



Comptroller General
of the United States

Washington, D.C. 20548

114614

Decision

Matter of: Raymond Corporation

File: B-251405

Date: April 2, 1993

Karl S. Miller for the protester.
Timothy A. Beyland, Esq., Elizabeth Kelly, Esq., and
Roger J. McAvoy, Esq., Department of the Air Force, 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 specifications are unduly restrictive of competition because they require forklifts with side stance operator compartments without permitting as an option forklifts with fore and aft stance operator compartments is denied where the record shows that restriction is based reasonably on health and safety concerns.

DECISION

Raymond Corporation protests the terms of invitation for bids (IFB) No. F19650-92-B0038, issued by the Department of the Air Force for forklift trucks. Raymond contends that the specifications are unduly restrictive of competition because they require forklifts with side stance operator's compartments, thereby excluding Raymond, a manufacturer of forklifts with fore and aft operator's compartments, from competing.¹

We deny the protest.

¹Raymond's initial protest also challenged the agency's requirement for a dual braking system with brakes on both the drive motor and the steer caster. After receiving the agency report--which discussed the fact that the agency issued amendment No. 2 to revise the placement portion of the dual brake requirement--Raymond, in its comments on the agency report, stated that the issue of the dual brake requirement was moot because Raymond's forklifts offer a dual braking system. Accordingly, we regard this protest ground as abandoned.

The IFB, issued on August 7, 1992, contemplated the award of a firm, fixed-price contract for two rider reach forklift trucks, Crown Model 35RRTL or equal; the forklifts are the type suitable for indoor use. Section C of the solicitation included the requirement for a side stance operator's compartment; since the controls are on the side of the forklift, the side stance compartment allows the operator to stand sideways when operating the forklift and to turn his head from left to right to face the direction of travel.

Raymond contends that the requirement for a side stance operator compartment is unduly restrictive of competition because there are other types of forklifts, namely, fore and aft stance operator compartments, that will meet the agency's minimum needs. In this regard, the protester contends that its fore and aft stance forklift is designed so that the operator can face the direction of travel.

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. Where, as here, a requirement relates to safety, an agency has the discretion to set its minimum needs so as to achieve not just reasonable results, but the highest possible reliability and effectiveness. Id.

The Air Force reports that it initially considered both fore and aft stance and side stance forklifts. The agency explains that the use of side stance forklifts was ultimately specified in the IFB because past experience with fore and aft stance forklifts led the agency to conclude that the side stance would be more beneficial from a health and safety standpoint. The Air Force explains that in order to comply with the requirement that forklift operators face the direction of travel,² the operator of a fore and aft forklift would have to twist his torso to face the rear when driving in reverse. In comparison, the operator of a side

²This requirement is contained in the applicable regulations regarding use of forklifts, specifically, Department of Defense (DOD) Regulation 4145.19-R-1, September 15, 1979, which was issued pursuant to DOD Directive 4145.19, entitled "Storage and Warehousing Facilities and Services," August 13, 1975.

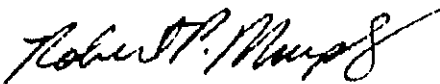
stance forklift merely would have to turn his head from left to right in either direction of travel. As a result, the agency concluded that side stance forklifts would best serve the health and safety needs of the employees operating the forklifts; specifically, the side stance design offered better visibility, reduced fatigue, and was less stressful on the operator's neck and shoulders, thereby reducing the risk of soft tissue injuries.

The protester challenges the agency's assertion that only side stance forklifts reduce health and safety risks to the operators. In this regard, the protester claims that an operator of a Raymond fore and aft stance forklift does not have to twist his body in order to face the direction of travel because by simply "turning his body a full 180 [degrees]," the operator can drive his vehicle in reverse without any twisting. We find, however, that Raymond's sales brochure--which the firm submitted with its comments on the agency report--does not support its allegation that the operator of a fore and aft stance forklift can safely drive the vehicle in reverse without twisting his body.

Unlike in side stance forklifts, the driving controls in Raymond's forklifts are in the front of the vehicle. These controls include Raymond's patented electronic vehicle control system called intellidrive; the intellidrive display provides the operator with information on vital vehicle functions, including battery status, travel speed and load weight. If the forklift is driven with the operator facing the rear, as Raymond suggests, the vital vehicle information on the intellidrive display would not be visible to the operator. The control handle, which also has a horn, is located to the side in the front of Raymond's forklift; the handle is used to manage a combination of functions, including forward/reverse, lift/lower, dual-speed reach/retract, tilt and sideshift, with one hand simultaneously. Based on Raymond's sales brochure, it does not appear that the control handle is designed, as Raymond suggests, to be used while the operator's body is entirely facing the rear of the forklift. The handle curves forward, approximately at a 45-degree angle, following the natural position of a hand extended from the operator's body with adequate resting space for the fingers and thumb and easy access to the horn. Unless the operator stands sideways and, thus, twists his torso, the operator's hand could neither be held in its natural position nor with maximum comfort and ease. In addition, it does not appear that the operator can simultaneously manage all of the necessary driving functions and safety features, e.g., the vehicle's horn, if the operator were to grasp the handle while facing the rear.

Operating a vehicle in which the controls are not designed to be used behind one's back obviously presents safety risks both to the operator and other personnel who may be within the forklift's path that are not presented in a situation where the driver is operating a side stance forklift.¹ The only way to eliminate such risks while driving a fore and aft forklift is to face the controls and to twist the torso when driving in reverse. The record establishes, and the protester does not refute, that this twisting may cause lower back pain, discomfort, and misalignment of the spine. Since the use of a side stance forklift avoids twisting of this nature, the agency could reasonably view side stance forklifts as the only type that meets its minimum needs. Thus, the requirement for side stance forklifts is not unduly restrictive of competition.

The protest is denied.


for James F. Hinchman
General Counsel

¹Although Raymond defends driving in this manner, there is nothing in its sales brochure that shows an operator driving a forklift in this way.