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DECISION



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

FILE: B-214524

DATE: April 3, 1984

MATTER OF: Tecle, Inc.

DIGEST:

Procuring agency may properly award contract to second low bidder, under total small business set-aside, where low bidder has been found previously to be other than small and has not been recertified as small business by SBA as of date of bid opening.

Tecle, Inc. (Tecle), the low bidder on a total small business set-aside, issued by the General Services Administration (GSA), Public Buildings Service, under invitation for bids (IFB) No. IFB-OPR-9PPC-84-20118, protests the GSA award of the contract to the second low bidder. Tecle contends that it should have received the award because it is the low responsive, responsible small business.

We summarily deny the protest.

GSA has advised us that although the Small Business Administration (SBA) certified Tecle as a small business on February 23, 1984, Tecle's status was not that of a small business on the bid opening date, January 26, 1984. This advice is based on an SBA size determination dated April 26, 1982, which reads in part:

"Since Tecle, Inc., and their affiliation with Cleveland Wrecking exceed the small business size standard of 5,000,000 average annual receipts and also exceeds the 12,000,000 average annual receipts for the preceding three fiscal years they do not qualify as a small business concern for this procurement or any other small business set-aside." (Emphasis in original.)

Where a bidder has been found to be large by SBA in the past and the bidder seeks recertification as a small business, but has not received recertification as of the bid opening date of a subsequent small business set-aside

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procurement, the bidder cannot properly represent itself as a small business at the time of bid opening and, therefore, is ineligible for award. Propper International, Inc., et al., 55 Comp. Gen. 1188 (1976), 76-1 CPD 400.

Since Tecle was not recertified as a small business by the bid opening date, it is ineligible for award under the instant solicitation and we cannot object to GSA's decision to award the contract to the next low bidder.

Accordingly, the protest is clearly without legal merit and is summarily denied without awaiting a report from GSA. 4 C.F.R § 21.3(g) (1983), as amended by 48 Fed. Reg. 1931 (1983).

for *Milton J. Acosta*
Comptroller General
of the United States