

DECISION



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

60553

FILE: B-183730

DATE: February 23, 1976

MATTER OF: Kan-Du Tool & Instrument Corporation

98570

DIGEST:

1. Contracting officer's determination that company's quality history, under different corporate names, justifies waiver of first article testing will not be disturbed in absence of clear showing of arbitrary or capricious action.
2. Since contracting officer's signing of contract constitutes affirmative responsibility determination, contention that agency should have conducted preaward survey is a protest against affirmative responsibility determination and will not be considered absent contentions of fraud or defective responsibility criteria.

Kan-Du Tool & Instrument Corporation (Kan-Du) protests an award to Automatic Connector, Inc. (Automatic) on the ground that the contracting officer's decision to waive first article testing for Automatic, making that company low bidder, was erroneous.

The facts are not in dispute. Invitation for bids (IFB) No. DAAA25-75-B-0352 was issued February 28, 1975 for two types of initiators, which are components of aircraft ejection seat systems. Item 0001 of the IFB was for 1,065 initiators M32A1 (Metal Parts Assembly) and Item 0004 was for 73 initiators M30A1 (Metal Parts Assembly). Bids for Item 0001 were solicited with and without first article testing. Since both initiators have the same metal parts assembly, both items were to be awarded to the same bidder.

After bid opening on March 28, 1975, the quality assurance office was given the names of the bidders and requested to recommend whether first article testing should be waived for any of the bidders under section C-15 of the invitation which states in part:

"The Government may waive the requirement for First Article Approval Tests as to a bidder/offeror offering a product identical or similar to a product previously furnished by bidder/offeror and accepted by the Government.
* * *"

The contracting officer's technical advisors recommended that first article testing should be waived for all bidders except the protester. Based on the prices submitted for Kan-Du with first article testing and the others without first article testing, it was determined that Automatic was the low responsible, responsive bidder and Contract No. DAAA25-75-C-0579 was awarded to that company.

Kan-Du protests against the award arguing that the determination to waive first article testing for Automatic was erroneous since Automatic never produced the subject initiator for the Government. In addition, Kan-Du insists that a pre-award survey should have been conducted at Automatic before that firm was determined to be responsible.

The contracting officer reports that Automatic is the same company which under the prior names of Plessey Connector and Buchmann Spark Wheel Company had good quality records in the production of items similar to those which are the subject of the instant contract. In the administrative report the contracting officer states:

"The firm /Automatic/ is a well known long established quality producer of this type item, having previously produced M26, M27, M28, M5A2, M53, M72 and M99 initiators. On the basis of the similarity of these initiators with the M32A1 presently being procured and good quality history, quality assurance personnel recommended a waiver of the First Article Test requirement. Hence, the Contracting Officer exercised his reserved right to waive First Article Testing on this procurement for Automatic Connector Inc. * * *"

It has been the position of this Office that the decision whether to grant a waiver of first article testing is a matter of administrative discretion, to which we will not object in the absence of a clear showing of arbitrary or capricious action. See B-177873, April 24, 1973; B-175015, November 20, 1972; B-168557, January 23, 1970. Although Kan-Du does allege that certain employees with the firm under the prior company names are no longer with Automatic it has not been shown that there is any substantive difference in either products manufactured, production and quality control processes, management or plant location between the two predecessor companies and Automatic. Accordingly, we are unable to conclude that the contracting officer acted arbitrarily in waiving the first article testing requirement for Automatic based on the production record it achieved under two prior corporate names. See generally, 53 Comp. Gen. 249, 251 (1973), dealing with qualified products; and Dero Industries, Inc., B-179730, April 3, 1974, 74-1 CPD 166, wherein we upheld a contracting officer's refusal to waive first article testing for a bidder based in part on the poor performance record of a company whose assets were taken over by that bidder.

Kan-Du's contention that a pre-award survey should have been performed on Automatic is, in effect a protest against the affirmative responsibility determination necessarily made by the contracting officer by his signing of the contract with Automatic. See Armed Services Procurement Regulation (ASPR) § 1-904.1 (1975 ed.). Our Office does not review protests against such affirmative determinations unless fraud on the part of procurement officials is alleged or the solicitation contains definitive responsibility criteria. See American Safety Flight Systems, Inc., B-183679, August 5, 1975, 75-2 CPD 83 and cases cited therein. Since such factors are not present in the instant case we must decline to consider this issue.

For the reasons stated above, the protest is denied.


Deputy Comptroller General
of the United States