

**DECISION**



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

**FILE:** B-215607

**DATE:** July 9, 1984

**MATTER OF:** Biospherics Incorporated

**DIGEST:**

1. Protest concerning the small business size status of offeror is by law a matter for decision by the Small Business Administration and not for consideration by GAO.
2. Since GAO has no authority to order withholding of award pending determination of offeror's small business size status by Small Business Administration, protest requesting such relief is dismissed.

Biospherics Incorporated (Biospherics) protests the proposed award of a contract to Sorenson Development Incorporated (SDI) under request for proposals (RFP) No. 200-84-2708(P), issued by the National Institute for Occupational Safety and Health (NIOSH). The RFP was issued as a 100-percent small business set-aside. The protester contends that SDI is affiliated with a large business concern and, thus, is ineligible for the award. Biospherics has protested SDI's size status to the Small Business Administration (SBA).

The protester expresses concern that due to "internal pressure," NIOSH may award the contract to SDI regardless of its eligibility before the SBA makes a size determination. Biospherics argues that we should ensure that SDI's eligibility is carefully reviewed and that no award is made until the review is completed.

Under 15 U.S.C. § 637(b)(6) (1982), the SBA has conclusive authority to determine matters of small business size status for federal procurement purposes. Therefore, our Office does not consider size status protests. 4 C.F.R. § 21.3(g)(2) (1983).

Furthermore, the General Accounting Office has no authority to order the withholding of an award. Hoffman - Whitehead Co., B-208472, Apr. 30, 1982, 82-2 C.P.D. ¶ 186; Dauphine Corporation, B-202665, Apr. 14, 1981, 81-1 C.P.D. ¶ 284. We note that under the Federal Acquisition

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Regulation (FAR), § 19.302(h)(1), 48 Fed. Reg. 41,102, 42,246 (1983) (to be codified at 48 C.F.R. § 19.302(h)(1), where the contracting officer is timely notified of a size status protest prior to award, the contracting officer shall not award the contract until the SBA has made a size determination or 10 business days have expired since SBA's receipt of a protest, whichever occurs first. In any event, the FAR states that award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

We dismiss the protest.

*Harry R. Van Cleve*

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Acting General Counsel