

118395 *HUNTER*

DECISION



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

FILE: B-204396

DATE: May 17, 1982

MATTER OF: Kan-Du Tool & Instrument Corp.

DIGEST:

Waiver of a solicitation's first article testing requirement is a matter within the discretion of the procuring agency and will not be questioned by GAO in absence of a showing that the decision was arbitrary or capricious. GAO finds that contracting agency's decision not to waive first article testing was supported by the record which indicates that, among other things, there had been a lapse in production of produced item of approximately 4 years.

Kan-Du Tool & Instrument Corp. (Kan-Du) protests the contracting officer's decision not to waive first article testing on its product bid under invitation for bids (IFB) No. DAAE07-81-B-7299, issued by the United States Army Tank-Automotive Command, Warren, Michigan, for the supply of ignition coil parts kits. Kan-Du asserts that the evaluation of its otherwise low bid to include first article testing costs, which resulted in the only other bidder being evaluated as low, was arbitrary and capricious and not in the best interest of the Government.

For the reasons set forth below, we deny Kan-Du's protest.

Kan-Du contends that the contracting officer did not take into account all of the significant factors in deciding whether to grant Kan-Du a waiver from the IFB's first article testing requirements pertaining to the ignition coil part of the parts kit. Specifically, Kan-Du alleges that it provided the Army sufficient evidence to show that its vendor, Andover, Inc. (Andover), had been certified by the Government for many years as a qualified source of ignition coils.

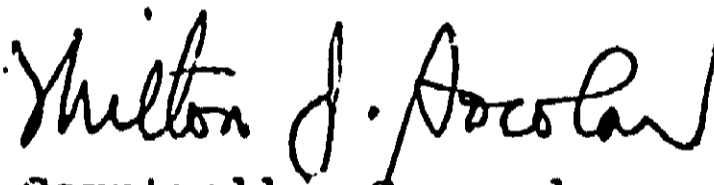
Andover points out that its ignition coils were the subject of first article testing and approval in 1972. Since 1972, Andover has supplied over 100,000 ignition coils to the Government and none of these coils has ever been the subject of a quality deficiency report. Andover further notes that it has been on the Government's qualified parts list (QPL) for many years.

The Army states that, for waiver of first article approval, the IFB required bidders to submit a copy of previously approved first article test reports. Bidders were also asked to identify those contract numbers under which the same or similar part had been previously accepted by the Government. In support of waiver, Kan-Du's bid indicated only that it had previously supplied the item to the Government under two listed contracts. Following bid opening, Kan-Du advised that the ignition coil would be furnished by a "QPL approved source"; however, the Army notes that the applicable product drawing indicated that QPL listing did not apply. With regard to the two contracts listed, the contracting officer found two separate reports of premature ignition coil failures on one of the contracts. Also, the contracts listed by Kan-Du were completed in 1976 and 1977. In this regard, the Army calls our attention to Army Regulation (AR) 702-9 (March 1977), which provides that there should be first article testing by a former producer of an item whenever there has been a lengthy delay or interruption of production, normally 1 year or more. Consequently, the Army takes the position that the contracting officer's decision to deny Kan-Du a waiver from first article testing was a reasonable exercise of administrative discretion.

In response, Kan-Du recalls only one instance in which it was notified by the Government of a failure relating to ignition coils it had supplied. According to Kan-Du, rather than investigate the matter fully, it was decided at the time that it would be faster, easier and less costly to merely replace without further question the damaged ignition coils. Kan-Du asserts that to this date it has "doubts" that it actually supplied the damaged coils.

The decision whether to waive first article testing for a particular offeror is essentially an administrative one which our Office will not disturb unless it is clearly arbitrary or capricious. Libby Welding Company, B-186395, February 25, 1977, 77-1 CPD 139. We find that the record supports the contracting officer's determination not to grant a waiver from first article testing to Kan-Du. It is not disputed that Kan-Du's last contract for ignition coils was completed approximately 4 years ago. Second, as to Andover, the IFB specifically deleted the applicability of QPL listing. Further, the record shows that the contracting officer had no evidence to indicate that Andover had supplied its coil to the Government since 1977. Neither Kan-Du nor Andover provided any information to the contracting officer that Andover's coils had been more recently supplied to the Government. See Wilco Electric, Inc., B-194872, September 24, 1979, 79-2 CPD 218. Such information, according to the Army, was not available from the Government list of prior awards. Moreover, there is contemporaneous documented evidence of premature failures in some of the ignition coils supplied by Kan-Du in one of its prior Government contracts.

Protest denied.

for 
Comptroller General
of the United States