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

FILE: B-219369.2 **DATE:** August 20, 1985

MATTER OF: Altama Delta Corporation

DIGEST:

Contracting agency properly refused to consider bid for labor surplus area (LSA) preference where bid listed in LSA concern eligibility clause LSA addresses and work to be performed at addresses, but did not state that the work represented more than 50 percent of the contract price and contracting agency had information which indicated that the cost of material would exceed 50 percent of the contract price and material was not listed in clause.

Altama Delta Corporation (Altama) protests the award of a contract to McRae Industries (McRae) under invitation for bids (IFB) No. DLA100-85-B-0752, issued by the Defense Personnel Support Center, Defense Logistics Agency (DLA), for 50,000 pairs of combat boots. Altama contends that DLA improperly refused to consider it eligible for a labor surplus area (LSA) evaluation preference and that Altama is low bidder for this contract when the preference is applied.

We deny the protest.

The solicitation was issued as a total small business set-aside and provided for a preference for LSA concerns. The IFB contained a clause instructing bidders desiring to be considered for award as LSA concerns to indicate the address(es) where manufacturing or production costs amounting to more than 50 percent of the contract price would be incurred. The failure to do so, the IFB warned in bold-face type, would preclude consideration of the bidder as an LSA concern.

Altama and the other three bidders received awards under the IFB for 1.1 million pairs of boots. Altama contends that, "but for the Government's erroneous failure or refusal to apply the LSA price differential to [Altama's]

bid of $48.60 per pair . . .," Altama's bid would have been lower than McRae's bid under this IFB for an additional 50,000 pairs of boots.

Clause K17 of the solicitation, entitled "Eligibility for Preference as a Labor Surplus Concern," provided:

> "Each offeror desiring to be considered for award as a Labor Surplus Area (LSA) concern on the set-aside portion of this acquisition specified elsewhere in the schedule, shall indicate 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."

Altama indicated in the space provided under the LSA clause:

> "City/County/State: Darien/McIntosh/Georgia & Salinas/Puerto Rico
>
> Percentage: All Vulcanizing, Finishing, Lasting, Shipping & Packing to be done in Darien, GA.
> All Cutting & Stitching to be done in Salinas, Puerto Rico."

The clause further provided:

> "(If more than one location is to be used, list each location and the costs to be incurred at each, stated as a percentage of the contract price.)
>
> 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."

Altama contends that, by completing the clause in this manner, it made an absolute legal binding promise that it was an LSA concern and that it confirmed this by telephone with the contracting staff, reporting that 65 percent of the contract price would be incurred in Salinas and 35 percent of the contract price would be performed at Darien. It is not in dispute that Salinas and Darien are LSAs.

DLA argues that Altama failed to supply the government with adequate information to determine Altama's LSA eligibility from the face of the bid. While DLA concedes that Altama provided the addresses of two different LSA locations where the work was to be performed, and indicated the work to be performed in each location, DLA asserts that Altama did not specify whether costs incurred in these areas would exceed 50 percent. DLA further notes that Altama listed several types of work to be performed, but did not state where the cost of purchased material, a significant portion of the contract price, would be incurred. In this regard, DLA advises that its production branch reported that more than 50 percent of the cost for the boots would be for materials, and that an affidavit provided by Altama with its protest shows that the work performed in the two specified locations would not represent more than 50 percent of the contract price. DLA concludes that it properly determined Altama's bid did not contain the necessary LSA certification to permit Altama's consideration as an LSA concern.

We concur with DLA. We agree with Altama that, where a bidder promises to incur the requisite costs in LSAs, the bidder's ability to meet the promise is a matter of responsibility. Uffner Textile Corp., B-205050, Dec. 4, 1981, 81-2 C.P.D. ¶ 443. However, in this case, there is not a clear commitment by Altama to incur the requisite costs in LSAs.

Clause K17 not only requires the bidder to show where the LSA work is to be performed, but also, by the showing of percentages, that the work at the designated addresses will meet the LSA requirements. While, in clause K17, Altama did list addresses and the work to be performed at each address, it did not state that the work represented more than 50 percent of the contract price. DLA had information that indicated that the cost of purchased material would exceed 50 percent of the contract price and material was not listed in clause K17. In the circumstances, Altama's bid was not necessarily a promise to incur the requisite costs in LSAs. Therefore, it was proper for DLA to refuse to consider the bid for LSA preference.

Harry R. Van Cleve
General Counsel