

DECISION

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

B-215656

DATE: September 12, 1984**MATTER OF:**

Anchor Conveyors, Inc.

DIGEST:

Where bidder indicates that only 34.8 percent of the cost of manufacture or production would be incurred in a labor surplus area (LSA) the bidder is not entitled to the LSA evaluation preference.

Anchor Conveyors, Inc. protests the award of a contract to any other bidder under invitation for bids (IFB) No. DLA410-84-B-5259 issued by the Defense General Supply Center, Defense Logistics Agency (DLA) for the supply and installation of a mechanized freight packing, staging, and shipment terminal at the Defense Depot, Ogden, Utah. Anchor contends that DLA improperly refused to consider it eligible for a labor surplus area (LSA) evaluation preference.

We deny the protest.

The solicitation was issued as a total labor surplus area set-aside. It provided that non-LSA businesses would be subject to a 2.2 percent evaluation factor. The invitation contained a clause instructing bidders desiring to be considered for award as LSA concerns to indicate the address(es) where manufacturing or production costs amounting to more than 50 percent of the contract price would be incurred. The failure to do so, the invitation warned in boldface type, would preclude consideration of the bidder as an LSA concern. The solicitation defined an LSA as "a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor 'Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582,'" and it defined an LSA concern as "a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas."

Anchor, the second low bidder, submitted a bid of \$2,969,981. Anchor indicated its eligibility for the

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evaluation preference by a telegraphic amendment to its bid which listed Dearborn, Wayne County, Michigan and Harbor Springs, Emmet County, Michigan as the sites where more than 50 percent of its cost of manufacturing or production would be incurred. The costs to be incurred at Dearborn and Harbor Springs were listed as 17.2 percent and 34.8 percent of the contract price, respectively. At the time of bid opening, however, Dearborn was not included in the Department of Labor's listing of LSAs, although Harbor Springs was an LSA. Hoj Engineering and Sales Co., a non-LSA firm, submitted the low bid of \$2,915,217. If Anchor is viewed as an LSA concern so that the 2.2 percent evaluation factor is assessed against Hoj, Anchor would be the low bidder.

By letter submitted after bid opening, Anchor sought to clarify its LSA status. It stated that the components of the freight terminal would be produced at several non-specified locations in Detroit, Michigan, an LSA, and that assembly of the components would be in the firm's plant at Dearborn, Michigan. These operations were listed as comprising 17.2 percent and 7.6 percent of the contract price, respectively. DLA, however, refused to permit clarification of Anchor's bid, and determined that Anchor was not an LSA concern.

Anchor argues it was eligible for the LSA evaluation preference because signing the bid was a legal commitment to perform in an LSA area and its failure to list the specific LSA areas in Wayne County was a minor informality which, as a matter of bidder responsibility, could be corrected after bid opening.

We agree with the agency that Anchor was not an LSA concern for the purpose of this procurement. Under the LSA provisions, a bidder is required to list its proposed area of performance. The legal commitment to perform in an LSA arises if the area listed is an LSA. East Wind Industries, Inc., B-208170, Dec. 29, 1982, 82-2 CPD ¶ 587. Since the LSA provisions constitute material terms of the contract, it is essential that a bidder legally obligate itself to perform as an LSA concern by committing itself to incur more than 50 percent of the cost of manufacture or production in LSAs at the time of bid opening. See S.G. Enterprises, Inc., B-205068, April 6, 1982, 82-1 CPD ¶ 317. Thus, a bidder's designation of a geographic area that is not included on the Secretary of Labor's published list of LSAs at the time of bid opening does not create the

essential legal obligation to perform the contract in an LSA, see S.G. Enterprises, Inc., supra, and the information necessary to establish that obligation may not be submitted after bid opening. See Uffner Textile Corporation, B-205050, Dec. 4, 1981, 81-2 CPD ¶ 443.

Here, Anchor incorporated an LSA and a non-LSA in the space reserved for listing LSA locations. The costs to be incurred at the non-LSA location represented 17.2 percent of the price while the LSA costs represented 34.8 percent of the contract price. Anchor's designation of a non-LSA area in the LSA eligibility clause of the solicitation thus did not create the essential legal obligation to incur more than 50 percent of the contract price in an LSA at the time of bid opening. See S.G. Enterprises, Inc., supra.

Since the information necessary to establish the obligation to perform in an LSA may not be provided after bid opening, the bidder's later disclosed intention to have 17.2 percent of the costs incurred by manufacturers located in Detroit, an LSA, is irrelevant. See Eastwind Industries, Inc., supra. The fact is that one of the two sites listed in the bid, Dearborn, Michigan, was not an LSA at the time of bid opening. Further, the failure to indicate that the requisite percentage of costs would be incurred in LSAs cannot be waived as a minor informality because such failure is a material omission affecting the relative standing of the bidders. See Chem-Tech Rubber, Inc., 60 Comp. Gen. 694 (1981), 81-2 CPD ¶ 232.

We have held, as the protester points out, that bidders may submit after bid opening information regarding the specific location where the requisite proportion of costs will be incurred. See Uffner Textile Corporation, supra. We have not, however, permitted the submission of such information after bid opening where the bid does not on its face expressly include the bidder's promise to perform as an LSA concern. Here, Anchor's bid, by failing to list LSA locations for the requisite proportion of costs, did not include the necessary promise. See East Wind Industries, Inc., supra.

The protest is denied.

for Milton J. Anstam
Comptroller General
of the United States