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DECISION



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

[Protest Against Agency Determination of Nonresponsibility]

FILE: B-199077

DATE: February 9, 1981

MATTER OF: Jackson Lumber Company, Inc.

DIGEST:

Question of small business responsibility must be referred to Small Business Administration (SBA) for consideration of issuing certificate of competency. Since this was not done, we recommend referral to SBA.

Jackson Lumber Company, Inc. (Jackson), protests the award of any contract under the Lost Aspen timber sale of certain sawlogs, conducted by the United States Department of Agriculture, Forest Service (Forest Service). Jackson asserts that it was improperly determined nonresponsible after having been declared high bidder under a prior solicitation for the same timber, and, alternatively, that it was improperly excluded from participation under the resolicitation.

Bids for the initial timber sale were opened, and Jackson was the high bidder following an auction. The Forest Service then advised Jackson that it had been denied award because of nonresponsibility on the basis of Jackson's serious violations of contract under a prior timber sale award.

The Forest Service decided to cancel the solicitation and readvertised because the only eligible bidder other than Jackson apparently declined to accept award. Although Jackson was on the appropriate bidders list, the agency indicates that the bid prospectus and advertisement were mailed to "potential purchasers," but "Jackson Lumber was not mailed a copy * * * nor did it participate in bidding." Bid opening and an auction took place, and a high bidder was declared but no award has been made. Jackson, after first protesting to the Forest Service, subsequently filed a protest with our Office.

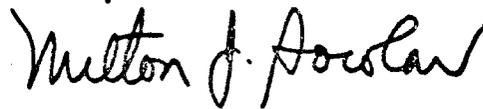
The agency argues that Jackson's protest is untimely filed with our Office. While we agree that Jackson's protest against the nonresponsibility determination is

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untimely for failure to protest within 10 days of notice of disqualification for award under the first sale, the record shows that the agency did not recognize its obligation to refer that matter to the Small Business Administration (SBA).

In this regard, we have been advised by the Forest Service that Jackson is a small business and that the agency did not refer this matter to the SBA for consideration of issuing a certificate of competency (COC) to Jackson. It is clear that whenever a contracting officer makes a determination that a small business is nonresponsible, he must refer the matter to SBA. In this case, since the initial nonresponsibility determination should have been but was not referred to the SBA, and the issuance of a COC by the SBA under the Small Business Act, 15 U.S.C. § 637(b)(7) (1976 and Supp. I 1977), is normally conclusive on the sales activity and our Office with regard to all aspects of a bidder's responsibility, we recommend that such referral now be made. In the event that SBA issues a COC, the contract should be awarded to Jackson under the initial solicitation.

Protest sustained.



For the Comptroller General
of the United States