotters to be capable of pushing and pulling railcars with a minimum traction of 30,000 pounds using only one coupler, thereby excluding Caterpillar from competing because its spotter cars must use two couplers in order to provide the minimum starting traction required in the IFB.

We deny the protest.

<sup>1</sup>Railway spotter cars allow users to move railroad cars short distances without locomotive engines.

The IFB, issued on January 7, 1993, contemplated the award of a firm, fixed-price contract for eight railway spotter cars. The solicitation contained a commercial item description which included some of the following requirements; (1) the spotter must be either a locomotive rail car type or a truck-tractor type vehicle; (2) it must be capable of a 30,000 pound drawbar pull while using only one coupler; and (3) it must have one coupler on each end. Four bids were received by the March 18 bid opening.

Caterpillar contends that the solicitation requirement for minimum drawbar capability using one coupler as opposed to two couplers is unduly restrictive of competition. According to Caterpillar, this requirement effectively limits the competition to larger-sized spotter cars which are designed to be capable of meeting the requirement for 30,000 pound drawbar pull using one coupler. The protester asserts that its smaller-sized spotter car--which must rely on two couplers to achieve the minimum drawbar pull--will meet the agency's minimum needs. The protester states that its spotter car has the capability of maneuvering on and off the track; as a result, it can place its car between the railcars and achieve the minimum drawbar pull using two couplers, one on each end of the spotter.

In preparing a solicitation for supplies or services, a contracting agency must specify its minimum needs and solicit offers in a manner designed to achieve full and open competition. 10 U.S.C. § 2305(a)(1)(B)(i) (1988). A solicitation may include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 10 U.S.C. § 2305(a)(1)(B)(ii). Where a protester alleges that a requirement is unduly restrictive, we review the record to determine whether the requirement has been justified as necessary to satisfy the agency's minimum needs. Sunbelt Indus., Inc., B-246850, Mar. 31, 1992, 92-1 CPD ¶ 325. Here, we conclude that the agency reasonably decided to require a spotter car that meets the minimum drawbar pull using only one coupler.

The Air Force states that it considered the feasibility of drafting the specification so that it allowed the contractor to break up a train--i.e., by positioning the spotter car between railcars, as the protester states its car would operate--to get full weight transfer on both couplers to maximize tractive effort. After discussing this matter with the leading industry manufacturers and inquiring about standard commercial practices for spotter cars, the Air Force concluded that allowing the train to be broken up would result in inefficiency in unloading cars, since the agency's ability to unload the cars would be limited to those that are in front of the spotter car. Accordingly, the use of Caterpillar's smaller-sized spotter car would

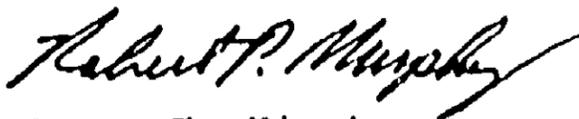
require additional waiting time on the part of personnel assigned to load or unload cars that otherwise would not be necessary if a larger spotter car--which could be located at the end of the train--were used.

The record also establishes that regardless of Caterpillar's spotter car's ability to mount and dismount the track at any location, allowing this feature for the performance of this contract would not be in the agency's best interest because mounting and dismounting would tend to damage the track bed and rail ties in places where the agency's track is not in the best of condition.

Finally, the record shows, and the protester effectively does not refute, that if the spotter car is positioned between railcars as the protester suggests, the Air Force loses the benefit of having a spotter car that can "attack" the entire load on either side. In areas where the track bed is damaged and mounting and dismounting the track is not an option, the agency needs the assurance that the spotter car will be able to push the entire train from one end.

Since using a spotter car that must be placed between cars adversely affects the efficient unloading of railcars; interferes with the agency's ability to have a spotter car that can "attack" on either end of the load; and creates a situation where mounting and dismounting the track may in fact damage the tracks, the agency reasonably viewed a larger-sized spotter car with the capability to use one coupler as opposed to two couplers to achieve the minimum drawbar pull as the only type that meets its minimum needs. The fact that the protester may be precluded from submitting an offer does not render the specifications unduly restrictive where, as here, the specifications reflect legitimate agency needs. See Check Tech. Corp., B-223987, Dec. 23, 1986, 86-2 CPD ¶ 704.

The protest is denied.

  
for James F. Hinchman  
General Counsel