Mr. Wotherspoon
19737

DECISION

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

FILE: B-202783 DATE: October 14, 1981

MATTER OF: Unit Portions Inc.

DIGEST:

1. Bidder's certification that it is small business, that it will provide products manufactured by small business, and its listing of that small business in bid is sufficient information for contracting officer to find bid responsive to invitation for bids setting aside requirement for small business.

2. Bidder's past conduct performing contracts set aside for small business, where the bidder supplied some items not manufactured by a small business, is a matter to be considered by the contracting agency in determining whether the bidder is responsible. Such determination will not be reviewed by GAO except in circumstances not present here.

3. Whether a bidder in fact supplies items manufactured by a small business is a matter of contract administration, which is the responsibility of the contracting agency and not for consideration by GAO.

Unit Portions Inc. (Unit Portions) protests the award of a contract to Sandler Foods (Sandler) under invitation for bids No. M4-Q28-81, issued by the Veterans Administration Marketing Division (VA). The contract is to supply jellies, jams, honey and syrup to a number of VA medical centers. The requirement was totally set aside for small businesses.

Unit Portions alleges that Sandler has exhibited a pattern of using large business manufacturers on past contracts for the same items with the VA and that Sandler

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will do the same on this contract. The protester argues that Sandler's bid, which offers to deliver the food at uniform prices nationwide, provides evidence that Sandler will use a large business with manufacturing sites around the nation. Unit Portions contends that Sandler's intent to use a large business manufacturer requires the rejection of its bid.

The protest is denied in part and dismissed in part.

The solicitation contained a requirement that bidders certify that they are small businesses and if they do not manufacture the supplies to be furnished under the contract that the supplies will be manufactured or produced by a small business. Sandler certified that it is a small business and that it does not manufacture the supplies to be furnished, but will provide supplies manufactured by a small business. Sandler listed its small business subcontractor as the location of the principal place of performance of the contract.

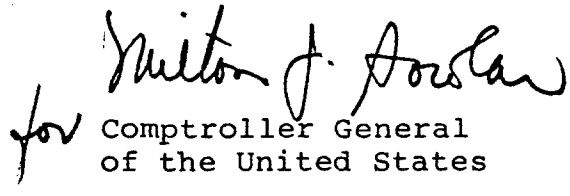
Unit Portions had made the same allegations during the performance of Sandler's previous contract. The VA conducted an investigation and discovered that on a small number of deliveries Sandler had used a large business manufacturer. Sandler's explanation was that those instances involved urgent requirements which could only be met by using a large business' local plant. At that time, the VA demanded, and Sandler agreed, that Sandler would not use a large business manufacturer again.

A bid on a total small business set-aside must establish the intention of the bidder to furnish products manufactured or produced by small businesses for the bid to be responsive. Culligan, Inc., 58 Comp. Gen. 307 (1979), 79-1 CPD 149. Here, the bidder certified to that effect and listed its manufacturer, a small business. Sandler's pricing pattern (uniform prices nationwide) is reasonably explainable in other ways, as Unit Portions has admitted, and does not provide sufficient support for concluding that it intends to use a large business manufacturer.

Therefore, the contention that Sandler's bid is nonresponsive is denied.

Sandler's past conduct is a matter to be considered by the contracting agency in determining whether Sandler is a responsible bidder. That determination will not be reviewed by our Office, except in limited circumstances not present in this case. Connelly Containers, Inc., B-199180, June 19, 1981, 81-1 CPD 510. Further, whether Sandler in fact provides supplies manufactured by small businesses is a matter of contract administration, which is the primary responsibility of the contracting agency and not for consideration by our Office. Id.

This part of the protest is dismissed.



for Comptroller General
of the United States

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

B-202783

October 14, 1981

The Honorable Thomas J. Downey
House of Representatives

Dear Mr. Downey:

We refer to your letter to our Office dated July 9, 1981, in regard to the protest of Unit Portions Inc., concerning the award of a contract under solicitation No. M4-Q28-81 issued by the Marketing Division of the Veterans Administration.

By decision of today, copy enclosed, we have dismissed in part and denied in part the protest.

Sincerely yours,

for Milton J. Socolar
Comptroller General
of the United States

Enclosure