

DECISION

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

FILE: B-209042

DATE: October 12, 1982

MATTER OF: Reynolds Metals Company

DIGEST:

To be eligible for consideration as a labor surplus area concern, offeror must complete solicitation clause requiring address of performing facility. Failure to do so is material and prevents the formation of a legally binding commitment to perform in a labor surplus area.

Reynolds Metals Company protests the refusal of the Defense Logistics Agency's Defense Industrial Supply Center, Philadelphia, Pennsylvania, to grant Reynolds preference as a labor surplus area concern under invitation for bids No. DLA 500-82-R-3476. We deny the protest.

Reynolds states that its intended place of contract performance, McCook, Illinois, is located in Cook County and was designated a labor surplus area by the Department of Labor on August 6, 1982. The designation thus occurred 12 days before bid opening on August 18, although Reynolds did not learn of it until August 31. Reynolds argues that a 5 percent differential for non-labor surplus area concerns should not have been added to its bid, since, at the time of bid opening, it was in effect a labor surplus area concern.

We do not need to address this argument here. Reynolds was denied the labor surplus area preference because it failed to complete Clause K-2, page 43, of the solicitation, which stated:

"Eligibility for Preference as a Labor Surplus Area Concern:

"(a) Each offeror desiring to be considered for award as a labor surplus area (LSA) concern * * * shall insert below the address(es) where costs incurred on account of manufacturing or production * * * will amount to more than fifty percent (50%) of the contract price.

"Name of Company:
"Street Address:
"City/County:
"State:

* * * * *

"CAUTION: Failure to list the location of manufacture or production and the percentage, if required, of cost to be incurred at each location will preclude consideration of the offeror as a LSA concern."

This clause was left blank in Reynolds' bid, and the firm therefore is not eligible for the preference as a labor surplus area concern. Although Reynolds inserted the address of its McCook facility in Clause K-10, page 40 of the solicitation, this clause is entitled "Place of Performance--Inspection and Shipping Point" and completion does not constitute a binding legal commitment by Reynolds to perform in a labor surplus area. Such commitment demands the completion of Clause K-2, page 43. Vi-Mil Inc., B-207603, June 23, 1982, 82-1 CPD 621, aff'd on reconsideration, July 30, 1982, 82-2 CPD 96. To allow completion after bid opening would be to permit an improper late modification of Reynolds' bid.

The protest is summarily denied.

for *F. H. Barclay, Jr.*
Comptroller General
of the United States