

**DECISION**

11,200-117000  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-211073.2**DATE:** April 15, 1983**MATTER OF:** Eterna-Line Corporation**DIGEST:**

Protest against an agency's award of a contract under a small business set-aside 3 days before the Small Business Administration (SBA) was scheduled to issue its decision on a protest of the prospective awardee's small business status is dismissed, since the SBA's decision confirmed the awardee's status as a small business and the protester therefore was not prejudiced by the award.

Eterna-Line Corporation protests the March 15, 1983 award of a contract to repaint stripes on an airport runway to Stripe-A-Zone, Inc. under Air Force invitation for bids No. F34650-83-B-0031, which was set aside for small business. Eterna-Line had challenged the small business size status of Stripe-A-Zone to the contracting officer, who referred the matter to the Small Business Administration (SBA). Eterna-Line complains that the Air Force did not wait for the SBA's decision, which was expected on March 18, before awarding the contract. We dismiss the protest.

Under Defense Acquisition Regulation § 1-703(b)(3)(iv) contracting action must be suspended until the SBA resolves a size status complaint or until 10 working days have elapsed from the SBA's receipt of a size status complaint, whichever occurs first, unless the contracting officer determines that award must be made without delay in order to protect the public interest. The award here apparently was based on such a determination by the contracting officer, although Eterna-Line disputes whether any emergency existed and contends that the 3-day wait for the SBA's decision would not have created a dangerous situation.

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The SBA's March 18 decision, however, confirmed the small business status of Stripe-A-Zone. Although Eterna-Line has appealed this decision to the SBA's Size Appeals Board, the contracting officer was free to make award to Stripe-A-Zone on the basis of that decision prior to his being notified of the appeal. DAR § 1-703(b)(3). The protester's documents indicate that the appeal was filed more than a week after the March 18 decision was issued. Therefore, it appears the contracting officer could have made the award, without any determination of urgency, upon receipt of the March 18 decision. Consequently, the award 3 days before that decision did not prejudice Eterna-Line, and we thus need not consider the propriety of the urgency determination that supported the award.

The protest is dismissed.

*J. H. Barclay, Jr.*  
Harry R. Van Cleve  
Acting General Counsel