

**DECISION**

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

FILE: B-210551

DATE: February 22, 1983

MATTER OF: Contract Services Co., Inc.

**DIGEST:**

GAO has no authority to order the suspension of procurement proceedings or award pending the Small Business Administration Size Appeals Board's ruling on an appeal against the small business size standard used in the solicitation.

Contract Services Co., Inc. (CSC) protests any award of a contract under solicitation No. DAEA-83-R-0005, a small business set-aside, issued by the Army for motor vehicle operation and fleet management at Fort Ritchie, Maryland, pending determination by the Small Business Administration's (SBA) Size Appeals Board of whether the small business size standard used by the procuring agency is proper. CSC requests that this Office suspend action in the procurement until a final determination is made. We dismiss the protest.

On November 10, 1982, CSC contacted the procuring agency by letter and asked that it be forwarded a copy of the solicitation. The contracting officer then requested that CSC identify itself as either a large or small business, defining a small business as one whose average annual receipts for the preceding 3 fiscal years do not exceed \$2 million. In response, CSC questioned the correctness of the contracting officer's definition of a small business. CSC asserted that the appropriate size standard was that a concern not exceed 500 employees. When the contracting officer rendered a decision in support of his initial size standard, CSC appealed to the SBA Size Appeals Board in accordance with Defense Acquisition Regulation (DAR) § 1-703(c)(2) (1976 ed.). At that same time, CSC requested the General Accounting Office to suspend procurement proceedings until the Size Appeals Board makes a final determination.

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Our Office has no authority, however, to order the withholding of an award in general, see Hoffman-Whitehead Co., B-208472, August 30, 1982, 82-2 CPD 186, or otherwise to require that procurement proceedings be delayed or suspended in this type of situation. According to the procurement regulations at DAR § 1-703(c)(3), if the SBA Size Appeals Board agrees with CSC, and the ruling is received before the receipt of initial proposals, the solicitation must be modified to reflect the ruling. Also, the contracting officer "may" delay initial proposal receipt pending resolution of the appeal, although the decision whether to do so is a matter within his broad discretion. See Baird Corporation, B-210136, December 20, 1982, 82-2 CPD 556. Finally, if the Size Appeals Board ruling is not received until after initial proposals are submitted, the regulations provide that the ruling will not apply to the current procurement, but will have prospective effect only, so that the ruling does not affect the legality of the award. See Logistical Support, Inc., B-205538, March 10, 1982, 82-1 CPD 227.

The protest is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel