



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

125055

## Decision

**Matter of:** Komatsu Dresser Company

**File:** B-251944

**Date:** May 5, 1993

Philip J. Davis, Esq., and James J. Gildea, Esq., Wiley, Rein & Fielding, for the protester.  
M.L. Baughman for Deere & Company; and Michael E. Blessing and J.G. Jochums for Caterpillar, interested parties.  
Ronald M. Pettit, Esq., Defense Logistics Agency, 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

1. Protest that specifications are unduly restrictive of competition because they require tool carriers with 4-speed transmissions without permitting as an option 3-speed transmissions is denied where the record shows that the restriction reasonably is based on evidence that the use of the 4-speed increases productivity, helps decrease fuel consumption, and reduces wear on the engine.
2. Protest that specifications for tool carrier are unduly restrictive of competition because they require an adjustable steering column or wheel in addition to adjustable seat is denied where the record shows that the restriction reasonably is based on safety concerns.
3. Protest that specifications are unduly restrictive of competition because they require a single lever to control the tilt and lift functions in a tool carrier without permitting as an option separate control levers is denied where the record shows that the restriction reasonably is based on health and safety reasons.
4. Protest that agency was required to use a standard federal specification for tool carriers is denied where the record shows that the 10-year old specification will not meet the agency's minimum needs.

## **DECISION**

Komatsu Dresser Company<sup>11</sup> protests the terms of request for proposals (RFP) No. DLA730-92-R-7098, issued by the Defense Logistics Agency (DLA) for 28 tool carriers. Komatsu contends that the specifications are unduly restrictive of competition because they require tool carriers with 4-speed transmissions, adjustable steering columns, and a single lever to control the tilt and lift functions, thereby excluding Komatsu from competing because its 3-speed tool carriers do not have these features.

We deny the protest.

The RFP, issued on September 8, 1992, contemplates the award of a firm, fixed-price contract for 28 tool carriers, Deere 544ETC, Caterpillar IT28, Michigan Volvo L70 or equal. Section C of the solicitation includes the following requirements for the tool carrier: 4-speed transmission; adjustable steering column; and automatic parallel lift, or for vehicles with z-bar linkage instead of parallel lift, single lever lift and tilt control.

Komatsu contends that these requirements are unduly restrictive of competition because there are other types of tool carriers that can meet the agency's minimum needs. The protester contends that the agency's minimum needs can be met with its tool carrier, which has a 3-speed transmission, an adjustable seat, and z-bar linkage. The protester also argues that the agency was required to use a standard federal specification (KKK-L-11542C), rather than the RFP specifications, because other contracting agencies have used the federal specification in the past when procuring tool carriers.

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.

DLA reports that the RFP ultimately specified a 4-speed transmission rather than a 3-speed transmission because there are several benefits associated with 4-speed transmissions. The agency explains that the highest gear

in either a 3- or 4-speed transmission is used for traveling and that the lower gears are used as "working gears." According to the agency, the benefit of having an additional "working gear" is two-fold. First, the third gear in a 4-speed transmission narrows the range of available speed between second and fourth gear (e.g., 8 to 15 miles per hour), whereas the range between second and the highest gear in a 3-speed covers a wider range of speeds (e.g., 8 to 22 miles per hour). The narrower range of speed in a 4-speed results in more efficient matching of gear ratios to available engine power and, consequently, less wear on the engine and less fuel consumption. Second, the record indicates that more work can be accomplished on improved surfaces because with a third working gear covering approximately 7 to 17 miles per hour, the machine can operate at higher speeds while performing a greater variety of tasks. In comparison, the agency states that the highest "working" gear in a 3-speed transmission (the second gear) covers only 4 to 8 miles per hour. The agency also asserts that notwithstanding Komatsu's objections to the use and benefits associated with a 4-speed here, in a sales brochure for one of its other machines, Komatsu admits that a 4-speed transmission provides "the ultimate in speeds for load and carry applications."

The protester challenges the agency's assertions that a vehicle with a 3-speed transmission will not meet the agency's minimum needs. The protester claims that the agency has failed to show that "its needs for productivity, fuel efficiency, and maintainability are suddenly any greater now than they were in the past when a 3-speed transmission was deemed adequate." Without expressly arguing that all 3-speeds have the same advantages found in 4-speeds, the protester asserts that the agency's principal justification for requiring a 4-speed--an additional "working" gear--is not an exclusive feature of 4-speed vehicles. In this regard, the protester primarily objects to the agency's suggestion that the third gear in its vehicle is a traveling gear, not a "working" gear. The protester claims that because of its unusual torque converter,<sup>1</sup> its machine, like 4-speeds, "works" in third gear at speeds between 8.5 and 15 miles per hour.

To the extent that the protester argues that the specifications are unduly restrictive of competition because DLA and other contracting agencies determined in the past that 3-speeds adequately met their minimum needs, the protest

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<sup>1</sup>A torque converter is a device for converting the speed and torque at the driving shaft of a vehicle to that required by the driving shaft.

lacks merit. Each procurement action is a separate transaction and the action taken under one is not relevant to the propriety of the action taken under another procurement for purposes of a bid protest. Westbrook Indus., B-248854, Sept. 28, 1992, 92-2 CPD ¶ 213. Simply stated, the fact that the agencies--correctly or incorrectly--believed that vehicles with 3-speed transmissions adequately met their minimum needs in the past does not affect the reasonableness of the agency's conclusion here that a 4-speed vehicle is necessary to satisfy its minimum needs in light of the advantages inherent in 4-speeds and the disadvantages associated with 3-speeds; requiring an agency to fashion every procurement based on its prior practices and without regard to technological advancements and improvements would create an overwhelming burden on the agency's ability to procure supplies and services that are necessary to meet its minimum needs.

Similarly, the record does not support the protester's contention that its third gear acts as both a traveling and a working gear. While the protester states that the dual features are made possible by a torque converter, there is no evidence in the record to support its claim that its machine can actually "work," as opposed to travel, in third gear at approximately 8.5 to 15 miles per hour. Although Komatsu acknowledges that this asserted capability in 3-speeds is unique, its sales brochure--which the agency submitted as part of its agency report--merely states that the machine has 3 gears and that its torque converter is a single phase, single stage type. Based on a comparison with the sales brochures of Komatsu's competitors, this appears to be a standard feature, not a unique one. Since the protester has not submitted any persuasive evidence to support its argument that its vehicle actually "works" in third gear, it has not shown that its 3-speed transmission has the advantages associated with 4-speeds, like reduction of wear on the engine and reduction of fuel consumption. As a result, we have no basis to conclude that the agency did not reasonably view 4-speed transmissions as the only type that meets its minimum needs.

The protester also challenges the agency's requirement for an adjustable steering column. According to the protester, the agency's minimum needs can be met simply with an adjustable seat.

Disagreeing with the protester's assertion, the agency states that it ultimately specified an adjustable steering column or wheel because experience has shown that these features are necessary to accommodate overweight and large personnel; in this regard, the agency explains that an adjustable seat by itself does not produce enough flexibility in the cab configuration to accommodate the

needs of the workforce. On the other hand, the agency reports that the ability to adjust the wheel and the seat simultaneously increases the chances of operator comfort, which enhances safety and productivity.

The protester challenges the agency's argument that an adjustable steering column or wheel is necessary to meet the agency's minimum needs. To support its allegation, the protester claims that this feature has never been required by contracting agencies. The protester contends that DLA should have opted to use the standard federal specification, which provides, in part, that the "operator's seat shall be . . . within easy and convenient reach of all controls. It shall provide adjustments for comfortable riding positions."

We are not persuaded by the protester's argument that the requirement is restrictive simply because other contracting agencies have not required adjustable steering columns or wheels or because there is a federal specification that does not discuss this feature. As discussed above, each procurement action is a separate transaction and is not relevant to the propriety of the action taken under another procurement for purposes of a bid protest. Westbrook Indus., supra. In other words, the mere fact that the feature has not been required in the past does not, by itself, mean that the requirement is unreasonable.

Contrary to the protester's suggestion, an adjustable seat by itself does not ensure that the operator will have maximum comfort and ease in operating the vehicle. Further, the protester has ignored the fact that the adjustment of an operator's seat as the sole means of accommodating an overweight operator would create safety problems due to the operator having difficulty reaching the floor pedals and/or hand controls as well as limiting the operator's visibility, since the operator, in order to be comfortable, would have to resort to moving the seat away from the steering wheel. Operating a vehicle in which the operator, in order to be comfortable, has difficulty reaching the floor pedals or hand controls obviously presents safety risks both to the operator and other personnel who may be within the vehicle's path that are not presented in a situation where the driver can comfortably adjust both the seat and the steering column or wheel. 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. Sunbelt Indus., Inc., supra. Since the adjustable steering column or wheel in addition to an adjustable seat ensures maximum comfort and ease as well as reduces fatigue, the agency could reasonably view a vehicle with these features as the only type that meets its minimum needs. Thus, the requirement for

an adjustable steering column or wheel is not unduly restrictive of competition.

The protester also challenges the agency's requirement for either an automatic parallel lift or a vehicle with a z-bar linkage that is equipped with a single lift and tilt control. We will not consider the protester's contention regarding automatic parallel lift because the protester, in essence, is arguing that the agency should be prohibited from accepting a vehicle with this feature.<sup>2</sup> Our Office generally will not consider contentions that specifications should be made more restrictive since our role in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect any interest a protester may have in more restrictive specifications. Petchem Inc., B-228093, Sept. 8, 1987, 87-2 CPD ¶ 228.

We will, however, consider the protester's contention that the requirement for a single control lever for tilt and lift on a machine with z-bar linkage is restrictive of competition. To support its argument, the protester again claims that the specification is restrictive because no other agency has ever required such a feature. The protester also argues that while its vehicle does not have a single control for lift and tilt functions, it nevertheless meets the agency's minimum needs because the controls on its vehicle are so close together that operators will be able to operate both controls with the same hand.

The agency reports that it decided to require the single lift and tilt control because the single lever would be beneficial from a safety standpoint. The agency explains that the vehicles will be used for a variety of purposes, including lifting and transporting hazardous wastes. According to the agency, the use of a z-bar linkage significantly increases the risk of dropping a load being lifted and transported. (The agency does not claim that there is no risk of dropping loads with automatic parallel lifts, however, it does state that the risk of human error is reduced because the automatic lift causes the load on the forks to automatically tilt back as the load is lifted and to remain tilted as the load is lowered.) The agency states that the requirement for a single control to lift and tilt in a z-bar vehicle decreases the likelihood of human error and ensures that the operator can safely raise and/or lower a load.

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<sup>2</sup>According to DLA, this feature automatically tilts the load back at an angle between 3 and 6 degrees to prevent loss of the load.

As explained above, the protester's continued contention that the specifications are restrictive simply because they have not been used in the past is without merit. In addition, we are not persuaded by the protester's assertion that its vehicle meets the agency's minimum needs here. First, the record does not contain any evidence to support the protester's argument. In fact, notwithstanding the protester's argument that an operator of its machine can simultaneously control both the tilt and lift lever with one hand, a review of Komatsu's drawing of its vehicle--which the firm submitted with its comments on the agency's report--shows that the controls were not designed to be used simultaneously with one hand. Both the tilt control lever and the lift control lever are in the front of the vehicle on the right side. The controls appear to come from the floor of the vehicle to above the driver's seat; the handle on the control appears to be similar to a knob around which there is resting space for the driver's fingertips. The tilt control lever is closer to the steering wheel than the lift control lever. While the drawing does not indicate the distance between the two controls, there appears to be ample space between the controls. Unless the operator puts his hand between the two controls, rather than completely putting his hand on either control, the operator cannot simultaneously control the tilt and lift functions. Handling the controls in a manner in which neither hand is completely on a control increases the chances of human error in part because the operator's hand can neither be held in its natural position nor with maximum comfort and ease. The only way to reduce such risks is to have one lever for both controls. Thus, the requirement for a single lever in z-bar linkage vehicles is not unduly restrictive of competition.

Finally, the protester argues that the agency's decision to draft a brand name or equal specification listing the salient requirements for tool carriers was improper because the agency was required to use the mandatory federal specification that was drafted for these type of vehicles. The agency states that while the federal specification that the protester refers to is required to be updated every 5 years in order to keep current with industry standards, the specification in fact is the same that it was when it was drafted 10 years ago. The agency also notes that the federal specification does not contain a requirement either for 4-speed transmissions or automatic parallel lifts. Since we have concluded that the agency reasonably required these features in order to meet its minimum needs, the agency reasonably decided not to use an outdated federal specification that does not meet its needs. Rather, pursuant to Federal Acquisition Regulation (FAR) § 10.006(b), DLA drafted a purchase description listing the brand name tool carriers and the features that will meet its needs; FAR § 10.006(b) states that when procuring commercial products, an agency

should consider drafting a purchase description rather than relying on a federal specification. Accordingly, we have no basis to object to the agency's actions here.

The protest is denied.



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