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

FILE: B-203201

DATE: January 27, 1982

MATTER OF: Navajo Food Products, Inc.

**DIGEST:**

GAO denies an Indian-owned firm's protest that an agency's determination to procure food supplies and food services by a single award to a non-Indian food services contractor rather than acquiring the supplies separately from Indian firms violates statutory and regulatory preferences for Indian firms, small businesses, or minority firms. There is no legal requirement that a particular procurement be restricted to effect any of the alleged preferences mentioned, and an agency is not required to structure its requirements to contract in a manner that will not meet its needs.

Navajo Food Products, Inc. (NFP) protests the inclusion of a requirement for fresh dairy products in request for proposals (RFP) No. NA600-9093, issued by the Bureau of Indian Affairs (BIA) for food services for the BIA Navajo Area Office school food program in fiscal year 1982. NFP is an Indian-owned firm with which BIA previously negotiated several contracts under the Buy Indian Act, 25 U.S.C. § 47 (1976), to supply fresh dairy products. NFP, desiring another contract with the BIA to supply such products, asserts that BIA's decision to include the supply of fresh dairy products in the food services contract violates various laws and regulations pertaining to Indian, small business, and minority preferences.

We deny the protest.

Prior to fiscal year 1981, the BIA maintained an in-house food supply center which purchased foodstuffs and distributed them to the schools. During this time, the BIA procured dairy products from NFP under several contracts awarded pursuant to the Buy Indian Act, which

permits the negotiation of contracts with Indian-owned firms to the exclusion of non-Indian firms. See Navajo Food Products, Inc., B-202433, September 9, 1981, 81-2 CPD 206. The in-house supply center, however, was costly and inefficient. A major purpose of the RFP was to obtain prices for a comparison (pursuant to Office of Management and Budget Circular No. A-76) between the costs of: (1) continuing the in-house operation and acquiring food products separately, and (2) contracting for a single food services contractor, thereby eliminating the need for separately acquiring various foodstuffs. BIA awarded a contract under the RFP after determining that the second alternative would be less costly.

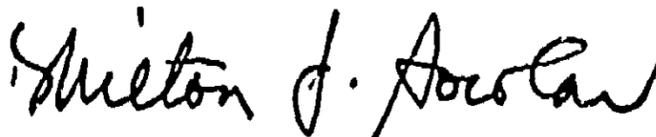
NFP protests that in view of statutory and regulatory preferences for contracting with Indian firms, small businesses, and minority firms, the BIA should contract for fresh dairy products separately, presumably under a solicitation set aside for Indian firms pursuant to the Buy Indian Act. There is no law or regulation, however, that requires an agency to structure its requirements to make awards to such preferred firms when the agency determines that such an approach will not serve its actual minimum needs. For example, although the Buy Indian Act permits set-asides for Indian firms, it does not require them. Rather, the statute gives the Secretary of the Interior broad discretionary authority to determine whether such a restriction is appropriate in a given situation. See Bartow Associates, Inc., B-204287, August 17, 1981, 81-2 CPD 151. Moreover, we have held that the Secretary's discretion is not limited simply because previous contracts for the requirement were set aside. Navajo Food Products, Inc., *supra*. Also, with certain exceptions not applicable here (see 15 U.S.C. § 644(j) (Supp. III 1979); Defense Acquisition Regulation § 1-706.1(f) (DAC No. 76-19, July 27, 1979)), neither the Small Business Act nor the procurement regulations mandate that a particular procurement be set aside for small business; that decision similarly is within the contracting agency's discretion. See Environmental Container Systems, Inc., B-201739, February 9, 1981, 81-1 CPD 83. Finally, we know of no express legal authority to restrict a Federal procurement to minority firms unless it is done under the Small Business Act's section 8(a) program. See Atkinson Builders, Inc., B-193735, September 1, 1979, 79-2 CPD 186.

The determination of an agency's minimum needs and the method of accommodating them necessarily is the responsibility of the contracting agency. Our Office therefore will not disturb a contracting agency's decision to meet its minimum needs through a total-package approach rather than by separately acquiring portions of the total requirement unless it is shown to lack a reasonable basis. See Joseph Albanese & Associates, B-193677, March 6, 1979, 79-1 CPD 152.

The BIA determined that separately acquiring food products and maintaining its own food supply center did not fulfill its needs, and decided to contract for the entire program with a food services contractor who must, among other things, purchase and supply all food products. NFP does not provide any evidence indicating that the BIA's determination to meet its needs by a contract for a total food services package (contingent upon the results of the cost comparison) was unreasonable. Under the circumstances, we will not question the agency's decision.

We note, however, that in accordance with the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450e(b) (1976), the RFP did contain clauses that require the prime contractor to give preference to Indian and Indian-owned firms in awarding subcontracts.

The protest is denied.



Acting Comptroller General  
of the United States