

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

60073

FILE: B-184369

DATE: October 21, 1975

MATTER OF: Consolidated Airborne Systems, Inc.

97803

DIGEST:

1. Additional basis of protest will not be considered unless filed within 10 working days after additional basis for protest is known or should have been known.
2. Waiver of requirement for first article testing is matter within sound discretion of procuring agency and will not be questioned absent showing that decision was arbitrary, capricious or without substantial basis in fact.

Consolidated Airborne Systems, Inc. (CAS), has protested against award of contract No. DAAJ01-75-C-1159 by the Department of the Army, Aviation Systems Command. The solicitation upon which the award was made allowed bidders to submit prices on Bid A (first article required) and Bid B (no first article required). Bid opening was held on May 5, 1975, and three bids were received. Gull Airborne Instruments, Inc. (GAI), was low bidder under Bid A and CAS, which was the only bidder to submit a price under Bid B, submitted a lower bid than that submitted by GAI under its Bid A. The contract was awarded to GAI on June 24, 1975, as lowest bidder since CAS was not granted a waiver for first article testing. By letter of the same date, CAS was notified of the award.

The initial protest, filed by CAS, alleges that the procuring agency erred in not granting it a waiver for first article testing as a prior producer under contract Nos. DAAJ01-68-C-1524 (first article required); DAAJ01-72-C-0639 (functional test required); and DAAJ01-73-C-0522 (first article waived). Subsequently, CAS filed an additional basis of protest contending that since the procuring agency was rejecting it as a nonresponsible bidder the agency was required under applicable law to submit the matter to the Small Business Administration (SBA) for a Certificate of Competency proceeding.

We have held that the question of whether first article testing may be waived as to a particular bidder is a procurement responsibility

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which our Office will not disturb unless the determination is shown to be arbitrary, capricious, or without substantial basis in fact. Deco Industries, Inc., B-179730, April 3, 1974, 74-1 CPD 166, citing B-162438, February 15, 1968; 46 Comp. Gen. 123, 127 (1966).

The record indicates that an extended period of time (18 months) had lapsed since CAS had last supplied the Government with the item. Production under contract No. DAAJ01-73-C-0522 was completed and last delivery made in December of 1973. Additionally, the specifications were changed to allow the contractor an option "of producing a Test Set with a pointer dial or lighted digital display" either of which would be in the new performance specifications. Due to the 18-month lapse since the item was last supplied and the change in specifications, the contracting officer's declination to waive first article testing for CAS was not arbitrary, capricious or without substantial basis in fact.

The additional basis of protest by CAS, filed July 29, 1975, concerning notification to the SBA of the finding of nonresponsibility by the Army (if indeed a requirement for first article approval is a determination of nonresponsibility), is untimely since not filed within 10 working days from the date when the basis of protest was known and will not be considered. 40 Fed. Reg. 17979 (1975).

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States