

DECISION

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

*Mr. Gopik...
JY II*

118802

FILE: B-207603

DATE: June 23, 1982

MATTER OF: Vi Mil Inc.

DIGEST:

Where IFB states that bidders will be given an evaluation preference if they propose to perform work in labor surplus area listed by Assistant Secretary of Labor, bidder proposing to perform in an area which it had been told would be included on next published list but which was not listed at time of bid opening is not entitled to the preference.

Vi Mil Inc. protests award of any quantity of coats under Invitation for Bids (IFB) DLA100-82-B-0532 issued by the Defense Logistics Agency. Vi Mil says that award is to be determined by applying an evaluation preference because the work is to be performed in a labor surplus area (LSA). Vi Mil asserts that its bid would be low if it received the LSA evaluation preference to which it is entitled. Vi Mil states that it was advised prior to bid opening that the place where it would produce coats has been classified as an LSA and would be added to the Assistant Secretary of Labor's published list of qualified LSAs in a new list to be published on June 1, 1982. Bids were opened on May 17.

We deny the protest.

In part, the issues raised in Vi Mil's protest were resolved in our recent decision in S.G. Enterprises, Inc., B-205068, April 6, 1982, 82-1 CPD 317, where we agreed with DLA that a protester is not entitled to an LSA preference if the area where it proposes to perform the work is not an LSA at the time of bid opening. Our decision was based on our view that a firm is entitled to a preference only if it makes an unequivocal commitment in its bid to incur production or manufacturing costs of more than 50 percent of its contract price in an LSA. Such a commitment is not assured where a bidder states in its bid that it will

perform the contract in a location which is not an LSA at the time bids are opened because such a bid leaves the bidder free later to contend that it did not in actuality agree to perform in an LSA.

Vi Mil's protest cites the same DLA solicitation clauses as were considered in S.G. Enterprises. Vi Mil, like S.G., specified an area for performance in its bid which was not included on their current list of qualifying LSA's published by the Assistant Secretary of Labor pursuant to 20 C.F.R. § 654.7 (1981). The only difference between the two cases is that Vi Mil states that it learned in advance of bid opening that the Department of Labor planned to include the location Vi Mil selected in the next publication of the LSA list.

Under existing regulations, the Assistant Secretary of Labor publishes a list of labor surplus areas each year on June 1, 20 C.F.R. § 654.7. This list is based on data produced by the Bureau of Labor Statistics for the previous two calendar years. 20 C.F.R. §§ 654.4(d), 654.5(a). Moreover, although the Assistant Secretary may classify areas other than on the basis of two calendar years of data under special circumstances (20 C.F.R. § 654.5(c)), the present regulations make no provision for listing LSAs other than annually. (But see 47 Fed. Reg. 23754, June 1, 1982 containing a notice of proposed rulemaking which would, if finalized, authorize the Assistant Secretary to publish lists periodically in the Federal Register.)

The pertinent standard DLA solicitation clause states that a locality will be considered to be an LSA for purposes of evaluation provided it 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." The IFB language listing is controlling in determining eligibility for the preference. B-162881, April 10, 1968, aff'd. May 6, 1968.

We believe, therefore, that to be eligible for preference under the DLA clause and existing regulations, a bid must propose a locality which is identified as an LSA on the published list that was current as of the bid opening date.

Since Vi Mil proposed a locality which was not listed at the time of bid opening, it was not eligible for the LSA evaluation preference.

The protest is summarily denied.

for *Milton J. Rowland*
Comptroller General
of the United States