

30927

DECISION



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

FILE: B-218041.1; B-218041.2 **DATE:** April 8, 1985

MATTER OF: Columbus McKinnon Corporation

DIGEST:

1. Bid submitted under qualified products list (QPL) procurement must be rejected as nonresponsive where production facility listed in bid has not been approved for inclusion on QPL before bid opening. Qualification of another one of protester's facilities which protester asserts controls operations at facility listed in its bid may not be regarded as extending to listed facility.
2. Agency decision to transfer QPL approval of one firm's production facility to a successor firm involves a matter of business judgment which generally will not be questioned absent a showing of possible fraud or bad faith.

Columbus McKinnon Corporation protests the rejection of its bid under invitation for bids (IFB) No. DLA700-84-B-0740 issued by the Defense Construction Supply Center (DCSC). The IFB called for a quantity of hand-operated chain hoists and required that they be approved for inclusion on qualified products list (QPL) No. 904-47. The agency rejected Columbus' bid because the facility for production of the hoists listed in its bid was not included on the QPL. The protester maintains that the rejection of its bid was improper because the production facility listed in its bid is a satellite plant under the control of another of Columbus' production facilities which is listed on the QPL. Columbus also contends that the awardee, Yale Industrial Products, Inc., was not approved for inclusion on the QPL. We deny the protest.

031716

Section M-18 of the IFB provided in pertinent part as follows:

"(a) The Contracting Officer will make awards for end items requiring qualification only if the items are qualified for inclusion in the Qualified Products List (QPL) identified below. The item must be qualified at the time set for opening of bids, or the time of award of negotiated contracts, whether or not the item is actually included in the QPL. Offerors should contact the specification preparing activity (SPA) designated below to arrange for qualification of the product they intend to offer."

After bid opening, Columbus was found to be the low bidder on those items for which it had submitted a bid.^{1/} The contracting officer then examined whether the hoists offered by Columbus were included on the QPL as required by clause M-18 of the IFB. The contracting officer found that Columbus was listed on the QPL as having qualified a hoist which had been manufactured at either of two of its production facilities, located in Tonawanda, New York and in Damascus, Virginia. The production facility listed in Columbus' bid, located in Abingdon, Virginia, was not, however, included on the QPL. As a result, the contracting officer concluded that Columbus' bid should be rejected for failure to offer a qualified product.

The protester states that the Abingdon, Virginia facility listed in its bid is located near its Damascus facility, which is included on the QPL, and in fact is a satellite facility under the control of the management at the Damascus plant. The protester maintains that it has manufactured hoists for the government interchangeably in its Abingdon and Damascus plants for 15 years. In addition, Columbus states that it chose to have only its Damascus facility approved for inclusion on the QPL because that facility is the central point for supervisory, engineering, and quality control for Columbus' operations in

^{1/} By amendment No. 1 to the IFB, the agency increased the total quantity of hoists being procured from 296 to 669. The protester states that it never received the amendment and therefore submitted a bid only for the original quantity.

Virginia, including its Abingdon facility. Based on the relationship between the two plants, the protester argues that the QPL approval given to the Damascus facility should be regarded as extending to the Abingdon facility listed in Columbus' bid.

Where, as here, an IFB requires that an item be qualified for inclusion on a QPL, a bid which offers a item to be produced at a plant other than the one listed on the QPL is not responsive to a material requirement of the IFB and must be rejected. See 52 Comp. Gen. 142, 145 (1972). Columbus does not appear to disagree with the requirement that the production facility listed in its bid be included on the QPL; rather, Columbus contends that its Abingdon plant should be regarded as qualified because it is under the functional control of its Damascus facility which is included on the QPL.

While Columbus asserts that its Abingdon plant is controlled by management of its QPL-approved Damascus plant, the Abingdon plant nevertheless is a separate production facility at a different location. There is no basis on which to assume that the conditions at the Abingdon plant relating to its ability to manufacture a qualified product are the same as the conditions at the Damascus plant on which that plant's QPL approval was based. Moreover, even accepting Columbus' assertion that it has used the plants interchangeably for production of the hoists, that practice is not a substitute for the testing, inspection, and approval required for inclusion on the QPL. Thus, in our view, the qualification of Columbus' Damascus plant cannot be considered to extend to the Abingdon plant. As a result, since the Abingdon plant had not been qualified separately for inclusion on the QPL before bid opening, the agency properly rejected Columbus' bid for failure to offer a qualified product.

Columbus also argues that the contracting officer should have notified Columbus that its Abingdon plant was not qualified for inclusion on the QPL and should have given Columbus a chance to secure QPL approval for the plant before its bid was rejected. We disagree. It is clear from clause M-18(a) of the IFB, cited above, that the burden is on the bidder to secure approval for inclusion on the QPL and that such approval must be received before bid opening. The contracting officer thus was not required to contact Columbus regarding qualification of its plant, and, in any event, qualification of the

B-218041.1; B-218041.2

Abingdon plant was required before bid opening, when the contracting officer had not as yet seen the contents of Columbus' bid.

Columbus' second principal contention is that the hoist offered by the firm to which the award was made, Yale Industrial Products, Inc., was not included on the QPL. We find no support in the record for this contention. On May 17, 1984, the agency transferred to Yale Industrial the qualification approval previously granted to the hoist manufactured by the Eaton Corporation, a firm which apparently had been reorganized under new management as Yale Industrial. The qualification of Yale Industrial was conditioned on a satisfactory facility survey, which was completed by the agency on July 30. Thus, Yale Industrial was qualified for inclusion on the QPL as of July 30, well before bid opening on September 26.

To the extent that it questions the agency's decision to transfer the qualification to Yale Industrial from its predecessor, the protester has offered no evidence to show the agency's decision was improper. The agency concluded that there was no major change in operations as a result of the reorganization from Eaton to Yale Industrial, primarily since the location of the manufacturing plant did not change. Such a decision by the agency involves a matter of business judgment which we generally do not question absent a showing of fraud or bad faith. See Elliot Co.; Hardie-Tynes Manufacturing Co., B-212897.1; B-212879.2, Jan. 30, 1984, 84-1 CPD ¶ 130. The protester has made no such showing. In fact, the protester presents no evidence to contradict the agency's decision to qualify Yale Industrial for inclusion on the QPL.

We conclude that the agency properly rejected the protester's bid for failure to offer a qualified product, since the production facility listed in the protester's bid was not included on the QPL. We also find no evidence to show that the awardee's production facility was not properly included on the QPL. The protest is denied.

Ronald Berger
for Harry R. Van Cleve
General Counsel