

**DECISION**

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

FILE: R-207016

DATE: July 6, 1982

MATTER OF: Stocker &amp; Yale, Inc.

**DIGEST:**

1. Agency's decision not to waive first article testing for the protester is a reasonable exercise of administrative discretion where the protester has failed to deliver an acceptable first article under its current contract for the same item.
2. GAO will not review the propriety of an agency's rejection of a protester's first article samples as this is a matter of contract administration for resolution by the contracting parties and not this Office. Any dispute in this regard must be resolved under the Disputes clause of the contract.

Stocker & Yale, Inc. (S&Y) protests the award of a contract to Waltham Compass Corporation under invitation for bids (IFB) No. DLA 120-82-B-0905 issued by the Defense Personnel Support Center (DPSC) for survival compasses. S&Y contends that DPSC has improperly refused to waive first article testing for it. S&Y would be the low bidder if such a waiver were granted. We deny the protest.

The IFB provided that where supplies identical or similar to those called for previously had been furnished by the bidder and accepted by the Government, the requirement for first article approval might be waived. Bidders who considered themselves eligible for waiver were requested to list the contract number(s) which would establish their eligibility. S&Y listed contract No. DLA120-81-C-5513, awarded to it on June 4, 1981, for the same item.

DPSC determined not to waive first article testing for S&Y because of its continued failure to deliver an acceptable first article under the 1981 contract. In this regard,

the record shows that since the date of that contract award, S&Y has submitted samples for testing on four separate occasions, and they have been rejected each time. On several occasions, S&Y has requested that it be granted deviations from the specifications. All of these requests have been denied by DPSC.

S&Y's position is that the difficulties it has encountered in securing first article approval under the 1981 contract are primarily the fault of the agency, which has refused to grant deviations that would actually result in a better product and which has been uncooperative with S&Y's effort to resolve the situation. S&Y also asserts that the most recent problems it has encountered with the compass are minor and can easily be corrected. S&Y therefore argues that DPSC's failure to approve its first article under the 1981 contract is arbitrary and capricious and that this in turn renders improper the decision not to waive first article testing under the IFB here.

The decision 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. Morse Diving Equipment Company, Inc., B-195289.2, January 18, 1980, 80-1 CPD 57. The solicitation provides that first article testing may be waived where an identical or similar item previously has been furnished and accepted by the Government. It is undisputed that the Government has never accepted the item under S&Y's 1981 contract, which S&Y cited as establishing its eligibility for waiver. Consequently, we find no basis to conclude that DPSC has acted in an arbitrary and capricious manner by refusing to waive first article testing for S&Y in this case.

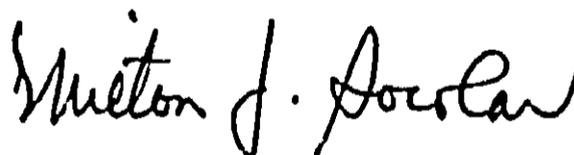
While S&Y maintains that we should review the propriety of DPSC's rejection of its first article under the 1981 contract since that constitutes the agency rationale for its refusal to waive first article testing here, we do not believe that it would be appropriate to do so. The approval or disapproval of first article samples is a matter of contract administration, which is properly for resolution by the contracting parties and not by this Office under our Bid Protest Procedures. See Duroyd Manufacturing Company Inc., B-195762, November 16, 1979, 79-2 CPD 359. Any dispute in this regard is a matter which must be resolved under the Disputes clause of the contract. See Libby Welding Company, Inc., B-186395, February 25, 1977, 77-1 CPD 139. The authority of our Office does not include intervention between a contractor and a contracting agency for the purpose of resolving a dispute arising under a contract.

In its comments on the agency report, S&Y for the first time argues that first article testing should be waived because it is currently supplying similar compasses to the Army and Navy. S&Y did not, however, list these contracts in its bid and consequently, it appears that DPSC did not consider them. Therefore, we believe they are irrelevant to the propriety of the agency's decision.

S&Y also states in its comments that it supplied the identical item under an Army contract in 1968. While DPSC was apparently aware of this fact, it felt that since more than thirteen years had elapsed, a waiver on that basis was not warranted. We consider that determination to be a reasonable exercise of administrative discretion under these circumstances. See Wilco Electric, Inc., B-194872, September 24, 1979, 79-2 CPD 218.

Finally, Waltham urges that we conduct a full scale inquiry into the history and performance records for past awards for various types of compasses, and particularly those involving S&Y. It is not the practice of our Office to conduct investigations pursuant to our bid protest function. See Robinson Industries, Inc., B-194157, January 8, 1980, 80-1 CPD 20. Further, in light of our decision, we do not believe that such an investigation would serve any useful purpose.

The protest is denied.



Acting Comptroller General  
of the United States