

DOCUMENT RESUME

03318 - [A2353461]

Request for Reconsideration of Decision not to Accept Forklift Trucks not Meeting Braking Requirements. B-186545; B-187413. August 22, 1977. 3 pp.

Decision re: Paycomd Corp.; Schreck Industries; by Robert F. Keller, Acting Comptroller General.

**Issue Area: Federal Procurement of Goods and Services:
Procurement of Only Needed Quantities of Goods (1901).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).
Organization Concerned: Department of the Air Force.
Authority: B-182141 (1974).**

Agency requested reconsideration of contract award decision on the grounds that GAO was too strict in its interpretation of braking performance test requirements. Request was denied since the administrative interpretation asserted was unreasonable. (Author/SS)

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P.L. II
Ayer.

DECISION



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

FILE: B-186545, D-187413

DATE: August 22, 1977

MATTER OF: Raymond Corporation and Schreck Industries -
Request for Reconsideration

DIGEST:

Agency request for reconsideration of prior decision is denied since administrative interpretation asserted is unreasonable.

By letter dated April 29, 1977, the Air Force requested reconsideration of our decision Raymond Corporation, Schreck Industries, B-186545, B-187413, April 13, 1977, 56 Comp. Gen. 77-1 CPD 257, in which we advised the Secretary of the Air Force that the undelivered forklift trucks under the contract in question should not be accepted until it was shown through actual demonstration that these trucks could meet the solicitation's braking performance requirements.

The Air Force requests that GAO reconsider those portions of our decision which are premised upon our understanding that the solicitation sought a vehicle which would exhibit certain braking characteristics on a 10% slope. The solicitation required that:

"z. The vehicle braking system shall be capable of bringing the vehicle to a smooth controlled stop on 8%, +2%, -0%, descending ramps from a full rated speed with zero load and with maximum rated load on both wet and dry surfaces.

"aa. In addition, because of the environment in which the vehicle must operate, the vehicle braking system must be capable of bringing the vehicle to a smooth controlled stop under all combinations of the following situations:

(!) Both forward and reverse direction of travel.

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- (2) Speeds up to maximum rated.
- (3) Level surfaces.
- (4) 8%, +2%, -0%, ramps (downward direction).
- (5) Dry or wet surface.
- (6) Zero load and maximum rated load."
(emphasis supplied).

The Air Force contends that the solicitation really expressed a minimum requirement for a vehicle which would exhibit the required braking performance on a 3% slope. It states that "8%, +2%, -0%" indicates a tolerance which is only allowed to vary in one direction. The solicitation under this reading would state that the Government's minimum requirement was for an 8% slope capability, but if the vehicle offered could perform on a 10% slope that would also be acceptable. In support of this contention the Air Force has quoted from the digest of our decision in the matter of Faul H. Werres Company, Inc., B-132141, December 26, 1974, 74-2 CPD 388, to the effect that this Office would accept an "administrative interpretation of specification requirement * * * which was not unreasonable even though (another) interpretation may be equally valid." Although in Werres, as here, the issue presented was the meaning to be ascribed to a technical term, we do not believe that the Werres case is applicable. In Werres we concluded that it was not unreasonable for the agency to accept a truck with a belt timing drive system under a specification calling for a rear wheel "gear drive train". The contracting officer in accepting the belt system relied on "technical advice" indicating that a belt timing drive would be acceptable. We concluded that under the circumstances the contract should not be terminated but we recommended that the specification be studied to avoid similar problems in the future.

Here, however, we are dealing with a performance requirement and not a design feature of a specification. The issue here is whether the specification phrase, "8%, +2%, -0%" reasonably may be read as indicating a minimum requirement for performance on an 8% slope, as now asserted by the Air Force, or a 10% slope, as assumed by our Office (as well as at least some of the Air Force personnel, see Sacramento Message 232230Z Nov 76) in

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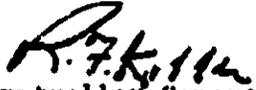
deciding the prior case. In our opinion this specification can reasonably be read only as calling for braking performance on a 10% descending ramp. We remain of the view expressed in our prior decision that the contractor by only offering a "maximum 8%" slope performance did not offer to comply with the specification requirement.

Accordingly, our prior decision is affirmed.

With regard to the undelivered trucks, the Air Force reports that:

"As a result of Comptroller General Decision B-186545, dated 13 April 1977, brake tests were conducted on a Clark forklift at Sacramento ALC (SMALC) during 3-6 May 1977. A 10.1% sloped ramp was used during the test. The vehicle was operated empty, with intermediate loads and with full 4000 lb. load on both wet and dry surfaces at low and maximum speeds. During all tests, the vehicle came to a completely safe and controlled stop without any measurable slewing. Based on the test data, the Air Force has determined that the vehicle meets and/or exceeds all braking requirements reflected in the specification. Accordingly, deliveries of the five remaining brand name items are being accepted since the item's compliance with salient characteristics has been established through actual demonstration."

Based on our examination of the Air Force test results it appears that the vehicles in question were only tested in the backward mode and not in a forward direction as also required by the specification. However, we recognize also that no useful purpose would be served by recommending any further remedial action at this stage.


Acting Comptroller General
of the United States