



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Food Tech Industries Co., Inc.
File: B-232791
Date: October 25, 1988

DIGEST

Whether an offeror in fact supplies end 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 General Accounting Office.

DECISION

Food Tech Industries Co., Inc., protests the rejection of its proposal and the award of contracts under request for proposals (RFP) DLA13H-88-R-9050, a total small business set-aside issued by the Defense Logistics Agency for salad oil.

We dismiss the protest pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1988).

The RFP contained the Small Business Concern Representation provision set forth in Federal Acquisition Regulation § 52.219-1 (FAC 84-28). Food Tech's low offer was rejected because Food Tech checked the box which certified that not all end items furnished would be manufactured or produced by small business concerns. Food Tech asserts that no offeror can meet the requirement that all end products will be manufactured or produced by small business concerns since the only small business refiner of soy bean oil does not sell to anyone for the military market. Further, Food Tech contends that one offeror knowingly made false representations by stating it would purchase all end items from small business concerns since it placed its order with a large business.

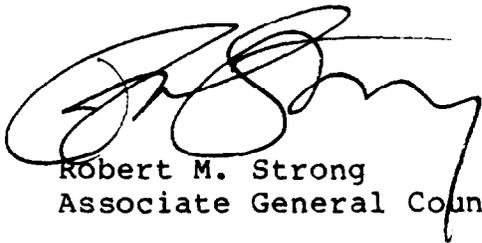
Since this solicitation was a total small business set-aside, Food Tech's offer was properly rejected as unacceptable because it checked that not all of the end items it was offering would be manufactured or produced by small

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business concerns. Jarke Corp., B-231858, July 25, 1988, 88-2 CPD ¶ 82. Food Tech admits that it cannot perform under the conditions of this solicitation. Its complaint is that no other offeror will comply with the small business certifications either. However, our Office will not review this allegation. The other firms apparently made the proper small business certifications. Whether a firm actually complies with its obligation to furnish a small business end item is a matter of contract administration, which is the primary responsibility of the contracting agency and not for consideration by our Office. Eclipse Systems, Inc., B-216002, Mar. 4, 1985, 85-1 CPD ¶ 267; The Wenninger Company, Inc., B-205093.3, Aug. 10, 1983, 83-2 CPD ¶ 194; Unit Portions, Inc., B-210651, Mar. 7, 1983, 83-1 CPD ¶ 228.

Moreover, to the extent that Food Tech may be protesting the requirement that all end items be furnished by small business concerns, its protest is untimely since Food Tech did not file its protest until after the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

The protest is dismissed.



Robert M. Strong
Associate General Counsel