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DECISION

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

FILE: B-213192.3 **DATE:** April 10, 1984

MATTER OF: Industrial Maintenance Services, Inc.

DIGEST:

1. Large business protester is interested party under GAO Bid Protest Procedures to challenge award under total small business set-aside where issue raised relates to the eligibility requirement under which the protester was excluded from the procurement.

2. Procuring agency properly rejected bid of concern, under total small business set-aside, which, prior to bid opening, had been found to be other than small and had not been recertified as small business prior to bid opening, notwithstanding SBA's decision after bid opening to change the size standard applicable to the type of procurement involved.

Industrial Maintenance Services, Inc. (IMS), the apparent low responsive bidder on a total small business set-aside, issued by the Army (Army) for the Buckley Air National Guard Base, Aurora, Colorado, under invitation for bids (IFB) No. DAHA05-83-B-0005, protests the Army's rejection of its bid as nonresponsive and any award to a firm other than itself. IMS contends that it should be considered for award because the Small Business Administration (SBA) changed the applicable size standard subsequent to bid opening and under the new standard IMS can be found to be a small business.

We summarily deny the protest.

The Army has advised us that a size determination concerning IMS was requested from SBA after the September 28, 1983, bid opening. SBA informed the Army that IMS was found to be other than a small business on August 2, 1983, under the applicable size standard, and that IMS has not been recertified since then as a small business. The Army therefore contends that IMS is not an interested party

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and urges that we summarily dismiss IMS's protest. However, we find IMS to be an interested party because the issue it raises concerns the eligibility requirement under which IMS was excluded from the procurement. Solon Automated Services, Inc., B-198670, November 18, 1980, 80-2 CPD 365.

We see no merit in IMS's contention that SBA's post-bid-opening change of the size standard applicable to this type of procurement operates to render IMS's nonresponsive bid responsive. Defense Acquisition Regulation (DAR) § 1-703(b) (Defense Acquisition Circular (DAC) No. 76-34, April 27, 1982) provides in part:

> "The controlling point in time for a determination concerning the size status of a questioned bidder or offeror shall be the date of written representation as a small business submitted, as part of a concern's submission of a bid or offer, to either a contracting officer, if offering as a prime contractor, or to a prime or upper tier subcontractor, if offering as a subcontractor. A representation by a bidder or offeror that it is a small business concern will not be accepted by the contracting officer if it is known that (i) such concern has previously been finally determined by SBA to be ineligible as a small business for the item or service being acquired, and (ii) such concern has not subsequently been certified by SBA as being a small business. . . ."

This is consistent with our decisions in Propper International, Inc., et al. 55 Comp. Gen. 1188 (1976), 76-1 CPD 400, and SCS Engineers, B-210166, September 29, 1983, 83-2 CPD 388.

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

Milton J. Socolar

for Comptroller General
of the United States