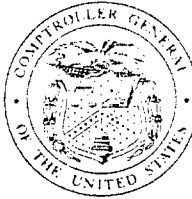


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Mr. Cohen

DECISION



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

[Protest of Air Force Contract Award]

FILE: B-195980

DATE: April 15, 1980

MATTER OF: S & G Services, Inc.

DLG00132

DIGEST:

No legal basis exists to object to award of contract under small business set-aside to second low bidder before resolution of appeal by low bidder of Small Business Administration's determination that low bidder was large business where contracting officer suspended procurement action beyond regulatory period required for receipt of SBA determination of size before awarding contract.

CNG00601

S & G Services, Inc. (S & G), the low bidder under invitation for bids (IFB) No. F2860979-B-0023 issued by the Air Force for mess attendant services at McGuire Air Force Base, protests the award of a contract to the second low bidder, Kleenrite, Inc. (Kleenrite). The solicitation was set aside for small businesses, and the contract was awarded between the time that the Atlanta District Office of the Small Business Administration (SBA) sustained a protest by Kleenrite against S & G's small business size status and the SBA Size Appeals Board's (Board) reversal of that determination in response to an appeal by S & G. S & G contends that the award should have been delayed until the Board completed its deliberations, and thus that the contract with Kleenrite should be terminated based on the Board's decision, with award then made to S & G.

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For the reason set forth below, the protest is denied.

Bids under the IFB were opened on April 18, 1979. On April 25, before award could be made to S & G, Kleenrite filed a timely protest with the

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contracting officer challenging S & G's small business status. The protest was forwarded by the contracting officer to the SBA District Office, which on June 4 agreed with Kleenrite that S & G was a large business. S & G immediately appealed that position to the Board. On July 31, the contracting officer, having waited almost 7 weeks for the Board to issue a decision, and having failed to receive from the Board any clear indication of when the decision would be rendered, awarded the contract to Kleenrite pursuant to the authority at Defense Acquisition Regulation (DAR) § 1-703(d)(3)(iii) (1976), which provides:

"If the determination of the Chairman, Size Appeals Board, Small Business Administration, on the appeal is not received by the contracting officer within the 30 working day period [from the time of initial receipt of the case in an SBA District Office], it shall be presumed that the SBA District Director's size determination has been sustained."

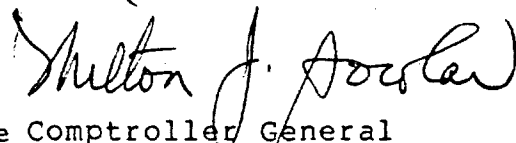
On August 29, the Board reversed the SBA District Office's determination, and S & G thereafter filed the protest in our Office.

S & G contends that the time period prescribed in DAR § 1-703(d)(3)(iii) during which a contracting officer must delay a contract award pending resolution of a size status appeal is only a minimum requirement and thus absent "any unusual or emergency situation which necessitates an immediate award," the award should be withheld until an appeal is resolved. Since the award to Kleenrite evidently was not based on an urgent need for the mess attendant services, S & G argues that the integrity of the competitive procurement system dictates that under the circumstances the contract with Kleenrite be terminated and award made to S & G.

We do not agree with S & G that DAR § 1-703(d)(3)(iii) establishes only a minimum period during which a contract award must be delayed while a size status appeal is pending. In this respect, we point out that DAR § 1-703(d)(3)(iv) specifically limits the suspension of the procurement action only during the 30-day period, and provides for an earlier award if the contracting officer determines that award without delay is necessary "to protect the public interest." We believe the chronology of events listed above clearly shows that the award comported with the regulatory requirement. In view thereof, our Office has no legal basis to object to the contract award. B-178480, May 14, 1973.

Accordingly, we have no basis to recommend the contract termination as requested. B-163418, August 1, 1968.

The protest is denied.



For The Comptroller General
of the United States