



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

## Decision

**Matter of:** Truesdail Laboratories, Inc.  
**File:** B-250253.2  
**Date:** February 25, 1993

Norman E. Hester, Ph.D., for the protester.  
Craig R. Schmauder, Esq., Department of the Army, for the agency.  
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that the agency improperly evaluated proposal is denied where the record indicates that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.
2. Allegation that protester was entitled to an award because it submitted a technically acceptable offer at a lower price than that of one of the awardees is denied where the solicitation provided for awards on the basis of proposals most advantageous to the government, and the agency reasonably concluded that the awardee's higher technically rated proposal warranted payment of the price premium.

### DECISION

Truesdail Laboratories, Inc. protests the award of a contract to Clayton Environmental Consultants under request for proposals (RFP) No. DACA83-91-R-0014, issued by the Department of the Army for laboratory analysis of samples collected from the Pacific region area. Truesdail asserts that it is entitled to an award because it submitted a lower priced technically acceptable proposal. Truesdail also contends that the agency improperly downgraded its proposal for failing to provide for packaging the samples collected by the government, a requirement which Truesdail asserts is not specified in the RFP.

We deny the protest.

The solicitation, issued on June 13, 1991, contemplated the award of two firm, fixed-price, indefinite quantity contracts for a base year with 2 option years. The RFP called for the submission of cost and technical proposals and advised offerors that the government would make awards to two responsible offerors whose offers, conforming to the solicitation, were determined to be the most advantageous to the government. The solicitation listed six major technical evaluation factors and provided that these evaluation factors were more important than price.

The solicitation stated that the samples would be collected by the government from areas including but not limited to Hawaii, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Korea, Japan, and miscellaneous Pacific Island and Asian locations. The solicitation calls for the contractor to provide the government with clean sample containers, sample tags, field preservation and spiking solutions, and coolers for the preservation of the samples until their delivery to the contractor's laboratory. The government first collects the samples from the various sites and ships the samples to Fort Shafter, Hawaii. In describing the specific work task details for the subsequent shipment to the contractor's facility, the RFP provides that:

"The Contractor shall coordinate with the Government to provide for delivery of samples to the Contractor's laboratory. It will be the responsibility of the Contractor to provide for the shipment of samples from Environmental, Master Plans and Programs Section, Building T 223, Fort Shafter Hawaii, to the Contractor's laboratory unless stated otherwise in the delivery order. All samples shall be regarded as contaminated and the Contractor shall take all necessary precautions during handling."

This requirement was clarified by amendment 2 to the RFP, which contained questions and answers concerning the solicitation including the following:

"Question (b) Will the Government package and ship the samples to the Contractor's Laboratory?"

Answer (b) No. It is the responsibility of the Contractor to safely package and expeditiously ship the samples to the contractor's laboratory from Bldg 223, Fort Shafter, Hawaii. All costs for packaging and shipping the samples shall be borne by the Contractor and will not be additionally billable."

Twelve firms submitted proposals by the August 7 closing date. The technical evaluation board found seven proposals, including the protester's, to be in the competitive range. The protester's proposal received the fourth highest technical score and Clayton's proposal received the highest technical score. Discussions were conducted in writing. After discussions, the individual scores were slightly revised, but the relative ranking did not change. The seven offerors were then requested to submit best and final offers (BAFO).

Clayton's BAFO received the highest technical score and offered the fourth low price. Truesdail's BAFO received the fourth highest technical score and offered the third low price. The technical evaluation board was concerned that Truesdail proposed that the agency package the samples and ship them to the contractor's laboratory in Tustin, California.<sup>1</sup> The board considered that this proposal would require training of agency personnel, and could result in additional costs for resampling in the event that agency personnel incorrectly packaged the samples, as well as posing additional environmental hazards and violations.

The board determined that Clayton's proposal was more advantageous to the government than Truesdail's. The board found that Clayton's proposal was technically excellent in the areas of shipping, analysis, and quality control of the samples that will be collected by the agency. The board specifically noted that Clayton has a office in Honolulu which is familiar with packaging and shipping regulations and which will be responsible for the pick-up and transport of the samples.

On August 27, the agency awarded contracts to Eureka, Laboratories, Inc. and to Clayton. Truesdail protested to our Office on the grounds that it had submitted a lower priced technically acceptable offer.<sup>2</sup> In response to the agency report, Truesdail added the argument that its proposal was improperly downgraded based on a requirement that it contends was not in the solicitation. Specifically, the protester contends that the solicitation did not require

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<sup>1</sup>Truesdail proposed to provide the agency with pre-addressed Federal Express shipping labels which would be affixed by agency officials at Fort Shafter to the samples that had arrived already packaged from various locations, thus enabling the samples to be forwarded to its laboratory in Tustin, California.

<sup>2</sup>Truesdail initially protested the award to Eureka Laboratories, Inc., as well as the award to Clayton, but subsequently withdrew this aspect of the protest.

the contractor to package the samples collected by the government.

We will examine an evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria; however, a protester's mere disagreement with the agency's judgment does not render that judgment unreasonable. Maytag Aircraft Corp., B-237068.3, Apr. 26, 1990, 90-1 CPD ¶ 430.

Here, the record indicates that although Truesdail's proposal was considered technically acceptable, the agency was concerned that Truesdail's approach for shipping the samples from Fort Shafter, Hawaii, to its laboratory in Tustin, California, was inadequate and did not satisfy the solicitation requirement that the contractor provide for the shipment of the samples from Fort Shafter to the contractor's laboratory. This requirement that the contractor provide for shipping the samples, as clarified by amendment 2, explicitly requires the contractor to safely package and ship the samples to the contractor's laboratory from Fort Shafter, Hawaii. The RFP expressly provides for the evaluation of the contractor's ability to respond on a timely basis, which encompasses the contractor's ability to have the samples picked up. Since the RFP makes it the contractor's responsibility to package and ship the samples, the agency properly downgraded Truesdail's proposal for failure to adequately provide for the packaging of the samples.<sup>3</sup>

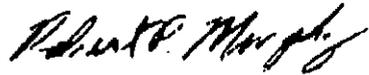
Truesdail also challenges the award to Clayton on the basis that Truesdail submitted a lower priced technically acceptable proposal. In a negotiated procurement, an agency is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. Patricia A. Geringer, B-247562, June 11, 1992, 92-1 CPD ¶ 511. Here, the RFP provided that the award determinations would be made on the basis of price and technical factors, with the technical factors being more

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<sup>3</sup>Truesdail also argues that it is unreasonable to require the contractor to package the samples for shipment from Fort Shafter to its laboratory as the samples have already been packaged in the field for shipment to Fort Shafter. This allegation is untimely as it concerns an alleged apparent solicitation impropriety, and the protest was not filed until after the closing time for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (1992). In any event, we note that packaging and shipping from Fort Shafter requires, at a minimum, the handling and consolidation of the field samples; thus, the agency reasonably designated it as a separate and discrete shipping and handling requirement.

important. The Army determined that Clayton's proposal--with its higher technical rating and higher price--was more advantageous to the government. Truesdail has not challenged the agency's evaluation of Clayton's proposal, which appears to be supported by the record, and, as indicated above, the agency's evaluation of Truesdail's proposal was reasonable. Accordingly, we find no basis to question the agency's selection of Clayton's proposal rather than Truesdail's. Irwin & Leighton, Inc., B-241734, Feb. 25, 1991, 91-1 CPD ¶ 208.

The protest is denied.

  
for James F. Hinchman  
General Counsel