

# DECISION



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

FILE: B-184537

DATE: January 14, 1976

MATTER OF: Dunham-Bush, Inc.

60388

~~099370~~

099234

## DIGEST:

1. Under advertised procurement to furnish air conditioning units for Navy ships, allegation that successful bid is nonresponsive for failure to offer compressor of its manufacture that has had extensive commercial and industrial application as required by paragraph 3.15.1 of MIL-R-24085A (incorporated into specifications) is without merit since record indicates requirement related to bidder responsibility rather than bid responsiveness.
2. Where invitation defines "other factors" that were to be considered in making award to responsible bidder whose bid, conforming to solicitation, would be most advantageous to Government, price and "other factors" considered, protest after bid opening by second low bidder that it assumed cost of installation (although not specified) would be included as bid evaluation factor is untimely under GAO's Bid Protest Procedures.
3. Where IFB was amended to provide that Government would not consider option for deleting shock tests in evaluating bids for award, allegation after bid opening that acceptance of second low bid not requiring shock test could have saved \$87,200 is untimely raised and, if considered, would have not changed relative standing of bidders.

Dunham-Bush, Inc. (Dunham-Bush), protests the award of a contract to Borg Warner Corporation, York Division (York), under invitation for bids (IFB) N00024-75-B-4684, issued by the Naval Sea Systems Command (Navy), Washington, D. C.

The invitation, issued on May 23, 1975, solicited bids for air conditioning units to be used in the modernization program for the DDG-37 class of guided missile destroyers and cruisers. Bidders were requested to respond on the basis of two offers

(A&B). Offer B called for twenty-one (21) air conditioning units, engineering services, support, spares and data. In addition to and inclusive of the offer B quantities, the IFB also provided for an additional air conditioning unit and five additional mandays of engineering services (offer A). It stated that the additional quantities in offer A were to be used for training purposes in the event adequate funds were available. However, the IFB provided that bids would only be evaluated on the basis of the information submitted in offer A. Bidders had the option of submitting their bid on the basis of supplying either a centrifugal compressor type or a helical rotary screw type of air conditioning units. The Navy states that it provided for a choice of engineering approaches in order to maximize price competition since either type unit satisfied the Government's requirements.

Two amendments were issued to the IFB. Amendment 0001 revised the specifications and extended the bid opening date to July 11, 1975. Amendment 0002, which made additions to the solicitation shock test requirements, also provided the Government with the option to delete the requirement for shock tests (after the receipt of preliminary drawings). Thirteen (13) bidders received copies of the IFB. Two bids were received at bid opening. York submitted the apparent low bid of \$3,391,419.51 (offering a centrifugal type unit), and Dunham-Bush bid \$3,494,000.00 (offering a rotary screw type unit). However, Dunham-Bush asserts that York's bid is nonresponsive, and if evaluated in accordance with the IFB, would not be the lowest bid received. Award has been withheld pending our resolution of the protest.

The principal issues raised by Dunham-Bush's protest are that (1) York's compressor requires redesigning and thus does not meet the specification requirement (incorporated by MIL-R-24085A) that it be of a type and capacity which has had extensive commercial and industrial application; (2) York's centrifugal type compressor cannot meet the reliability requirement (15,000 operating hours between failure) of the IFB; (3) the Navy in determining the low bid did not consider and evaluate the additional installation costs (alleged to exceed \$110,000) required to install centrifugal units; and (4) Dunham-Bush's unit would not require shock testing thereby reducing its overall bid by an additional \$87,200.00.

Counsel for Dunham-Bush argues that since the specification's length, width, and height limitations will necessitate a re-design of the York compressor, the resulting new unit will not

B-184537

satisfy the requirement of MIL-R-24085A referenced in the IFB, and, therefore, the York bid was nonresponsive. Paragraph 3.15.1 of MIL-R-24085A reads as follows: "Standard product. Except as modified herein, the compressor shall be of a type and capacity which has had extensive commercial and industrial application as manufactured by the bidder."

The Navy contends that the foregoing requirement was intended to determine the responsibility of a prospective bidder rather than the responsiveness of its bid. In this regard, York was found to be responsible. It is noted in the administrative report that York has been furnishing single stage gear driven centrifugal air conditioning compressors for commercial and industrial application for over 15 years. Since the Navy started using R114 refrigerant in centrifugal air conditioning units in 1967, York had been the manufacturer for most of the 150 units purchased. York also states that a redesign of its centrifugal compressor is not required for it to build units meeting the specifications under the subject IFB.

It is our view that Dunham-Bush has misinterpreted the requirements of paragraph 3.15.1 supra. The requirement was not directed to the performance history of the compressor, but rather to the experience of the bidder in manufacturing a particular type of compressor. Therefore, we conclude that the requirement relates to bidder responsibility and the agency's affirmative determination in this regard and York's responsiveness to the technical specifications was all that was required. 52 Comp. Gen. 647 (1973).

Regarding the challenge to the reliability of air conditioning units using centrifugal compressors, the Navy states that the 15,000 hour mean time between failure (MTBF) requirement of the IFB is within the present state-of-the-art for such units using R114 refrigerant. The IFB's requirement was based on the Navy's experience of having at least sixteen (16) centrifugal compressor units in operation since 1970 which have in excess of 15,000 MTBF. Therefore, the Navy determined that the York units can meet the IFB's reliability requirements.

Dunham-Bush also notes that it knew the Navy would have to incur substantial installation costs if it selected a unit

using the centrifugal rather than their rotary screw design. However, the protester states that it had every right to believe and rely upon the fact that in accordance with Armed Services Procurement Regulation (ASPR) § 2-407.1 (1974 ed.) the Navy would consider and evaluate these costs in determining which bid was in fact "most advantageous to the Government, price and other factors considered." Since it contends that the Navy knew or should have known that no consideration was going to be given to installation costs of the centrifugal unit, Dunham-Bush asserts that the Navy had the affirmative obligation to so inform the bidders before the bids were opened. Therefore, it alleges that the Navy (in violation of ASPR § 2-102.1; 2-201; and 2-301) changed the evaluation factors and conditions for award to the detriment of the protester.

The IFB stated in "Section D - Evaluation Factors For Award" that the contract would be awarded to "that responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered." It specifically stated that "other factors" shall include all of those evaluation factors which were described within section D. The evaluation criteria set forth therein did not include a factor for possible installation costs. The Navy states it determined it was impossible to accurately assess the overall costs of installation, operation and maintenance of the two (2) types of systems without a considerable amount of speculation and conjecture. Moreover, it contends that the proper time for raising issues or questions regarding the evaluation factors for award was prior to bid opening.

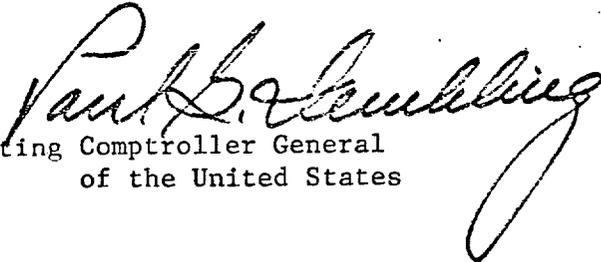
We concur with the Navy's position that Dunham-Bush's protest with respect to what constituted evaluation factors was untimely raised after bid opening. Our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), require that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening shall be filed prior to that time. We have stated that known additional costs to the Government which will be incurred as the result of an award to a contractor should be evaluation factors to the extent they can be realistically estimated. Teledyne McCormick-Selph, B-180468, April 25, 1974, 74-1 CPD 214. However, in this instance the solicitation clearly stated what the Government would include in its evaluation as "other factors," and no mention was made of installation costs. Therefore, Dunham-Bush's reliance on what it thought would be taken into consideration under

B-184537

"other factors" cannot be raised as basis for protest after bid opening.

Finally, Dunham-Bush maintains that it had already shock tested a unit similar to that required by the IFB. Thus, if the Navy had selected its bid, it is alleged that an additional savings of \$87,200 (for further shock tests) could have been had by the Government. Amendment 0002 of the IFB specifically provided that the Government would not consider the option for deleting the shock test in evaluating the bids for award since no determination in this regard would be made until after receipt of preliminary drawings under the contract. Therefore, this contention is speculative and is also untimely raised after bid opening (40 Fed. Reg. 17979, *supra*). Nevertheless, since Dunham-Bush's bid was more than \$102,000 greater than York's price, a reduction of \$87,200 would not have displaced York as the low bidder.

Accordingly, the protest is denied.

  
Acting Comptroller General  
of the United States