



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Amity Merchandise Products Corporation
File: B-228000
Date: November 19, 1987

DIGEST

Agency properly rejected offer to furnish surplus property where the protester failed to provide sufficient information to establish that the surplus items met all the requirements of the solicitation and the agency considers the items critical to the safety of persons and property.

DECISION

Amity Merchandise Products Corp. (Amity) protests the rejection of its offer to furnish surplus hydraulic servovalves (valves) in response to request for proposals (RFP) No. N00383-87-R-0696 issued by the Navy Aviation Supply Office (ASO). Amity contends that the agency failed to give its proposal full and fair consideration and that rejection of its proposal was unreasonable and not in the best interest of the government.

We deny the protest.

On June 12, 1986, ASO published notice in the Commerce Business Daily (CBD), of its intent to order 25 valves for the F-14 aircraft, Grumman Aerospace Corp. (Grumman) part number (P/N) A51H9038-3, from Grumman under a basic ordering agreement. According to ASO, data sufficient for competitive procurement is not available and cannot therefore be furnished by the government.

In response to this CBD announcement, ASO received two unsolicited offers from Amity and D. Moody & Co., Inc., on June 26 and July 10, respectively. Each firm offered to furnish a partial quantity of seven surplus valves; both firms identified the manufacturer of these valves as Moog Inc. On November 12, ASO again synopsisized the requirement in the CBD. The RFP, issued on the same day, sought 25 valves manufactured in accordance with Grumman source control drawing P/N A51H9038-3 from the only known approved

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source of supply for this P/N, which is Moog. The Navy reports that Moog's P/N applicable to Grumman's source control drawing is P/N 010-69996-1. The RFP incorporated by reference a new material clause which required offerors to represent that the parts to be supplied, including any former government property identified as surplus, would be new, not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety. The solicitation further required under the government surplus clause incorporated therein that a firm intending to offer former government surplus property attach to its offer a separate sheet containing a complete description of the items, the quantity to be supplied, the name of the agency from which the items were acquired and the date of acquisition.

ASO received two offers in response to the RFP. The manufacturer, Moog, offered to furnish the total quantity of 25 valves at a unit price of \$3,551.1/. The protester offered a partial quantity of seven surplus valves at a unit price of \$2,200. In its proposal, Amity indicated that the valves were manufactured by Moog and were purchased by Amity from Grumman "contract termination."

Accompanying Amity's proposal were test acceptance data sheets for one valve, serial number 47. Each test acceptance data sheet for this valve was stamped "Repair." In response to ASO's request for further information, Amity by letter dated May 11, 1987, submitted test acceptance data sheets for the other six valves, 2/ a completed surplus certification with addendum, and a copy of its unsolicited proposal of June 26, 1986. In its May 11 letter, Amity advised the contracting officer that the firm was resubmitting the seven valves to Moog for a current test and evaluation report and copies of the current test results would be furnished to the contracting officer. By letter dated June 19, 1987, the contracting officer rejected Amity's offer on the grounds that the surplus valves did not meet the relevant regulation governing the acquisition of surplus property. Specifically, the contracting officer determined that the Federal Acquisition Regulation/(FAR), 48 C.F.R. § 10.010(b) (1986), applied to this procurement

1/ ASO reports that Moog's proposed unit price for a partial quantity of 18 valves is \$3,922.

2/ All but one page of the test data sheets for these six valves were stamped "Repair" and the year indicated on these data sheets for all seven valves was 1977.

and Amity's surplus items failed to meet the four factors set forth in that provision. In relevant part that provision states:

"(b) Contracting officers shall consider the following when determining whether used or reconditioned materials, former Government surplus property, or residual inventory are acceptable:

(1) Safety of persons or property.

(2) Total cost to the Government (including maintenance, inspection, testing, and useful life).

(3) Performance requirements.

(4) Availability and cost of new materials and components."

ASO therefore awarded the contract on June 19 to the manufacturer, Moog. Amity filed an agency level protest, which was denied, and this protest to our Office followed.^{3/}

The gravamen of Amity's protest is that ASO's rejection of its offer was without a reasonable basis. In this regard, Amity points out three specific factors which it believes the contracting officer should have considered, but which were not properly considered in evaluating its offer: (1) The favorable inspection and testing data obtained from Moog in 1977 and 1987 for all seven valves; (2) Moog's certification that the valves "meet(s) the specification requirements"; and that (3) Moog "attested" that the "condition of the valves is the same as purchased directly from Moog."

^{3/} As a preliminary matter, ASO contends that Amity's protest should be dismissed pursuant to section 21.1(d) of our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1987), because a copy of the General Accounting Office protest was not received by the contracting officer until 7 days after the protest was filed at our Office. We conclude that dismissal of Amity's protest is not warranted under these circumstances where, as ASO concedes, the agency knew Amity's bases of protest since Amity had initially filed its protest with the agency.

Amity argues that had ASO conducted its evaluation of the firm's surplus offering in a "fair" and "equitable" manner, the contracting officer should not have concluded that the valves did not meet the specification requirements. The protester challenges ASO's refusal to recognize the validity of the test reports from Moog and takes further exception to the contracting officer's conclusion that the government would incur substantial labor costs associated with additional testing and inspection of the valves. Amity asserts that further "overhaul inspection and dimensional checks" need not be performed since the valves had been inspected and tested by the manufacturer, Moog, as recently as June 1987 and those results were furnished to the government by the protester. On the basis of these test reports, Amity further asserts that the valves meet the performance requirements of the specifications; that no "useful life span" has been consumed; and that there should be no difference in maintenance costs for its "overhauled" versus "new" valves. Amity's final contention concerns the fact that in its view, the firm's low unit price would result in substantial cost savings to the government.

In its response to the protest, ASO submitted a detailed explanation of its reasons for rejecting Amity's offer. Preliminarily, ASO points out that the contracting officer's decision to reject Amity's offer was based, as previously noted, on the four factors enunciated in FAR, 48 C.F.R. § 10.010(b). Concerning the first factor, safety of persons or property, ASO states that the valve being acquired is a critical safety of flight item which is mounted on the glove vane cylinder assembly of the F-14 aircraft. This glove vane cylinder assembly provides hydraulic fluid to control the extension and retraction of the glove vanes (flaps) and the valves being procured control the flow of hydraulic fluid into the glove vane cylinder assembly. According to ASO, failure of the valve could lead to the failure of the glove vane cylinder assembly and ultimately loss of control of the aircraft.

ASO states that the contracting officer reviewed all the documentation furnished by Amity to support its offer--including its surplus certification, the acceptance and test data sheets--and concluded that Amity had failed to demonstrate that the items meet the specification requirements. For example, the agency contends that Amity did not furnish any manufacturing records to indicate when the valves were built or if the valves were built to Grumman's source control drawing A51H9038-3 and Moog drawing 010-69996-1. Moreover, the agency notes that the word "REPAIR" was stamped on all but one of the pages of the test data furnished by Amity; however, no information or repair records were provided by Amity to show what was repaired;

when the units were repaired; what parts, if any, were replaced; who performed the repair or to what standard the repair work was performed. In view of this uncertainty and lack of adequate information, the contracting officer determined that acceptance of these valves would pose undue risks to person and property.

As for the total cost to the government (including maintenance, inspection, testing and useful life) factor, the agency reasons that the government would incur substantial costs in determining the internal condition and useful life of the valves since Amity did not provide complete manufacturing and repair data. According to ASO, the Grumman source control drawing A51H9038-3 requires that the valves have an operating life of 6,600 hours and a useful life of 6,000 flight hours. Insofar as the protester had not submitted any supporting evidence that the 10-year-old valves it proposed to furnish would meet the operating life or useful life requirements, the contracting officer was unable to determine how much or if any of the valves' useful lives had been consumed.

ASO further reports, and the record confirms, that in its surplus certification, Amity was unable to certify that the surplus items meet all the drawing and specification requirements of the solicitation and Amity further indicated that it did not intend to refurbish the valves or to replace cure-dated or sensitive components. Thus, ASO maintains the agency would be required to independently determine the internal condition of the valves and that process would require ASO to disassemble the valves and perform an internal inspection, testing and replacement of parts, where necessary. Consequently, the agency refutes Amity's claim that the cost of maintaining the overhauled surplus valves should be no different than the cost of maintaining new valves since the internal condition of the overhauled valves is unknown.

Concerning the performance requirements factor, ASO asserts that the protester has not submitted any in-process inspection data or manufacturing data from which one could determine whether these valves were manufactured to any performance requirements. Specifically, the agency refers to two performance requirements specified in the Grumman source control drawing, i.e., a shelf life of 10 years and an operating life of 6,600 hours. ASO claims Amity has failed to show that its offer meets these two requirements. Additionally, the agency reiterates Amity's failure to show that the valves were manufactured in accordance with Grumman's source control drawing A51H9038-3 and Moog's drawing 010-69996, and Amity's failure to certify that the valves meet the specification's requirements.

As to the availability and cost of new materials and components factor, the contracting officer compared the cost of acquiring the total quantity from the manufacturer, Moog, with the cost of acquiring partial quantities from Moog and Amity and concluded that any potential savings to the government would be de minimis.^{4/} However, the contracting officer reasoned that any potential savings to the government if the valves were acquired from Amity and Moog would be negated if the cost for all necessary refurbishment or replacement of cure-dated or age sensitive parts in the surplus valves were added to Amity's unit price.

In rejecting Amity's offer, ASO analogizes the situation here to that in Hill Industries, Inc., B-209884, Aug. 24, 1983, 83-2 CPD ¶ 246, in which we found the agency's rejection of a proposal to furnish surplus items to be reasonable in light of a critical need for reliability of operation throughout the system life where: (1) the equipment would be used in the starter assembly of jet aircraft, (2) the protester's surplus offering failed to include historical data for the items from the time they left the manufacturer's facilities, and (3) the Air Force was unable to determine the current condition of the surplus items. The agency also cites a number of our prior cases recognizing the legitimate concerns of a procuring agency as to where, when, why and how an item became surplus. See, e.g., D. Moody & Co., Inc., B-214026, Sept. 25, 1984, 84-2 CPD ¶ 365. ASO contends therefore that its rejection of Amity's proposal was proper.

In comments on the agency report, Amity takes issue with the agency's rationale for rejecting its offer. However, many of Amity's exceptions are based on its premise that the agency refuses to give any significance or validity to the

^{4/} As previously noted, Moog's per unit price quote for a partial quantity of 18 valves was \$3,922. On this basis, the contracting officer calculated the potential savings as follows:

<u>Offeror</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Total Price</u>
Moog	25	\$3,551	\$88,775
<u>Offeror</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Total Price</u>
Amity	7	\$2,200	\$15,400
Moog	18	\$3,922	\$70,596
		Total	\$85,996
		Total Savings -	\$2,779

test reports obtained from Moog in which Moog purportedly "attested" to the "current conformity" of Amity's surplus offering to Moog's "test requirements."

The protester further contends that the firm was never informed of, nor given an opportunity to respond to, the various concerns cited by ASO in the agency's report on the protest. For example, Amity alleges that ASO did not request any historical data for the items from the time they left the manufacturer's facility, or any data concerning the internal condition of the valves and/or any cure-dated or age-sensitive components. Finally, the protester questions the reasonableness of Moog's unit price for a partial quantity of 18 valves on the basis that Moog's proposed unit price for 18 valves reflects an increase of more than \$700 over Moog's 1985 unit price for 20 valves.

As ASO correctly points out, we have long recognized that the critical nature of the functions that certain equipment has to perform, creates a legitimate need for an agency to know where, when, why and how an item became surplus. See Hill Industries, Inc., B-209884, supra; D. Moody & Co., Inc., B-214026, supra at 6. We have also held that the procuring agency is responsible for determining its minimum needs since the agency is in the best position to ascertain its needs due to familiarity with the particular requirements and environments in which the items will be used. Thus, we will not question an agency's determination of its minimum needs or the technical judgment forming the basis for that determination unless it is clearly shown to be unreasonable. See CMI Corp., B-216164, May 20, 1985, 85-1 C.P.D. ¶ 572 at 3.


We think ASO acted reasonably in rejecting Amity's offer. In our view, Amity's offer to provide valves that are at least 10 years old and which, according to Amity, "appear to have been completely reconditioned, overhauled and tested" does not constitute an offer to provide new, not used or reconditioned valves as required by the solicitation's new materials clause. The record shows that Amity relies, almost exclusively, on the fact that the valves were tested in 1977 and 1987 by the original manufacturer, Moog, and found to meet "all spec. requirements." However, the fact that Moog may have found these valves meet "all spec. requirements" is not relevant since these test acceptance documents do not indicate which specification requirements Moog is referencing, nor does Moog or Amity affirmatively state that the valves meet the specification requirements set forth in this current solicitation.

Moreover, given the critical nature of the items in question, we think it was reasonable for the agency to be

concerned about the lack of the original manufacturing or historical data on the items offered by Amity. While Amity has strongly argued that ASO is adequately protected because the original manufacturer, Moog, has "attested" to the condition of the valves, we are not persuaded that this is a viable substitute for historical or manufacturing data. We note, for instance, that Amity baldly asserts that according to Moog, its surplus valves meet the useful life requirement of 6,000 flight hours; however, Amity proffered no independent data to support or corroborate this assertion. In other words, we are not in a position to question ASO's conclusion that Amity has failed to provide meaningful data to establish the acceptability of its surplus offering pursuant to FAR, 48 C.F.R. § 10.010(b). In sum, since Amity did not submit an offer that met the requirements of the solicitation, ASO's rejection of its offer was proper.

Since we find Amity's offer was properly rejected we need not consider its protest that Moog's proposed price for a partial quantity of 18 valves was unreasonable.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel