

**DECISION**

12572 Martin  
THE COMPTROLLER GENERAL *Proc II*  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-195289.2

DATE: January 18, 1980

MATTER OF: Morse Diving Equipment  
Company, Inc. *DL903642***DIGEST:**

*[Protest of Navy Denial of Waiver for First Article Testing]*

Waiver of first article testing requirement is matter within discretion of procuring agency and GAO will not disturb the agency's decision absent showing that it was arbitrary or capricious. Agency's decision to require first article testing of protester's product where that firm previously furnished identical items was not arbitrary or capricious since significant portion of previously supplied item was manufactured by subcontractor whose current availability to protester was uncertain.

Morse Diving Equipment Company, Inc. (Morse) protests the award of a contract to Brantner & Associates, Inc. *DL603643* (Brantner) under invitation for bids (IFB) No. N60921-79-B-A025 issued by the Naval Surface Weapons Center, *AQ 00286* Dahlgren, Virginia. Morse contends its bid for connector assemblies was erroneously rejected because the agency denied waiver of first article testing. As Morse had previously furnished identical items, it states this denial was arbitrary and improper. For the reasons stated below, this protest is denied.

The IFB provided that where supplies identical or similar to those called for have previously been furnished by the bidder and accepted by the Government, the requirement for first article approval may be waived. The record shows that Morse's bid would have been low only if first article testing was waived for Morse but not for Brantner which had been a subcontractor to Morse in a previous procurement for the same items. Morse and Brantner submitted conflicting statements to the agency as to what portion of the items had been manufactured by each. When an inquiry to Morse failed to eliminate the agency's uncertainty as to whether the items would be manufactured

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with Brantner as a subcontractor, entirely by Morse or by Morse and another subcontractor, the agency determined that the best interests of the Government precluded waiving the first article testing requirement for Morse. This resulted in Brantner's bid being low and it received the award.

The thrust of Morse's argument is that the only information upon which a decision to waive first article testing can be based is whether the bidder previously and successfully furnished identical or similar items to the Government. It believes the amount and details of any subcontracting intended and the identities of the subcontractors should be of no concern. Morse contends Bogue Electric Manufacturing Company, B-193878, May 10, 1979, 79-1 CPD 330, supports its position that as the end item supplier is responsible for all components of the item, it is entitled to waiver of first article testing not only with respect to the end item but also on components manufactured by subcontractors.

Morse also argues that it was improper for the agency to have solicited additional information, after bid opening, regarding Morse's subcontracting plans. Since Morse responded to the agency's request for information on June 22, 1979, and did not contend that such request was improper until November 16, this contention is untimely under section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R Part 20 (1979) and will not be considered.

The decision whether to waive first article testing for a particular bidder is essentially an administrative one which our Office will not disturb unless it is clearly arbitrary or capricious. Kan-Du Tool & Instrument Corporation, B-183730, February 23, 1976, 76-1 CPD 121. The language used in the IFB makes clear that when identical or similar supplies have been successfully furnished, the Government may, but is not required to, waive first article testing. Libby Welding Company, Inc., B-186395, February 25, 1977, 77-1 CPD 139. In Bogue Electric, *supra*, we held it was not unreasonable on the facts presented for an agency to waive first article testing for an item which had been a component of a larger item supplied under a prior contract. The larger item was

produced by a firm other than that supplying the component item. We based this holding on the rationale that since the whole is the sum of the parts, it was a fair inference that the parts would be acceptable if the whole was acceptable, and on the solicitation provision contemplating that, if first article testing were waived, the contractor would utilize the subcontractor that furnished the previously acceptable item. That case, however, does not require that an agency waive first article testing in every instance where the item being purchased was a component of a satisfactory end item previously delivered, nor does it mandate waiver wherever the end item being purchased was also satisfactorily furnished previously if there is doubt as to the origin of a component of the item previously supplied and as to exactly who the manufacturer of the component will be.

Defense Acquisition Regulation § 1-1902 (a) (1976 ed.) states the first article approval requirement was designed to assure the product would be satisfactory for its intended use and, therefore, to minimize risks for both the contractor and the Government. As an example of where such approval is particularly appropriate, it cites the case when the product has been previously furnished by the contractor but there have been subsequent changes in production processes. See also BEI Electronics, 58 Comp. Gen. 340 (1979), 79-1 CPD 202, where we upheld an agency's refusal to waive first article testing in part because of a break in production of a subcontractor. While the record here is unclear as to exactly what portion of the end item was previously manufactured by Brantner, it is clear that the portion was significant. As there was no certainty as to how much of the item, if any, would be manufactured by Morse and as to the identity and processes of the subcontractor, if any, we believe the agency's desire to obtain the additional security which might result from first article testing was reasonable. Thus we find no basis for concluding the agency's refusal to waive first article testing for Morse was arbitrary or capricious.

The protest is denied.



For The Comptroller General  
of the United States