

01391

**DECISION**



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

**IN WITNESS  
Proc II**

**FILE: B-187429, B-187539**

**DATE: December 21, 1976**

**MATTER OF: Ainslie Corporation**

**DIGEST:**

1. Waiver of requirement for first article testing is a matter of administrative discretion and will not be questioned by GAO if there is reasonable basis for waiver.
2. Protest based on contention that company's high prompt payment discount is illegal is denied since Armed Services Procurement Regulation requires that discount be deducted from bid price in order to determine low bid.

Invitation for bids (IFB) No. N00024-76-2-7317 was issued by the Naval Sea Systems Command (Navy) for 150 PC 13/SPS-10 Antenna Replacement Modification Kits, data, and repair parts to be used on all major naval surface ships. The IFB called for bids under Offer A (first article required) and Offer B (first article waived). Of the three bids received, the bids of the Ainslie Corp. (Ainslie) which offered a discount of 1/8 percent for 20 days and of the Granite State Machine Corporation (Granite) which offered a discount of 10 percent for 20 days were:

	<u>Before Discount</u>		<u>After Discount</u>	
	<u>Offer A</u> <u>(1st Article)</u>	<u>Offer B</u>	<u>Offer A</u> <u>(1st Article)</u>	<u>Offer B</u>
Granite	\$518,550	\$440,550	\$463,995	\$396,495
Ainslie	477,900	470,550	476,706	469,321

The IFB provided that the requirement for first article testing could be waived by the Government if the bidder had previously provided supplies identical or substantially identical to those called for under the instant contract. The Navy determined that both Ainslie and Granite qualified for waiver of first article testing.

Ainslie protests against any award of a contract under the IFB to any party other than itself arguing that the requirement of first article testing could not be waived. The protester contends that the specifications in the instant IFB differ from the specifications

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used on previous procurements to such an extent that neither Ainslie nor Granite could have produced identical or similar goods for the Government. The protester also challenges the Granite discount offer contending that, as a matter of law, it constitutes "an irregular, unfair, and deceptive bidding procedure." Ainslie asserts that only Offer A of the bidders may be considered by the Government and that the discount offer of Granite must be disallowed. Award has been withheld pending our decision.

Ainslie subsequently protested the award of a contract to Granite under IFB No. N00189-76-B-0096, issued by the Naval Supply Systems Command. This protest, which we have docketed as B-187559, again raises the issue of the propriety of a prompt payment discount offered by Granite. Our decision is dispositive of both protests.

The Navy reports that there is no sound reason for requiring a first article from either Granite or Ainslie, since both have furnished the Navy with identical supplies under previous contracts. In this regard, we note that contrary to the position that it is taking in its protest, in its bid Ainslie cited its performance under a previous contract with the Navy as justifying waiver of first article testing. The Navy admits that salt spray and inclination tests and relaxed paint finish requirements have been added to the specifications that governed Ainslie's and Granite's previous contracts. However, the Navy advises that the items themselves have not changed and that the units furnished by Granite and Ainslie under previous contracts would meet all present requirements.

We have consistently held that the decision whether to grant a waiver of first article testing is a matter of administrative discretion, to which we will not object if the waiver has a reasonable basis. See Kan-Du Tool & Instrument Corp., B-183730, February 23, 1976, 76-1 CPD 121 and cases cited therein. The protester has not rebutted the Navy's position that it is obtaining antennas identical to those that it procured from Granite and Ainslie under previous contracts. Accordingly, we are unable to conclude that the Navy acted arbitrarily in waiving the first article testing requirement.

While the protester contends that the Granite discount is in violation of law, no specific law or regulation has been cited

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in support of its allegation. Armed Services Procurement Regulation § 2-407.3(b) (1975 ed.) requires that in determining the low bidder any discount offer should be deducted from the bid price on the assumption that the discount will be taken. We note that discounts were listed in the IFB as one of the award evaluation factors. We therefore see no impropriety in the consideration of the discounts offered by Granite.

For the reasons stated above, the protest is denied.

*P. F. K. 1/14*  
Acting Comptroller General  
of the United States