DECISION

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

FILE: B-207338 DATE: June 8, 1983

MATTER OF: Alchemy, Inc.

DIGEST:

Protester offered in best and finals to perform in a labor surplus area (LSA) and indicated that performance would be in one of two locations. One was an LSA and the other was not. The offer was ambiguous. The procuring agency was not required to inquire as to performance location because this information was essential for determining acceptability of LSA offer and, therefore, inquiry would have been discussion rather than clarification. Discussions need not be conducted after best and final offers.

Alchemy, Inc. (Alchemy) protests the award of a contract for 819 (aircraft) lock fluid passage bolts to Caprice Engineering Company, Inc. (Caprice), under request for proposals (RFP) No. DLA700-82-R-1258, issued by the Defense Construction Supply Center (DCSC) of the Defense Logistics Agency (DLA). Alchemy protests that the contracting officer improperly determined that it was not eligible for labor surplus area (LSA) evaluation preference. Alchemy also contends that upon being advised by DLA counsel that the contracting officer's decision regarding LSA preference was improper, DCSC improperly reversed its initial determination that Alchemy's proposal was technically acceptable.

The protest is denied.

Four offers were submitted by the closing date for the receipt of initial proposals. Caprice submitted the low offer of $71.90 for each lock fluid passage bolt and Alchemy submitted the second low offer of $121.82 each. A second round of negotiations was conducted and best and final offers requested. Caprice increased its unit price to $81.24. Alchemy decreased its unit price to $86.97 and indicated that 51 percent of the contract value would be

incurred in an LSA, either Puerto Rico or St. Thomas, Virgin Islands, "whichever facility is more advantageous to contract delivery requirements." Alchemy's status as an LSA concern would have made it the low evaluated offeror.

The contracting officer determined that Alchemy could not be evaluated as an LSA concern because it failed to specify the street address at which it intended to perform as required by clause "K22" of the RFP. The contracting officer also determined that while Puerto Rico is an LSA, St. Thomas is not, and that therefore Alchemy's offer was ambiguous. (We have confirmed that St. Thomas is not an LSA.) The contract was awarded to Caprice as the lowest responsible offeror.

DCSC provided DLA with the contracting officer's report for purposes of reviewing and forwarding to our Office. DLA noted that Alchemy had clearly indicated a willingness to perform in an LSA. It advised that any ambiguity regarding the location at which Alchemy would perform could have been resolved by a request for clarification. DCSC and DLA concluded, however, that Alchemy's offer was technically unacceptable and, therefore, the rejection of its offer was correct anyway. Alchemy also protests this determination.

We find that Alchemy's proposal was properly rejected as ambiguous. Alchemy's best and final offer indicated a willingness to incur the requisite costs in an LSA and to do so in either Puerto Rico or St. Thomas, Virgin Islands, whichever location was more advantageous. As noted above, St. Thomas, Virgin Islands, was not an LSA at the time of Alchemy's offer. We indicated in S. G. Enterprises, Inc., B-205068, April 6, 1982, 82-1 CPD 317, that a bid which indicates that the bidder will perform in an LSA, but designates a non-LSA location as the place of performance, is ambiguous and, therefore, not eligible for LSA status. See also Contact International, Inc., B-207019, December 28, 1982, 82-2 CPD 581; Kings Point Mfg. Co., Inc., B-205712, April 5, 1982, 82-1 CPD 310; ACCESS Corporation, B-181962, November 26, 1974, 74-2 CPD 294.

This case, unlike S. G. Enterprises, is a negotiated procurement which is not subject to the strict rules of responsiveness applicable to advertised procurements; yet, Alchemy's offer was contained in its best and final offer.

While "clarifications" may be requested after best and final offers, "discussions" may not be conducted without conducting discussions with all offerors in the competitive range. ABT Associates, Inc., B-196365, May 27, 1980, 80-1 CPD 362. Discussions occur if an offeror is afforded an opportunity to revise or modify its proposal or when the information requested and provided is essential for determining the acceptability of the proposal. Clarifications are inquiries to eliminate minor uncertainties or irregularities. ABT Associates, Inc., supra; Electronic Communications, Inc., 55 Comp. Gen. 636, 644 (1976), 76-1 CPD 15; Teledyne Inet, B-180252, May 22, 1974, 74-1 CPD 279. In our view, an inquiry as to Alchemy's place of performance would have constituted discussions rather than clarifications because this information was essential for determining whether Alchemy had submitted an acceptable LSA proposal. The contracting officer was not required to reopen discussions in order to permit Alchemy to make its best and final proposal acceptable. Electronic Communications, Inc., supra.

Also, even if the listing of the two locations were considered a mistake, Alchemy would not be allowed to correct it by deleting one location after best and finals since we have found this would constitute discussions. See DAR § 3-805.5(d)(3) (Defense Procurement Circular No. 76-7, April 29, 1977).

While the decision not to evaluate Alchemy as an LSA was based on Alchemy's failure to provide an address, the decision, nevertheless, was correct. The award to Caprice, therefore, was proper. Accordingly, we need not resolve the issues raised by DLA's determination that Alchemy's proposal was technically unacceptable.

The protest is denied.

Milton J. Socolar

for Comptroller General
of the United States