



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20549

Subject Card

B-176077(4)

JAN 26 1973

The Laboratory for Chromatography
211-14 49th Avenue
Rayside, New York 11364

Attention: Dr. David Sohn, Medical Director

Gentlemen:

Further reference is made to your teletype of June 27, 1972, and subsequent correspondence, protesting against the award of contracts under request for proposals (RFP) DABAI7-72-R-0602, to other firms by the United States Army Medical Research and Development Command, Washington, D.C.

The solicitation was for laboratory urinalysis screening in connection with the Department of Defense drug abuse program. Section D of the RFP provided for an initial evaluation of written proposals on the basis of answers to technical questions set forth in that section, followed by an evaluation of reasonableness of price. The third phase of the evaluation involved the submission of quality control specimen samples to those offerors whose proposals were deemed within the competitive range. Eleven of the 27 offerors submitting proposals were selected for this laboratory testing, and two of those, Washington Reference Laboratory, Incorporated (WRL), and Biochemical Procedures, achieved an accuracy rating of over 90 percent. Contracts were subsequently awarded to WRL and Biochemical Procedures for \$2.31 and \$2.19 per specimen processed, respectively. Your protest and those of five other unsuccessful offerors were then filed with this Office.

You claim that the quality control samples brought to your laboratory were contaminated with paraffin, which resulted in distorted test results. In this connection, you note that one laboratory, E&W Stat Laboratory, Incorporated, was provided with a second set of specimens when it refused to process the initial contaminated set, and then were told "to keep this 'quiet, or all the laboratories would want new samples.'" In addition, you question why award was made to WRL at a price of \$2.31 per specimen when that firm bid \$0.91 on another solicitation issued by the District of Columbia, and suggest that award should not have been made to WRL because of its poor past performance. You also point out that the director of WRL is associated with Walter Reed Army Medical Center, which handled preparation of the urine test samples.

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The contracting officer has reported that the urine samples furnished to all laboratories were sealed with paraffin to prevent spillage in transit. He denies, however, that paraffin interfered with your screening method and states that it could interfere only with gas-liquid chromatography (GLC). He points out that you successfully identified the negative test samples as well as those containing morphine, codeine, and amphetamines. He states that your problem in identifying methadone and barbiturates "is not one of interference by paraffin but rather the lack of sensitivity" in your screening procedure. You claim, however, that the RFP required all positives resulting from the initial screening be confirmed by GLC procedures and that the "paraffin and other contaminants * * * made confirmation of certain tentatively positive methadone and barbiturate samples equivocal on confirmation by gas chromatography."

We do not believe that the record affirmatively establishes that your processing of the quality control samples was adversely affected by the use of paraffin as a sealant, which the Army claims is a recognized, accepted method of sealing urine specimen containers. It is not clear that specimens furnished you actually were contaminated, and while you state that paraffin-caused peaks could "confuse the analyst in evaluating" GLC data, we do not understand why such confusion would be caused with respect to identification of methadone and barbiturates, but not with respect to identification of the other samples. Furthermore, as noted previously, the two successful offerors scored better than 90 percent and they used samples with paraffin sealant and used the GLC confirmation test. In the circumstances, we are unable to conclude that the evidence you have presented in this regard is sufficient to overcome the contrary administrative position.

This point

With regard to your allegation regarding B&W Stat Laboratory, the Army admits that a second set of samples, not sealed with paraffin, was furnished to this laboratory. However, that laboratory utilizes GLC as its initial screening method, and the second set was furnished to preclude the adverse affects of possible paraffin contamination on GLC procedures. Also, it is the Army's position that except for the sealant, the second set was identical to the first set and the set furnished other offerors. We understand that none of the other offerors receiving test specimens utilize GLC as the initial screening method, and none requested that substitute specimens be furnished. We do not believe that these circumstances indicate an improper procurement practice.

The record reveals that the contracting officer acted on the basis of recommendations made by a Board of Awards and approved by the head

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of the procuring activity, and that the Board's recommendations were arrived at after thorough consideration of the proposals and the specimen testing results. There has been no showing that the Board, the Walter Reed Army Institute of Research personnel who prepared the specimens and administered the tests, or the contracting officer acted arbitrarily or other than in good faith. Under such circumstances, cancellation of the contracts would not be proper.

With regard to WRL's price on the prior District of Columbia procurement, the contracting officer points out that a price comparison cannot be made because of the different requirements of the two solicitations, and further notes that WRL's price in the instant case was reasonable and within the Government's cost estimate. We have no basis to question his position in this respect.

We have carefully and thoroughly reviewed your other contentions and do not find that they provide a legal basis for objecting to the awards. We are enclosing a copy of our letter of today to counsel for B&W Stat Laboratory, Incorporated, in which we discuss at length the other contentions you make.

Very truly yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

Enclosure