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DECISION

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

FILE: B-205222 DATE: April 6, 1982

MATTER OF: Seagoing Uniform Corporation

DIGEST:

> Where the first-tier subcontractor is a "converter" of fabric (one who arranges for the production of gray goods into finished cloth), the costs of the converter's manufacturers rather than the administrative costs of the converter are required to be used by the clause in the IFB to determine whether the bidder is eligible as a labor surplus area concern.

Seagoing Uniform Corporation (Seagoing) protests the award of a contract to Choctaw Manufacturing Co., Inc. (Choctaw), under invitation for bids (IFB) DLA100-81-B-1208 issued by the Defense Logistics Agency, Defense Personnel Support Center, Philadelphia, Pennsylvania (DLA).

The IFB, a total small business labor surplus area (LSA) set-aside, solicited bids for 161,456 pairs of white cotton polyester trousers. The IFB imposed a 5-percent evaluation on non-LSA concerns.

Bids were received from eight concerns. Seagoing was the lowest bidder and claimed to qualify as an LSA concern. However, Choctaw, the next lowest bidder, protested that Seagoing did not qualify as an LSA concern. DLA investigated the eligibility of both Seagoing and Choctaw as LSA concerns. DLA ruled that Choctaw qualified, but Seagoing did not. Accordingly, the 5-percent evaluation factor was added to Seagoing's bid. This raised Seagoing's bid above Choctaw's. Choctaw was awarded the contract as the low evaluated responsive, responsible bidder.

Seagoing protests that it was denied LSA concern eligibility because DLA erroneously excluded the $117,000 administrative costs of Putnam Mills, Inc. (Putnam), one of Seagoing's first-tier subcontractors. We conclude that DLA acted properly and, accordingly, deny the protest.

Clause LD5(3) of the IFB defines "Labor Surplus Concerns" as follows:

> "The term 'labor surplus area concern' means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in LSA if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50 percent of the contract price." (Emphasis added.)

Seagoing contends that it qualifies as an LSA concern because 51 percent of the aggregate costs incurred by itself and its first-tier subcontractors, including Putnam, would be incurred in LSA's. If Putnam's costs are excluded, the costs incurred in LSA's would only amount to 44.4 percent. The issue is whether Putnam's costs were properly excluded.

DLA and Seagoing agree that Putnam is a "converter" that has subcontracted to provide Seagoing with the basic cloth it needs to manufacture trousers. A converter purchases gray goods from a mill and arranges for the production of the goods into finished cloth. Putnam's business offices are located in New York City, an LSA. Although Putnam would incur administrative costs, the actual manufacturing would be done by two separate concerns which have subcontracted with Putnam. Both of Putnam's subcontractors are located in non-LSA's. Nevertheless, Seagoing contends that insofar as Putnam's business offices are located in an LSA, the $117,000 administrative costs that Putnam would incur as a result of overseeing its subcontractors must be credited as "manufacturing" and "production" costs for purposes of determining Seagoing's eligibility as an LSA concern.

DLA determined that insofar as Putnam is a "converter," clause L51, which incorporates deviation 78-14 to Defense Acquisition Regulation § 1-801.1 (1976 ed.), requires that the costs of Putnam's subcontractors be used instead of Putnam's administrative

costs for purposes of determining Seagoing's LSA eligibility under clause LD5(3). Clause L51 provides:

> "The definition of 'Labor Surplus Area Concerns' which appears in Clauses L25, L26, L27, L28, L29, L30, LD5, LD6, LD7, or LD8 as applicable is revised by adding the following: Additionally, if a 'converter' is a first tier subcontractor, aggregate costs incurred by the converter's first tier subcontractors on account of manufacturing or production performed in labor surplus areas will be used to determine eligibility as a Labor Surplus Area Concern." (Emphasis added.)

Seagoing admits that Putnam is a converter but does not believe that clause L51 is applicable to the instant case. Seagoing contends that L51 is an explanation of the procedures to be followed when the issue is whether the converter itself is eligible as an LSA concern rather than when the converter's expenses are used to qualify a concern with which the converter has subcontracted.

We disagree. The clause operates as a deviation from the general rule stated in clause LD5(3) (Labor Surplus Areas). Thus, when the first-tier subcontractor is not a converter, clause LD5(3) requires the manufacturing and production costs incurred by the first-tier subcontractor in an LSA to be credited to the bidder's eligibility. However, when a first-tier subcontractor is a converter (as Putnam is), clause L51 requires that the aggregate manufacturing and production costs incurred by the converter's first-tier subcontractors be utilized for purposes of determining the bidder's eligibility. In the instant case, Putnam's status as a converter triggers the operation of clause L51. Thus, the costs incurred by Putnam's subcontractors are utilized for purposes of determining Seagoing's eligibility. Insofar as those costs would be incurred in non-LSA's, Seagoing falls below the 50-percent requirement and was properly designated a non-LSA concern.

We recognize that the sentence in clause L51, requiring the aggregate manufacturing and production costs incurred by the converter's first-tier subcontractors to be utilized in determining labor surplus

area eligibility, is introduced by the word "Additionally." However, since a converter is not in the business of manufacturing or producing, it would not qualify as a first-tier subcontractor under clause LD5(3). Therefore, the use of the term "Additionally" makes clause L51 additive only in the sense that it permits going beyond the first-tier subcontractor, when it is a converter, to determine labor surplus area eligibility.

Accordingly, the protest is denied.

for Milton J. Socolar
Comptroller General
of the United States