

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

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FILE: B-216304**DATE:** September 18, 1984**MATTER OF:** Wippette International Incorporated**DIGEST:**

Bid on total small business set-aside from a small business manufacturer which indicates that not all supplies to be furnished will be the product of a small business concern properly is rejected as nonresponsive because bidder would be free to furnish supplies from a large business and thus defeat the purpose of the set-aside.

Wippette International Incorporated protests the rejection of its bid by the Defense Logistics Agency under invitation for bids No. DLA 100-84-B-0818, a small business set-aside with labor surplus area price differential. The company's bid was rejected because in it Wippette indicated that not all supplies to be furnished would be manufactured by a small business concern in the United States. We deny the protest summarily.

The solicitation, for a quantity of men's shirts, contained the usual Small Business Concern Representation. Wippette indicated in that Representation that it was a small business concern, but that "not all supplies to be furnished will be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico." As a result, the contracting officer rejected the bid as nonresponsive.

Wippette states that it completed the Representation as it did because a small portion of the work involved, sewing, would be performed by a "small business concern in Haiti"; it further states that it did not intend to indicate that another company would be the manufacturer of the item, but only that "a subcontractor outside the United States would be performing a service for the

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offeror." Wippette's bid did indicate, in the Walsh-Healey Act Representation, that it was a manufacturer of the supplies offered, and, in the Place of Performance clause, that most of the work would be performed in its own plant in New York while sewing would take place in Haiti.

A bid on a total small business set-aside must establish the bidder's legal obligation to furnish supplies manufactured or produced by a small business concern. Culligan, Inc., 58 Comp. Gen. 307 (1979), 79-1 CPD ¶ 149. Otherwise, one of the purposes of the Small Business Act, 15 U.S.C. § 31 et seq., and the set-aside would be defeated because the contractor would be able to furnish supplies from either a large or a small business, as its business interests might dictate. Parco, a Division of Blue Mountain Products, Inc., B-211016, Mar. 28, 1983, 83-1 CPD ¶ 318; Cascade Pacific International, B-208149, Aug. 3, 1982, 82-2 CPD ¶106. The general rule, therefore, is that a bid which does not contain the Representation indicating that the supplies of a small business manufacturer will be furnished must be rejected as nonresponsive. Mactek Industries Corp., B-211675, June 1, 1983, 83-1 CPD ¶ 592. Moreover, even when the Representation does indicate that the contractor will furnish supplies manufactured by a small business, the bid nevertheless must be rejected if the bid otherwise indicates that the products of a large business may be furnished. Culligan, Inc., supra.

Here, even though Wippette indicated in its bid that it was a small business manufacturer and that a significant portion of the work would be performed at its New York plant, it also represented that not all the supplies it furnished would be the products of a small business concern. In Boskind Development, Inc., B-213679, Dec. 2, 1983, 83-2 CPD ¶ 639, a somewhat similar case, we held that a bid from a small business manufacturer whose Representation was completed as was the protester's here properly was rejected because the "bid as submitted did not legally obligate the firm to furnish a small business product." And in Prestex, Inc., 59 Comp. Gen. 140 (1979), 79-2 CPD ¶ 411, we held that the listing of small business firms in a "Place of Performance" clause did not overcome

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a Representation indicating that the products of a small business concern would not be provided, but merely created an ambiguity which required rejection of the bid. These cases are controlling here.

Accordingly, we must conclude that Wippette's bid was properly rejected.

The protest is summarily denied.

for 
Comptroller General
of the United States