

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

FILE: B-182502

DATE: October 17, 1975

MATTER OF: D. Moody & Company, Inc.

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DIGEST:

1. Based upon review of agency determination that samples of surplus parts were "used or refurbished", GAO concludes determination is rationally founded, despite protester's unsupported contrary allegations.
2. GAO cannot conclude that Department of Air Force's needs for particular procurement could have been satisfied through purchase of "used or reconditioned" tube assemblies, although GAO agrees with protester's objection to use of blanket prohibition.
3. Several grounds of protest regarding procuring agency's request to submit samples are considered untimely filed under Interim Bid Protest Procedures and Standards (4 C.F.R. § 20 (1975)), in effect when protest was filed, since samples were submitted without objection and protest was not filed until approximately 6 months later.

In February 1974, an announcement in the Commerce Business Daily stated that the San Antonio Air Logistics Center, Department of the Air Force, was contemplating a "select source order with United Aircraft of Canada, Ltd., for 196 tube assemblies applicable to the R1830 engine." Notwithstanding the "select source" nature of the purchase, the announcement further provided that offers would be considered from "firms having new unused, on hand before inventory" items. The Department advises that the announcement incorporated by reference a requirement that firms offering surplus material were required to certify that the material being offered was "new, unused, and meets applicable specifications; and, is offered without rework or refurbishment."

Several offerors, including D. Moody & Company, Inc. (Moody), responded to the announcement. All concerns were surplus dealers.

Moody submitted two offers of surplus material totaling 196 parts, each offer being accompanied by the appropriate certification. Moody's first offer of 50 parts was the lowest received, and on April 2, 1974, the contracting officer requested that Moody submit samples of the parts. Moody's offer of the additional 146 parts, received by the Department on April 24, 1974, was made subsequent to the request for samples but apparently prior to the actual submission of samples. The five samples submitted without complaint by Moody were found to show evidence of "prior use and refurbishment" and were rejected on July 17, 1974. For example, the inspectors found Moody's first sample to have:

"Evidence of prior installation on flange. Evidence of corrosion under plating. Item has been replated. Tube deformed in area where compression seal installed. Parts not marked properly."

Moody was informed of the decision sometime between July 26 and 29, 1974. Moody then requested authorization to resubmit additional samples on July 30, 1974. The request was denied on August 13, 1974, because the random samples were selected from the total stock available at Moody's facility, and any resubmission would have come from the same stock. Therefore, award was made to Alamo Aircraft Supply, Inc. on October 25, 1974, as the second low offeror.

Moody alleges that the Department improperly determined that its samples were used and refurbished. Based on our review of the Department's analysis of the samples, we must conclude that its determination that Moody's parts were "used" is rationally founded. Hence, Moody's surplus parts were not for acceptance in view of the announcement's provision that offers would only be considered from firms having unused items.

Moody also contends that Kelly Air Force Base Regulation 74-4 improperly discriminates against surplus dealers. The Regulation contains a provision requiring the certification of surplus material offered in purchases as being "new and unused" and the submission of samples of surplus material to be furnished by the prospective contractor. Moody's primary objection is the Regulation's blanket prohibition against consideration of used or reconditioned material.

We have expressed concern about blanket prohibitions against consideration of all surplus material. See D. Moody & Co., Inc.; Astronautics Corporation of America, B-180732; B-181971; B-182091, July 1, 1975, 55 Comp. Gen. 1, 75-2 CPD 1. We further understand, however, that the Department is in the process of revising Regulation 74-4. In any event, our decision recognized the purchasing agency's right to determine whether, for a given purchase, the Government's actual needs for a particular purchase could be satisfied with surplus and/or reconditioned material. Based on our review, we cannot conclude that the Government's needs here could have been satisfied through purchase of used or reconditioned tube assemblies as Moody suggests.

Moody's other grounds of protest, filed in October 1974, regarding the Department's April, 1974, request to submit samples (allegedly in violation of ASPR § 2-202.4), and its August 1974 denial of Moody's request to submit additional samples, were not filed with our Office within 5 working days from the events in question. Thus, these aspects of the protest are considered untimely filed under our Interim Bid Protest Procedures (4 C.F.R. § 20.2(a)(1975)) which were in effect when the protest was filed.

Protest denied.


Deputy Comptroller General
of the United States