

**DECISION**



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

**FILE:** B-214705

**DATE:** June 11, 1984

**MATTER OF:** Check-Mate Industries, Inc.

**DIGEST:**

A firm is not an eligible Labor Surplus Area (LSA) concern where its proposed manufacturing location is not listed as an LSA by the Department of Labor.

Check-Mate Industries, Inc. protests the proposed award of a contract for military belts under invitation for bids (IFB) No. DLA100-84-B-0443 issued by the Defense Personnel Support Center, Defense Logistics Agency. Check-Mate contends that the contracting officer improperly determined that it was not eligible for a Labor Surplus Area (LSA) evaluation preference. We deny the protest.

The solicitation, issued as a total small business and LSA/small business set-aside, provided that non-LSA small business bids were subject to a 2.2 percent evaluation factor, that is, bids from non-LSA firms would be increased by 2.2 percent for evaluation purposes. Paragraph LD5 of the IFB, entitled "NOTICE OF TOTAL SMALL BUSINESS AND LSA SMALL BUSINESS CONCERN SET-ASIDE WITH PRICE DIFFERENTIAL," 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 performed a substantial proportion of a contract in labor surplus areas."

Check-Mate's bid of \$6.74 per unit was the lowest of the three bids received. Kings Point Manufacturing Co., Inc. was the second low bidder at \$6.86 per unit. Kings Point is an LSA concern and thus was not subject to the 2.2 percent price increase assessed against non-LSA firms. Check-Mate desired to be considered as an LSA concern and its bid listed Wyandanch, New York, as the site where all of its manufacturing and production costs for the contract would be incurred. However, at the time of bid opening,

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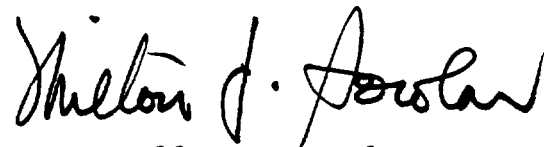
Wyandanch was not included by the Secretary of Labor in the Department of Labor's (DOL) listing of LSAs and has not since been listed. The contracting officer therefore determined that Check-Mate was not eligible for the LSA evaluation preference and, in evaluating Check-Mate's bid, increased its price by 2.2 percent. Consequently, Check-Mate was displaced as the low bidder by Kings Point.

Check-Mate does not dispute that Wyandanch is not listed as an LSA by DOL. Rather, Check-Mate argues that Wyandanch is, in fact, an LSA with an approximate unemployment rate of 40 percent (unemployed and discouraged workers) and therefore ought to be eligible for the LSA evaluation preference of the solicitation.

A bidder establishes its eligibility as an LSA concern when it submits a bid indicating that at least 50 percent of the contract cost will be incurred in an LSA classified as such by DOL at the time of bid opening. See, e.g., S.G. Enterprises, Inc., B-205068, April 6, 1982, 82-1 CPD ¶ 317.

Since Wyandanch is not listed as an LSA, the contracting officer could not grant Check-Mate the LSA preference. Whether Wyandanch ought to be so listed is a matter for DOL to determine, since the Secretary of Labor has exclusive authority to classify geographic areas as LSA's. See 20 C.F.R. § 654.5(a) (1983).

The protest is denied.

for   
Comptroller General  
of the United States