

8

**DECISION**



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

FILE: B-185644

60673  
DATE: March 25, 1976

MATTER OF: Triple A Machine Shop, Inc.

98452

**DIGEST:**

Decision to procure sole-source will not be disturbed where contracting officer's Determination and Findings to negotiate on a sole-source basis is supported by record indicating proposed awardee was only known source with functional capability to satisfy procuring activity's requirements.

8

Triple A Machine Shop, Inc. (Triple A), protests the proposed sole-source award of contract No. N00123-76-R-0755, to Milwaukee Valve Company (Milwaukee), by the Department of the Navy for 20 "Stop-Check-Lift" valves. The protester alleges that the procurement should have been made available on a competitive basis rather than sole-source since the valves being sought were available from other sources.

The protest stems from the publication of the referenced procurement in the Commerce Business Daily. The advertisement stated that negotiations were being conducted with the Milwaukee Valve Company on a sole-source basis due to the unique design of the valves sought.

Triple A alleges that a Walworth B-135 valve is equal in all respects to the specified Milwaukee Company valve, and is offered at a lower price. In support of its allegation, Triple A refers to an evaluation of the two valves made by the Supervisor of Shipbuilding, Conversion and Repair (SUPSHIPS), U. S. Navy, San Francisco, California. Triple A contends that the SUPSHIP study proves that the Walworth valve is identical in configuration, equal in performance, and superior in anticipated longevity to the specified valve. Triple A believes that the Walworth valve equates functionally with the specified Milwaukee valve and contends that it has been unfairly denied the opportunity to compete for the procurement. Therefore, a decision is requested regarding the validity of the proposed sole-source award.

The Navy reports that an investigation was conducted to determine potential sources of supply and it was determined that only Milwaukee's valve would meet its needs. Therefore, request for proposals (RFP)

B-185644

No. N00123-76-R-0755, was issued only to Milwaukee. The justification for the proposed sole-source award is contained in a Determination and Findings (D&F) dated December 12, 1975, which, in part, states:

"3. The Valves are for use in Waste Oil Rafts (DONUT) designed by Gibbs and Cox and has the following unique characteristics:

With the valve stem all the way up (open position) the disk is lifted off of the ring and the valve is open, allowing flow in either direction.

"4. The position lift feature is not found in commercial valves. Gibbs and Cox included the position lift feature because the valve is subjected to muddy sludge-like material. In the presence of this clogging material hydrostatic pressure may not be sufficient to open the valves when it is in check position. With the positive lift feature, the valve may be forced open by raising the valves stem to open position.

"5. Milwaukee Valve Company is the only known source with a valve to meet the unique operational requirements for the Waste Oil Raft."

Pursuant to 10 U.S.C. § 2310 (1970), a D&F approved by the head of an agency is entitled to finality. However, our Office is not precluded by the statute from questioning whether the determination based on the findings is proper. 52 Comp. Gen. 57 (1972). We believe that the determination to procure the Milwaukee valve reasonably flows from the findings. In addition, we conclude, for the reasons set out below, that there is a rational basis for the agency's determination of its need.

The initial survey by SUPSHIPS appeared to substantiate Triple A's claim that the Walworth valve is equal to the Milwaukee valve. However, since the data provided by SUPSHIPS indicated that its examination had not contemplated the operation of the Walworth valve as a check valve, further documentation was requested to show the design of the disk and stem and the operating characteristics of the stop-lift-check features of the valves.

B-185644

The additional design data furnished indicated that the Walworth valve and the Milwaukee valve are basically configured alike, but the Walworth valve is not functionally effective as a check valve. In this regard, the evaluation report stated in part:

"From the technical standpoint, the basic design concept \* \* \* appears valid. However, \* \* \* the diameter of the stem base is greater than the diameter of hole (N) through the new disk nut. This limits the lift of the disk in the check position to approximately 0.109 inch which represents less than one-half turn of the stem. This limited operation does not equate functionally to the specified Milwaukee valve."

Upon receipt of the administrative report dealing with the protest, Triple A, again relying on the SUPSHIPS evaluation, responded with a reiteration of its claim that the Walworth valve equates functionally with the Milwaukee valve. Further, Triple A has requested that an independent Government agency physically inspect the Walworth and Milwaukee valves to determine the equality of the two.

It is our view, however, that the additional evaluation by the agency appears to be a comprehensive examination of both valves which determined the functional deficiency of the Walworth valve. Triple A has offered no proof in addition to SUPSHIPS' initial report to substantiate its allegation that the Walworth valve will perform as well as the Milwaukee, nor has Triple A offered to modify its valve to conform to the agency's requirements. We can see no purpose in another evaluation since Triple A has presented no new information for evaluation. Based upon the subsequently obtained information, we conclude that the decision not to negotiate with Triple A was justified.

Based on the foregoing, the protest of Triple A is denied.

*R. F. Kramer*  
Deputy Comptroller General  
of the United States