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DECISION



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

FILE: B-191179

DATE: July 13, 1978

MATTER OF:

Brenner Metal Products Corp.

DIGEST:

Protest by bidder that as only "certified eligible" firm under total set-aside for small business/labor surplus area concerns it is only firm eligible for award is denied since solicitation, in accordance with recent statutory and regulatory changes, did not distinguish among categories of labor surplus area concerns.

Brenner Metal Products Corp. (Brenner) of Wallington, New Jersey, protests any award of a contract under invitation for bids (IFB) FEFP-T5-73042-A, issued by the Federal Supply Service, General Services Administration (GSA), Washington, D.C. on November 21, 1977, for metal costumers (garment racks) to any firm other than Brenner.

Brenner, one of six firms submitting bids, was third low bidder for Items 1-8 and 10 and fourth low for Item 9. The solicitation, which contemplated a requirements-type contract, was totally set aside for small business concerns which also qualify as labor surplus area concerns. Brenner asserts that it was the only bidder responsive to the labor surplus area concern requirement as it was the only "Certified Eligible Concern" that submitted a bid.

The IFB, however, did not require a labor surplus area concern to be a "Certified Eligible Concern." Page 12 of the IFB defined a labor surplus area concern as follows:

"The term 'labor surplus area concern' includes certified-eligible concerns with a first preference, certified eligible concerns with a second preference, and persistent or substantial labor surplus area concerns \* \* \*."

The IFB did not set forth any priority as to award among the three categories of firms that may qualify as labor surplus area concerns.

This approach is consistent with the recent changes made in the Government's labor surplus area set-aside program. Section 502 of the Small Business Act amendments of 1977, Pub. L. 95-89, 91 Stat. 553, 562, effective August 4, 1977, amended section 15 of the Small Business Act, 15 U.S.C. 644 (1976), by, inter alia, adding a subsection (d) which directed that "priority shall be given to the awarding of contracts and the placement of subcontracts to concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas." Subsection (d) also mandated the use of total labor surplus area set-asides. But see Maybank Amendment, 57 Comp. Gen. 34 (1977), 77-2 CPD 333.

This statutory change was implemented by Defense Manpower Policy (DMP) No. 4A, effective October 27, 1977. 42 Fed. Reg. 57,457 (1977) (to be codified in 32A C.F.R. Part 134). DMP4A eliminated the priorities previously established for firms certified eligible, with first and second preferences, which were used to determine priority for award on partial labor surplus area set-asides, see 32A C.F.R. Part 134 (1977); 29 C.F.R. 8.8 (1977), and Federal Procurement Regulations 1-1.804-2 (1964 ed. amend. 77), and merely provides that a labor surplus area firm is one that agrees to perform a substantial portion of a contract in a labor surplus area.

Accordingly, the fact that the protester is a certified eligible firm is of no consequence here since it is reported that other bidders which also qualify as labor surplus area concerns submitted bids lower than that submitted by the protester.

The protest is, therefore, denied.

*R. P. Kistner*  
Deputy Comptroller General  
of the United States