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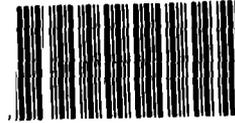
UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

B-197854

JUNE 22, 1984

The Honorable Lowell Weicker, Jr.
Chairman, Committee on Small Business
United States Senate



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Dear Mr. Chairman:

Subject: The Role of the U.S. Tea Examiner Office in
Procurement of Tea by the Department of Defense
(GAO/NSIAD-84-126)

In response to your request and subsequent discussions with your office on May 18, 1983, we have reviewed the overall functions of the U.S. Tea Examiner Office, with emphasis on determining if the procedures and practices used to test teas obtained under Department of Defense contracts are viable, cost effective, and equitable. Your request letter discussed the problems experienced by a government contractor, Embassy House, Inc., a small business tea importing company, and its allegations that the Tea Examiner Office discriminates against small firms in favor of large companies.

Procedures and practices used to test teas procured under Department of Defense contracts have been in effect for more than 30 years. Very nominal amounts are spent for such tests and we found no evidence that the test procedure favored any particular size or kind of tea firms in competition for Defense contracts. However, we believe the credibility of acceptance testing could be enhanced through such actions as:

- implementation of a postaward testing process that utilizes blind tests and a panel similar to the preaward testing process, and/or
- use of an ad hoc panel of tea experts in the appeals process to test teas that experience difficulties passing postaward acceptance tests.

INSPECTING TEAS PRIOR TO IMPORTATION

Prior to 1897, tea of an inferior quality was being imported into the United States. To end that situation, the Congress

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passed the Tea Importation Act of 1897 (the Tea Act). The act made it unlawful for anyone to import tea that is inferior to recognized standards of purity, quality, and fitness for consumption.

The Tea Examiner Office, which was established by the Tea Act, establishes a standard for imported tea and tests tea against that standard before it is allowed to enter the country. The Tea Examiner Office operation is located in New York City, where there are two tea examiners, and in New Orleans, where there is one tea examiner. The Tea Act, as amended, requires importers to pay the U.S. Treasury 3.5 cents per hundred pounds of imported tea to help defray the cost of the testing process. About 200 million pounds of tea are imported annually, which yields about \$70,000 in fees.

Each year a standard tea is selected for each of the eight categories of tea. The standard teas are selected by a Tea Board¹ from sample teas submitted by producing countries, importers, exporters, and packers.

The Board considers such factors as the

--taste, aroma, and color of the brewed tea;

--infused color of the brewed leaf; and

--feel, texture, and color of the bulk tea.

This procedure is referred to as the organoleptic method of testing and involves an appeal to the senses. The standard teas that are selected are not necessarily the best or highest quality sample, but the ones meeting the minimum acceptable standard of purity, quality, and fitness for consumption.

Once the standards are established, the Tea Examiner Office receives a certified and bonded sample of all teas entering the country. The Office tests each sample to determine whether it meets the previously established minimum standard. If it does, it is allowed to enter the country; if it does not, it cannot be imported into the United States. Affected parties have the right to appeal the Tea Examiner Office decision if their teas are rejected. When a test result is appealed, the Commissioner of FDA convenes a Board of Tea Appeals. The Board either confirms or overrules the Tea Examiner Office decision.

After the tea enters the country, the manufacturer, distributor, and packer can blend it with other teas, add spices or aromatics, and determine weight per tea bag.

¹The Tea Board consists of six industry tea experts, selected by the Commissioner of the Food and Drug Administration (FDA), and one tea examiner.

TESTING TEA PROCURED UNDER
DEPARTMENT OF DEFENSE CONTRACTS

The Defense Personnel Support Center (DPSC) procures tea to meet the military's requirements. DPSC requested the Tea Association of the United States of America² to produce a tea mix that the military population at large would find palatable, rather than a specific tea meeting individual or regional tastes. The Association developed a blend consisting of the five most widely sold teas in the United States. That blend became known as the A-2 standard and is prepared three times a year.

Under an agreement between DPSC and FDA, the Tea Examiner Officer performs tests on samples submitted by government contractors on a cost-reimbursable basis. DPSC has been using the services of the Tea Examiner Office for 30 years. The current reimbursement rate paid by DPSC is \$21 an hour for a tea examiner, \$8 an hour for typing services, and \$50 a day for each panel member. Annually, the total amount reimbursed by DPSC has been about \$2,400 on tea purchases averaging \$2.1 million annually since 1974.

Preaward testing

After the A-2 standard is established, contractors are invited to submit bids on the DPSC contract along with two 4-ounce samples of the tea to be supplied under the contract. The bidders are not provided information on the composition of the teas that make up the A-2 standard sample, however, they may get A-2 samples on request from the Tea Association.

The bidders' samples are coded by DPSC, and one sample from each bidder is sent to the Tea Examiner Office. A panel consisting of two tea experts and one tea examiner, who acts as chairman, is convened to test and grade all the samples. The suppliers' names are not known to the panel. This is considered a "blind" test since the suppliers' names are not known.

Any contractor's samples determined by the panel to meet or exceed the standard are acceptable and those which do not are not acceptable. The tea examiner notifies DPSC of the panel's findings and includes the reasons the samples did not meet the standard.

²The Association includes packers, importers, brokers, agents, and other firms in the tea business. The Association works with the paper industry on establishing quality, size, and other characteristics of tea bag paper; equipment manufacturers on testing and evaluating new types of brewing machines; and the restaurant business on developing new formulae and techniques for handling tea.

DPSC notifies each of the potential suppliers whether or not its sample met the standard. Some companies submit more than one sample, and at different prices. If a firm has more than one acceptable sample, the firm will submit bids on the lowest price tea since the award will be to the lowest bidder.

These preaward testing procedures were the subject of two DPSC tea contract award protests made by Embassy House to the Comptroller General. The Comptroller General ruled that the procedures contained adequate and practical safeguard against bias in this admittedly subjective activity. (Embassy House Inc., B-197854, July 7, 1980, and Embassy House, Inc., B-197854.2, September 10, 1980).

Postaward testing

After selecting the successful bidder, DPSC sends the selected bidder's second sample to the Tea Examiner Office. That sample becomes the standard for the tea to be supplied by the contractor. The A-2 standard is no longer used as the standard to be met by the contractor.

The Department of Agriculture, on request of DPSC, obtains a sample of tea from the contractor's production line. The sample is forwarded to the Tea Examiner Office for testing to determine whether it meets the standard established by the original sample submitted. The test is performed by one of the tea examiners rather than by a panel. The tea examiner knows the identify of the contractor. The Tea Examiner Office notifies DPSC if a postaward sample does not meet the preaward standard. DPSC is provided reasons for the failure.

Contractors accepting DPSC contracts agree to be bound by the tea examination results reported by the Tea Examiner Office. However, contractors may appeal in case of disputes to the Armed Services Board of Contract Appeals or bring an action directly in the U.S. Court of Claims. There is no intermediate appeals level similar to the appeal for an importer to the Board of Tea Appeals.

EMBASSY HOUSE, INC., TEA CONTRACTS

Between 1979 and 1981, Embassy House was awarded eight contracts by DPSC. On three contracts, the tea met the postaward test but was delivered late. On three other contracts, the tea did not meet the postaward test, but was accepted by DPSC at reduced prices. The last two contracts were terminated because of problems in meeting contract delivery schedules. A summary of the eight contracts is shown in enclosure I. Embassy House alleged that the Tea Examiner discriminates against small firms in favor

of large firms. The Small Business Administration's review of the matter concluded that there was no proof of wrongdoing but noted that under preaward blind tests, Embassy House experienced good success but under postaward test when Embassy House's identity was known, their samples failed. Over the last 20 years, Embassy House has been the only tea supplier to fail postaward tests.

CONCLUSIONS

Tea testing procedures and practices established under the DPSC/Tea Examiner Office agreement have been in effect for more than 30 years, and until the Embassy House contracts, had not been the subject of controversy.

DPSC reimburses the Tea Examiner Office about \$2,400 each year for the testing services. This seemed to us to be a nominal amount to obtain quality assurance for purchases totaling over \$2 million, and we therefore, did not attempt to determine if more cost effective procedures might exist.

We found no evidence that the Tea Examiner Office tea testing procedures favored any particular size or kind of firms in competition for government tea contracts. However, we believe the credibility of the testing of government contractor tea could be enhanced with the implementation of a postaward testing process that utilizes blind tests and a panel similar to the preaward testing process. Another approach to help ensure equitable treatment would be to establish an intermediate appeals process for postaward testing. An ad hoc panel of tea experts selected by the Commissioner of FDA could be used in this process. This process would be similar to the process used when an importer's tea fails a Tea Examiner Office test and would provide a capability to immediately act on contractor appeals. We believe such a process would add only a minimum cost to the government for the procurement of tea since the panel would serve on an ad hoc basis and the incidence of problems with postaward tests have been few.

The difficulties experienced by Embassy House in satisfying requirements under government contracts were not attributable solely to problems in meeting postaward tests. Some of its difficulties were also attributable to its inability to meet contract delivery dates.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to review the functions of the Tea Examiner Office and evaluate the viability, cost effectiveness, and equity of the process used to test tea obtained under government contracts.

We observed the tea examination process and reviewed policies and procedures used by the Tea Examiner Office to inspect teas entering the United States. We made our review essentially at the Tea Examiner Office in New York City where Embassy House teas were tested.

We discussed matters in this case with officials of the Tea Examiner Office, FDA, DPSC, the Small Business Administration, and Embassy House. We reviewed pertinent records applicable to the procurement and inspection of tea under government contracts.

Our review was conducted in accordance with generally accepted government audit standards.

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As requested by your office, we did not obtain agency comments on this report.

So that they may consider our suggestions for enhancing the credibility of postaward acceptance testing of tea, we are sending copies of this report to the Commissioner of FDA and the Commander, Defense Personnel Support Center. Copies are also being sent to the Director, Office of Management and Budget; the Secretary of Defense; the cognizant congressional appropriation and authorization committees; and others upon request.

Sincerely yours,



Frank C. Conahan
Director

Enclosure

EMBASSY HOUSE, INC., TEA CONTRACTS

- The first contract (79-C-1027) was awarded June 15, 1979, for \$495,929.50. The test standards were met. However, the tea was delivered in increments that were from 2 to 25 days late.
- The second contract (80-C-0714) was awarded February 15, 1980, for \$150,829.05. Supplies delivered failed to meet the standard. The tea was "urgently" needed, hence the contracting officer determined it to be in the government's best interest to accept this tea with a price reduction.
- The third contract (80-C-1126) was awarded August 29, 1980, for \$228,372.48. Test standards were met. However, the tea was delivered later than specified in the contract.
- The fourth contract (81-C-0585) was awarded November 20, 1980, for \$225,792.00. The postaward samples were found to be different from the approved preaward sample. The tea examiner convened a test panel on two separate occasions to test tea samples. Convening a panel for postaward testing was a departure from the policy of having these tests done by the tea examiner alone, however, DPSC requested the panel in response to allegations of bias by the contractor's. On one test the panel was not aware of the contractor's identity. In both cases the panel's unanimous reaction was that the postaward samples did not match the preaward samples. However, the tea was accepted on a nonconforming basis at a reduced price.
- The fifth contract (81-C-0734) was awarded February 9, 1981, for \$88,445.95. The first samples did not pass postaward tests. However, the contract was completed after other production samples were submitted and passed the test. Delivery dates were extended.
- The sixth contract (81-C-0763) was awarded February 27, 1981, for \$571,492.44. The samples did not pass postaward tests. The tea was accepted on a nonconforming basis at a reduced price.
- The seventh contract (81-C-0890) was awarded May 22, 1981, for \$170,634.24. The contract was terminated because the contractor could not meet the contract delivery schedule.
- The eighth contract (81-C-1096) was awarded September 18, 1981, for \$67,511.81. As in the previous contract, the contractor could not deliver as scheduled and the contract was terminated.