

**DECISION**



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

*14224 Trans.*  
*[Protest of Defense Logistics Agency Contract Award]*

**FILE:** B-197854

**DATE:** July 7, 1980

**MATTER OF:** Embassy House, Inc.

**DIGEST:**

1. Tea tested for possible purchase by Government must meet A-2 Standard, which is blend of five popular national teas, each with different characteristic that appeals to different group. Record contains no evidence to support protester's suggestion that those five suppliers have undue advantage in testing, since each must blend its tea with others to attempt to meet all of Standard's characteristics, and therefore it is as possible that resultant blend is unacceptable as with blend offered by any other firm.
2. Mere presence on tea testing panel of tea industry expert does not in itself establish that biased evaluation will occur. Rather, protester must present concrete evidence of actual prejudice in the testing.
3. GAO cannot object to subjective testing of tea for Government purchases by three-person panel that includes two non-Government Tea Association experts where no practical objective testing methodology exists, and where subjective method appears to contain adequate safeguards against bias in favor of particular Tea Association member.

Embassy House, Inc. protests the award of a contract by the Defense Logistics Agency's Defense Personnel Support Center (DPSC) to supply tea bags under invitation for bids DLA134-80-B-7949. Embassy House complains that tea was required to meet a standard which Embassy House suggests favored certain firms;

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that the method by which tea blends were tested for acceptability was too subjective; and that the composition of the testing panel may have biased the test results. The same standard, test method, and way of choosing the testing panel are used by DPSC whenever it purchases tea.

The protest is denied.

The invitation required that the tea offered meet the "A-2 Standard" for "organoleptic" quality. "Organoleptic" involves appeal to the senses. The A-2 Standard is a blend of five popular national teas intended to reflect the different quality that each emphasizes, e.g., color, aroma, thickness of the liquor, or brightness of the infusion, for the purpose of achieving a broad appeal. The Standard initially was developed 20 years ago by the Government in cooperation with the tea industry, and is "re-established" three times a year.

By agreement between DPSC and the Food and Drug Administration (FDA), the FDA tests tea for the Department of Defense to ascertain whether it meets the A-2 Standard. Accordingly, a tea testing panel was convened for this procurement, chaired by the FDA's Supervisory Tea Examiner. The panel included two expert tea testers from the American Tea Association, not connected with any prospective bidder. The panel tested samples of blends submitted by prospective bidders without knowing the identity of the firm that submitted a particular sample. In this respect, in view of the obvious subjectivity inherent in organoleptic testing, prospective bidders blend a number of different samples (up to 10 under the instant invitation) for testing against the A-2 Standard.

Of the four bidders here, one submitted 10 samples with one "passing;" another's single sample failed; one of McCormick Company's 10 samples passed; and none of Embassy House's 10 samples passed. McCormick Company's bid price was lowest for an acceptable sample.

Embassy House first protests that because the A-2 Standard is a blend of five national brands, the Standard "has a built-in mechanism which favors [those brands] \* \* \*." On that basis, the protester argues that such a "select group has certain inherent advantages" in the testing. Embassy House suggests that rather than use any particular national brands in blending the Standard, "the FDA or the USDA [Department of Agriculture] should blend a combination of teas which the FDA or the USDA believes gives a uniformly good cup of tea at an acceptable price," and that several standard samples meeting that blend should be established, with offered blends meeting any one of the standard samples being acceptable.

Initially, we point out that our Office is not in a position to substitute our judgment for DPSC's with respect to the standard and quality of tea that should be served to Department of Defense personnel as long as that judgment is reasonable and provides a proper basis upon which the broadest competition consistent with the Government's minimum needs can be conducted. See Therm-Air Mfg. Co., Inc., B-194185, et al., November 20, 1979, 79-2 CPD 365; Manufacturing Data Systems Incorporated, B-180586, B-180608, January 6, 1975, 75-1 CPD 6.

We cannot say that the use of the A-2 Standard either prejudiced Embassy House in the instant procurement, or is an unreasonable means to purchase tea. For example, none of the five firms whose teas are included in the A-2 Standard blend submitted bids for this procurement. In addition, there is no evidence in the record to support the protester's position that a firm supplying a portion of the tea for the A-2 Standard has an unfair advantage with respect to meeting all of the Standard's characteristics. To the contrary, because an offered tea must meet the Standard in all its qualities, each of the five firms that supplies tea for the A-2 Standard still must blend its teas with others to create a blend which it believes will meet the Standard. The contracting officer points out that it therefore is as possible that the blend offered by one of these firms will

not meet the Standard as it is with any other tea blend, and Embassy House has offered no evidence to contradict that position.

This portion of the protest is denied.

With respect to the remainder of the protest, Embassy House contends that an expert tea tester can determine the supplier of a blend of tea under any circumstances, including "blind" testing. Accordingly, and in view of the subjectivity of organoleptic testing, Embassy House believes that the possibility exists that a Tea Association tester may have prejudiced the competition in favor of a particular Tea Association member firm. Embassy House contends that a chemical or scientific test therefore should be used to judge the acceptability of a tea blend with respect to the A-2 Standard, or that as a general matter Tea Association members should not be involved in testing tea samples for the Government.

We first note that the record shows that organoleptic tea testing is the universal practice in the buying and selling of tea, and that the reason that Tea Association members are employed for a particular procurement essentially is that with few exceptions tea testing expertise resides in the tea industry rather than in the Government, and the Tea Association represents a convenient source of such expertise. The record also indicates that no acceptable chemical tea testing methodology has been developed to date.

We have stated that the composition of an evaluation panel is a matter primarily within the discretion of the procuring agency, which we will not review absent evidence of bias. Washington School of Psychiatry, B-189702, March 7, 1978, 78-1 CPD 176. However, the mere presence on an evaluation panel of a non-Government expert in the field does not in itself establish that a biased evaluation will occur. See Science Management Corporation, B-192256, April 5, 1979, 79-1 CPD 237. Rather, the burden is on the protester to present concrete

evidence of actual prejudice in the evaluation. See Columbia Research Corporation, B-193154, May 15, 1979, 79-1 CPD 353; Science Management Corporation, supra.

Embassy House has proffered no evidence of actual impropriety in connection with the instant procurement, but only generalizes as to the possibilities which it believes are inherent in having tea samples subjectively tested for the Government by tea industry personnel.

In any event, we have reviewed the testing procedures prescribed for organoleptic tea testing, and in our view even if Embassy House's evaluation of the capabilities of tea testers is accurate (it has been disputed in the record), the procedures certainly minimize any possibility of the type of bias in testing suggested by the protester.

The procedures provide that tea samples are submitted to DPSC in duplicate, where they are coded and all identification is removed. A sample is forwarded to the FDA Tea Examiner, the duplicate being retained by DPSC.

The FDA Tea Examiner then selects two tea experts from the industry to serve on the testing panel. The procedures caution that the industry experts "must not be connected in any way with the firms that submitted the samples. \* \* \* The experts selected will be queried as to knowledge of the submitted samples. Any connection with a firm that submitted samples will disqualify an expert from serving on the panel."

The dry tea sample is tested for appearance against an A-2 Standard tea. If all three panel members agree that the sample is not equal to the Standard for appearance, the sample is rejected. If even one member considers the sample equal to the Standard for appearance, it is evaluated further.

The next step involves "cup" testing by one of two methods. Under the "English Method," six samples

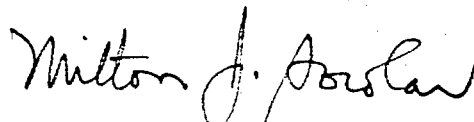
are weighed into uniform pots, with boiling water then added to each. Two samples of the A-2 Standard are prepared in the same manner at the same time, one at each end of the six samples being evaluated. The tea is brewed for a timed period, and strained into bowls. The infused tea leaves in the pots then are evaluated for appearance and aroma, and the tea liquor in the bowls is appraised for appearance, aroma, and flavor by cup-testing against the standard. Under the "American Method," the tea is brewed in cups directly, instead of bowls. In either method, only one individual performs all weighing.

At this point, if one panel member feels that a tea sample meets the Standard, the sample is "blind-tested" again and rated. Samples rated higher than the Standards are considered "totally acceptable," while samples rated between the two Standard samples are considered "acceptable."

We believe that these procedures -- with their coding, blind testing, uniformity in sample preparation, use of two prepared Standard samples for comparison -- contain as adequate safeguards against bias as practical in this admittedly subjective activity.

In view thereof, and since there is no evidence in the record that Embassy House was prejudiced in the instant procurement, or in fact suffers any prejudice in DPSC's procurement of tea in general, we have no basis to object to the award.

The protest is denied.



Acting Comptroller General  
of the United States