

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

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Lieberman

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FILE: B-213453**DATE:** April 17, 1984**MATTER OF:** Biological Monitoring, Inc.**DIGEST:**

1. Protest concerning small business size status is not for consideration by GAO since exclusive authority over such matters is statutorily vested with the Small Business Administration.
2. Where small business set-aside is conducted as negotiated procurement for personal or professional services pursuant to 10 U.S.C. § 2304(a)(4), procuring activity is not required to provide unsuccessful offerors with notice of intent to award prior to actual awarding of contract.

Biological Monitoring, Inc. (BMI), protests that the Army Corps of Engineers (Army) improperly awarded a contract for professional services to prepare a bioassay manual to Reish Marine Studies, Inc. (RMSI), under request for proposals (RFP) No. DACW09-83-R-0005, a small business set-aside procurement, negotiated pursuant to 10 U.S.C. § 2304(a)(4) (1982). BMI asserts that the Army handled its size determination protest improperly and failed to notify BMI of intent to make award to RMSI as required under Defense Acquisition Regulation (DAR) § 1-703(b)(5) (1976 ed.).

We find the protest to be without merit.

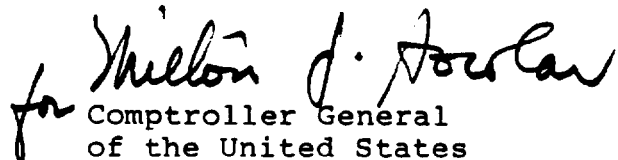
To the extent that BMI is protesting that RMSI is affiliated with a large business entity and, therefore, does not qualify as a small business, the protest is not for our consideration. Under 15 U.S.C. § 637(b)(6) (1982), the Small Business Administration (SBA) has exclusive authority to determine matters of small business size status for procurement purposes. In this connection, we note that the contracting officer referred the size protest to SBA as required. Therefore, our Office will not review questions of a bidder's small business size status. Arcata Associates, Inc., B-210315, January 11, 1983, 83-1 CPD 30.

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BMI's other ground of protest relates to the fact that the Army awarded the contract to RMSI on September 30, 1983, without providing BMI with any prior notice of intent to award which BMI alleges is required under DAR § 1-703(b)(5) (1976 ed.). BMI learned of the award on October 3, 1983, on which date BMI filed its size protest with the contracting officer. The Army agrees that it did not provide BMI with notice of intent to award to RMSI. However, the Army points out that the notification requirement contained in the above-cited provision is specifically stated to be inapplicable to procurements such as this for professional services negotiated pursuant to 10 U.S.C. § 2304(a)(4) (1982). As the Army points out, the DAR section in question reads "except as provided in 3-508.1." DAR § 3-508.1(ii) (1976 ed.) provides that such notice need not be provided to offerors where the contract to be awarded is negotiated, as here, pursuant to 10 U.S.C. § 2304(a)(4) (1982).

Accordingly, we agree with the Army that it was not required to provide BMI with advance notice of intent to award. PSI Associates, Inc., B-200839, May 19, 1981, 81-1 CPD 382.

We dismiss the protest in part and deny it in part.

for 
Comptroller General
of the United States