

DECISION



200-2
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-208433

DATE: January 18, 1983

MATTER OF: ICSD Corporation

DIGEST:

1. Where alternative bids are invited in the same solicitation, the nonresponsiveness of one of those bids has no bearing on the responsiveness of the other bid.
2. Where alternative bids are invited, one with and one without first article approval, a bid based on only one alternative is responsive where the bidder is seeking the contract solely on that alternative.

ICSD Corporation protests that the two lower bids under Navy invitation for bids (IFB) No. N00164-82-B-0057 for night vision sights were nonresponsive because they allegedly did not comply with the solicitation's first article pricing provision. We deny the protest.

The solicitation was divided into two lots, only one of which would be awarded. The lots were the same except that the Lot II specifications were somewhat more restrictive than the Lot I specifications; the Navy reports the item had never been procured to the Lot II specifications. The Lot I specifications described an article that met the Government's minimum needs but, according to the solicitation, the Government might choose to accept a Lot II bid "if it would be in the Government's best interest to do so, price and all other relevant factors considered." The IFB provided that if the low bid on Lot II did not exceed the low bid on Lot I by more than 15 percent, it would be deemed to be in the Government's interest to make an award on Lot II.

The IFB stated that the first article requirement "may be waived" for Lot I, but that first articles would be required for Lot II items. The IFB further explained that a bidder desiring first article waiver "may submit alternate bids, one including and one excluding first article

824400

approval testing" provided the firm supplied the contract numbers under which similar or identical items had been accepted by the Government.

Bids were opened on June 30, 1982. Three bids were received. Ni-Tec Incorporated was the low bidder at \$446,800 on each of Lots I and II, and with its bid Ni-Tec submitted a cover letter stating that its bid was based on waiver of first article approval. The second lowest bidder was Numax Electronics Incorporated, which bid \$473,527 on Lot I and \$485,353 on Lot II. Numax also submitted a cover letter to the effect that the bid prices submitted in response to the solicitation did not include the costs for first article testing. ICSD, the protester, was the third lowest bidder at \$673,858 (with first article approval) and \$643,261 (without first article) on Lot I, and \$689,056 on Lot II with first article approval. Since both Ni-Tec and Numax conditioned their Lot II bids on first article waiver, the Lot II bids were deemed nonresponsive, leaving ICSD the low, responsive Lot II bidder. The Navy found the Ni-Tec and Numax Lot I bids responsive, and since ICSD's Lot II bid of \$689,056 was more than 15 percent greater than the low Lot I bid (Ni-Tec's \$446,800), Lot I became the basis for award.

ICSD protests that the bids of Ni-Tec and Numax were nonresponsive because they were conditioned on waiver of first article. ICSD maintains that the Ni-Tec and Numax bids, to be responsive, should have included two separate bids for Lot I, one including first article costs and one without. It maintains further that their bids on Lot II were nonresponsive because they were based on waiver of first article approval which was not permitted for Lot II. ICSD concludes that it was the only bidder submitting responsive bids and therefore it should be awarded the contract.

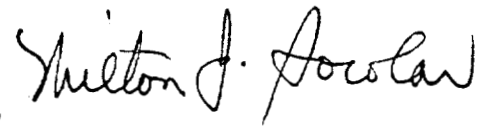
ICSD is correct that the two lower bids on Lot II were nonresponsive, which is what the Navy actually concluded. The test to determine a bid's responsiveness is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the IFB, so that the Government's acceptance of the bid will bind the contractor to

perform in accordance with all the terms and conditions on which bids were solicited. National Radio Company, Inc.; Bruno-New York Industries Corp., B-198240, July 25, 1980, 80-2 CPD 67. Thus, both Ni-Tec's and Numax's Lot II bids were nonresponsive because they were conditioned on waiver of first article approval, which was not permitted. By not providing for this requirement in their Lot II bids, both Ni-Tec and Numax attempted to limit their obligation.

As to the Lot I bids, we first point out that they are not affected by the nonresponsiveness of the bids on Lot II. The Lot II bid was distinct from the Lot I bid, so that an improper qualification of one bid had no effect on the responsiveness of the other bid. See Teledyne Republic, B-204022, December 31, 1981, 81-2 CPD 520.

Similarly, there is no reason to reject either Ni-Tec's or Numax's Lot I bid simply because the firms did not submit bids that provided for first article approval. In our decision Conic Corporation, B-187979, May 4, 1977, 77-1 CPD 304, we considered a situation where bidders also were offered the option to submit alternate bids conditioned on waiver of the first article requirement. The low bidder did not attempt to seek the waiver and therefore did not include in its bid the information required for waiver. We held that since the contractor "was not attempting to obtain the waiver, it was unnecessary to [furnish that the information] for the bid to be responsive." In the instant case, alternative bids also were not required, but allowed. Despite the fact that waiver was not sought in Conic but is sought here, the basic rule is that where alternative bids are invited, one with and one without first article approval, a single bid based on one alternative is responsive where the bidder is seeking the contract solely on that alternative. Thus, as long as waiver is deemed appropriate for either Ni-Tec or Numax, either bid on Lot I can be accepted.

The protest is denied.

for 
Comptroller General
of the United States