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DECISION



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

04742

FILE: B-189017 DATE: January 13, 1978
MATTER OF: Networks Electronic Corporation
DIGEST:

1. Government is not required to evaluate pre-production items in bidder's bid for whom first article testing has been waived notwithstanding solicitation provision stating that evaluation would be on basis of total price for production and preproduction items since preproduction items will not be included in contract award and Government will not incur any cost for such items.
2. Government was not required to consider patent mistake contained in bidder's preproduction items since Government had waived first article testing and would not include preproduction items in evaluation of bidder's bid.

Networks Electronic Corporation (NEC) has protested the award of a contract to Hi-Shear Corporation (Hi-Shear) under Department of the Navy, Naval Regional Procurement Office (NRPO), Long Beach, California, solicitation No. N00123-77-B-0680.

NRPO issued the subject invitation for bids (IFB) on February 18, 1977, for the purchase of Torpedo MK 46 Mod 4 ORDALT Kits and related components. An amendment to the IFB was issued on March 25, 1977, and bid opening was extended to March 29, 1977. The IFB, as amended, provided for the purchase of eight production items in varying quantities and for the purchase of additional quantities of three of the items in order to allow NRPO to conduct first article testing. The production items were designated as E-1 items and the additional

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items required to be tested were designated as E-2 items. The IFB required the bidders to submit prices for both E-1 and E-2 items as follows:

"SECTION E - SUPPLIES/SERVICES & PRICES

"E-1 The contractor shall fabricate, test, package and deliver Torpedo MK 46 Mod 4 ORDALT Kit components and expendable components and shall furnish documentation as specified herein. All quantities specified are net deliverable units, i.e., units required for First Article Testing (preproduction testing) and periodic production testing must also be provided for by the contractor. (First Article Units and periodic production testing units are, then, in addition to Items 0001 thru 0009 specified below).

"ITEM NO.	DESCRIP- TION	PART NO.	UNIT	QUANTITY	UNIT PRICE	AMOUNT
0001	Electron- ic Module Assy	3134125	EA	255	\$ _____	\$ _____
0002	After- body Cable Assy	3134139	EA	255	\$ _____	\$ _____
0003	Warm Plug Assy	3134141	EA	255	\$ _____	\$ _____
0004	Hot Gas Line	3134089	EA	255	\$ _____	\$ _____
0005	Hose Assy	3134090	EA	255	\$ _____	\$ _____
0006	Ordalt Kit, MK 46 MOD 4 less Items 0001 thru 0005	3209513	KITS	240	\$ _____	\$ _____

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*ITEM NO.	DESCRIP-TION	PART NO.	UNIT	QUANTITY	UNIT PRICE	AMOUNT
0007	Engine Enable Switch	3134136	EA	340	\$ _____	\$ _____
0008	Turnaround Kits	3209486	KITS	120	\$ _____	\$ _____
*	*	*	*	*	*	*

*E-2 The contractor shall provide the following First Article (preproduction) units in accordance with the First Article Approval Clause.

0010	Electronic Module Assy. (Same as Item 0001)		EA	6	\$ _____	\$ _____
0011	Water Inlet Valve Assy (Component of Item 0006)		EA	6	\$ _____	\$ _____
0012	Engine Enable Switch (Same as Item 0007). (NOTE: For purposes of Item 0012 only, 50 extra squibs shall be provided for First Article (preproduction) testing in accordance with WS13992, Figure 1)		EA	45	\$ _____	\$ _____
TOTAL AMOUNT (E-1 & E-2)						\$ _____

The IFB also provided that NRPO could waive first article testing for any bidder who had provided items identical or similar to those called for in the IFB in the past. In the event first article testing was waived for any bidder, a \$50,000 evaluation factor was required to be added to the bids of those bidders who did not receive a waiver.

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Bids were received from five bidders. The bids of Hi-Shear and NEC both contained obvious errors. Hi-Shear's error was in item No. 0012, an E-2 item, and NEC's error was in item No. 0007, an E-1 item. The bids of NEC and Hi-Shear were as follows:

E-1 Production Items:		NEC BID		HI-SHEAR BID	
Item	Quantity	Unit	Extended	Unit	Extended
0001	255 ea	\$640.13	\$163,233.15	\$722.26	\$196,926.30
0002	255 ea	255.15	65,063.25	256.12	65,310.60
0003	255 ea	84.37	21,514.35	76.40	19,482.00
0004	255 ea	14.16	3,610.80	10.02	2,555.10
0005	255 ea	20.80	5,304.00	19.41	2,654.55
0006	240 ea	417.23	100,115.20	398.13	95,551.20
0007	340 ea	83.03	27,210.20*	110.54	37,583.60
0008	120 ea	23.49	3,538.80	60.90	7,308.00
Subtotals			\$389,609.75		\$427,371.35

E-2 First Article Items:					
0010	6 ea	\$455.71	\$ 2,734.26	\$589.47	\$ 3,536.82
0011	6 ea	198.96	1,193.76	327.12	1,962.72
0012	45 ea	49.86	2,243.70	530.86	3,185.16*
Totals			\$395,781.47		\$436,056.05

*--Denotes mistake in bid

NRPO waived first article testing for Hi-Shear and in accordance with the IFB added the \$50,000 evaluation factor to NEC's bid. Having waived first article testing for Hi-Shear, NRPO determined that Hi-Shear's bids for the E-2 items were not to be included in Hi-Shear's total bid price. NRPO evaluated the bids of Hi-Shear and NEC without correction of errors as follows:

Hi-Shear:

E-1 Items	\$427,371.35
E-2 Items	No Charge - First Article Waived
Total	\$427,371.35

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NEC:

E-1 Items	\$389,608.75
E-2 Items	6,171.72
Added First Article Factor	<u>50,000.00</u>
Total	\$445,780.47
Difference	\$ 18,409.12

The difference actually was \$18,410.12, since the amount for the E-1 items should have been \$389,609.75 instead of \$389,608.75. See subtotal shown for items 0001 through 0008 above.

NEC maintains that NRPO was required by the IFB to include Hi-Shear's E-2 items in Hi-Shear's total bid price. NEC maintains that had NRPO included such items with the proper extended price for item No. 0012 that NEC's bid would have been the low bid notwithstanding the addition of the \$50,000 first article testing evaluation factor. NEC maintains that Hi-Shear's extended price for item No. 0012 should have been \$23,608.70, i.e., 45 times Hi-Shear's item No. 0012 unit price of \$530.86, rather than the extended price of \$3,185.16 listed in Hi-Shear's bid. NRPO maintains that, inasmuch as the first article testing requirement was waived for Hi-Shear, it was not required to include Hi-Shear's bid on E-2 in Hi-Shear's total bid price, since it was not required to purchase the E-2 items and therefore it did not have to consider the patent mistake in Hi-Shear's item No. 0012 bid price. NEC also maintains that NRPO improperly refused to waive first article testing for its item No. 0012. NRPO states that the terms of the IFB did not allow for a partial waiver of first article testing.

The resolution of this protest depends on the proper interpretation of the evaluation procedures set forth in the IFB. Section D-1 of the IFB provided:

"Award will be made to that responsive, responsible bidder offering the lowest total evaluated price."

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Section D-2 provided:

"Evaluation will be made on the total price submitted for the items set forth in E-1, E-2."

Although the IFB could have been clearer and more specific, we believe that the only reasonable interpretation of the IFB is that bids would be evaluated on the basis of E-1 and E-2 prices when the bidder did not receive a waiver of the first article testing requirement. It would defy logic to hold that pre-production items were required to be evaluated once first article testing was waived, since the items would not be part of any contract award and the Government would not incur any cost for such items. See 42 Comp. Gen. 717 (1963).

Inasmuch as evaluation of Hi-Shear's E-2 items was unnecessary after NRPO waived first article testing NRPO was not required to consider the mistake contained in the unit or extended price of Hi-Shear's item No. 0012 and the award of the contract to Hi-Shear was proper. It is unnecessary to consider whether NRPO acted properly in refusing to grant NEC a partial waiver of first article testing, since Hi-Shear's bid would remain low. Had NEC been granted a partial waiver of first article testing for its item No. 0012, NEC's evaluation factor of \$50,000 would have been reduced by \$7,538.00, the cost of testing item No. 0012, and \$2,243.70, the bid for item No. 0012, would have been deducted from NEC's total bid. If this \$9,781.70 total cost reduction was applied to NEC's evaluated bid and the extended price for item No. 0007 was allowed to remain unchanged, as NEC contends it should be, this would not result in NEC being the low bidder. Accordingly, the protest is denied.

It is recommended, however, that NRPO in the future use more specific language setting forth the evaluation procedures to be followed when first article testing is waived. Language stating that preproduction

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items would not be included in the evaluation of a bidder's bid for whom first article testing had been waived could have easily been included in the IFB and would have prevented the subject protest.

R. F. Kellum
Deputy Comptroller General
of the United States