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

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OCT 31 1966

Seaboard Manufacturing Laboratories, Inc.  
Fifth & Callowhill Streets  
Philadelphia, Pennsylvania 19123

Gentlemen:

Further reference is made to your letters of September 6 and 7, 1966, protesting that invitations for bids Nos. DSA-400-67-B-0003 and DSA-400-67-B-0382 issued by the Defense Supply Agency on July 1 and July 26, 1966, respectively, and opened on August 17, 1966, were defective and should be canceled.

Invitation for bids No. DSA-400-67-B-0003 solicited bids for furnishing insect repellent under a requirements-type contract for the period from date of award of contract to October 1, 1967. The invitation also provided for a labor surplus area set-aside of 50 percent.

Invitation for bids No. DSA-400-67-B-0382 solicited bids for furnishing 3,699,814 units of insect repellent and set aside 700,000 additional units for award to labor surplus area concerns.

Paragraph 41(a) of the Additional General Provisions of each invitation provided that negotiations for the set-aside portion would be conducted only with responsible labor surplus area concerns (and small business concerns to the extent indicated) which had submitted responsive bids on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion.

In your letters you state that it has come to your attention that on July 24, 1966, certain labor surplus areas were reclassified by the Department of Labor and Philadelphia, in which your firm is located, is no longer a persistent labor surplus area. You allege in essence that your firm was the only labor surplus area concern at the time the bids were issued that could be expected to bid. Therefore, you state that you felt assured of receiving an award for the set-aside portion under each invitation and that you would have submitted lower prices if you had been aware prior to bid

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opening that your company was no longer a labor surplus area concern. It is your contention that the invitations were defective because the Government did not amend them to delete the set-aside for labor surplus area concerns when it received notice of the change in the labor surplus areas.

Paragraph 1-804.1<sup>✓</sup> of the Armed Services Procurement Regulation (ASPR) provides that a portion of each procurement shall be set aside for labor surplus area concerns if the procurement is severable into two or more economic production runs and one or more labor surplus area concerns could be expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price.

It is reported that the decision to set part of the procurement aside under each invitation was based upon the responses received under a prior invitation for the same item which opened in December 1965. Responses under that invitation were received from two manufacturers in labor surplus areas, one from your firm and one from the Amco Chemical Corporation. In addition, the mailing list for the subject invitations included two other firms that were located in labor surplus areas. Under these circumstances, it seems apparent that one or more labor surplus area concerns could be expected to have the technical competency and production capacity to furnish a severable portion of the procurement at a reasonable price at the time the decision to have a labor surplus area set-aside under the invitations was made. Accordingly, we agree with the administrative agency that a labor surplus area set-aside was properly established under the cited ASPR provision for the invitations concerned.

Inasmuch as the set-asides were properly established we do not agree with your contention that the Government is required to review the appropriateness of such set-asides when a reclassification of labor surplus areas is received in the procurement activity. If a procurement activity has any substantial number of invitations issued at any one time, such reviews would necessarily increase the activity's workload. Also, since bidders located in labor surplus areas and bidders not located in such areas may or may not qualify as labor surplus area concerns, depending upon the portion of the contract price that would be attributable to manufacturing and production in a labor surplus area, the result of such a review would frequently be inconclusive. Furthermore, even if a review

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indicated that a labor surplus set-aside was inappropriate the procurement activity would be obligated to consider whether a total or partial set-aside should be made for small business. In that connection paragraph 41(a) of the invitations provides for awarding the set-aside portion to small business firms which are not labor surplus area concerns if there are no eligible labor surplus area concerns. Inasmuch as several small business concerns have submitted bids under both invitations, all of whom would be eligible for participation in the set-aside if their bids are within 120 percent of the award price on the non-set-aside quantity and since it appears that the Government has received the benefit of adequate competition, we see no proper or legal basis for rejecting all bids and re-advertising the procurement.

Accordingly, your protest is denied.

Very truly yours,

FRANK H. WEITZEL

Assistant Comptroller General  
of the United States