



Comptroller General  
of the United States  
Washington, D.C. 20548

"BEST COPY AVAILABLE"

Timmerman 148367

## Decision

**Matter of:** Thibodeaux Cajun Foods, Inc.

**File:** B-250945

**Date:** December 31, 1992

Coleman Jackson, Esq., for the protester.  
Albina A. Farrant, Defense Logistics Agency, for the agency.  
Barbara R. Timmerman, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

### DIGEST

Agency reasonably determined awardee's sample of hot sauce met the solicitation's commercial item description. Decision to substitute results of a second chemical analysis for results of original analysis was reasonable where first analysis produced widely different readings.

### DECISION

Thibodeaux Cajun Foods, Inc. protests the award of a contract to McIlhenny Company under request for proposals (RFP) No. DLA13H-92-R-9001, a small business set-aside, issued by the Defense Logistics Agency (DLA) for 529,920 bottles of Type II hot sauce. Thibodeaux contends that McIlhenny's product does not meet the RFP specifications. We deny the protest.

The RFP required bid samples which were to be evaluated for compliance with a commercial item description (CID). The CID for Type II hot sauce requires that the sauce be red to reddish brown, contain 3.9 to 6.2 percent nonvolatile solids, 1.2 to 3.5 percent salt, 8.0 to 9.5 percent acidity, 2.7 to 3.0 pH, and a bite/pungency of not less than 200 ppm capsaicin, the equivalent of 3,000 Scoville units.<sup>1</sup>

The agency received seven offers. Two offerors failed to submit a bid sample. DLA sent the samples of the remaining five offerors to the United States Department of Agriculture (USDA) for chemical analysis. The agency states that because the test results for pungency showed an unusually wide variation it contacted USDA. USDA informed DLA that it had encountered difficulty obtaining consistent pungency readings. According to the agency, the inconsistent readings were due to the USDA's use of the wrong detector

<sup>1</sup>Pungency is measured in parts per million (ppm) capsaicin. One ppm capsaicin is equivalent to fifteen Scoville units.

head in its testing device. USDA retested the samples using the correct detector head and submitted a second set of readings which the agency substituted for the readings originally reported. In the original test, the record shows that the first pungency readings had a range of almost 30,000 Scoville units between samples and two of the five samples failed to meet the CID requirement. The second readings had a range of a little more than 3,000 units and all samples met the CID requirement.

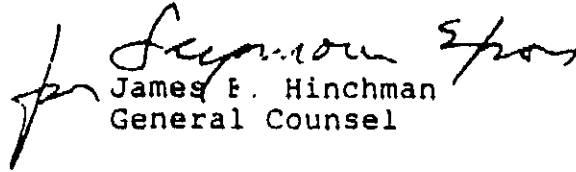
All offerors except McIlhenny failed two or more of the remaining tests for nonvolatile solids, salt, acidity, pH, and palatability. The protester's sample was found to have too high a percentage of nonvolatile solids, too low a percentage acid, too high a pH, and was dark brown instead of the red to reddish brown required. It also offered a higher price than that offered by McIlhenny. The contracting officer determined that McIlhenny offered a reasonable price and that it was responsible and awarded it the contract.

Thibodeaux questions whether a second pungency test was ever performed by the USDA and maintains that McIlhenny's product is technically unacceptable because it failed the original pungency test performed by the USDA. Our Office will review an allegedly improper technical evaluation to determine whether the evaluation was fair and reasonable and consistent with the evaluation criteria. Designe Tech, B-240290, Nov. 2, 1990, 91-1 CPD ¶ 69.

The agency has submitted a copy of the faxed handwritten pungency results from a USDA chemist, a log of the conversations and correspondence between DLA and USDA, as well as copies of the handwritten notes regarding the conversations. We believe this satisfactorily establishes that the second test took place. Moreover, given the 30,000 Scoville unit variation in the first test versus the 3,000 variation in the revised test, we believe the agency's request for a retest and its reliance on the retest results to be reasonable.

The protester also maintains that its hot sauce conformed to the CID requirements. As support for this assertion, Thibodeaux has submitted a copy of a pungency test performed by an independent laboratory. Since the record shows that the agency determined that the protester's pungency level was acceptable, an independent report confirming this result is superfluous. As the protester has not provided us with

any evidence that its sauce was incorrectly evaluated with respect to the four tests that it failed to meet, we have no basis to question the agency's determination that the sauce was unacceptable. The protest is denied.

James F. Hinchman  
General Counsel