

DECISION

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

FILE: B-220592

DATE: October 4, 1985

MATTER OF: JRR Construction Company, Inc.

DIGEST:

Contracting officer's award of a contract to the second low bidder following an initial determination by the Small Business Administration that the low bidder is other than small, without waiting for the result of an appeal to the SBA's Office of Hearings and Appeals, is proper and does not constitute an abuse of the contracting officer's discretion.

JRR Construction Company, Inc. protests the award of a contract to Tempo West, Inc. under invitation for bids (IFB) No. DACA21-85-B-0007, issued as a small business set-aside by the United States Army Corps of Engineers. The procurement was for the construction of a troop barracks at Fort Bragg, North Carolina. We dismiss the protest.

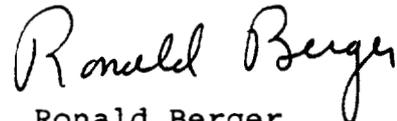
JRR, the low bidder, contends that the Corps should not have awarded the contract to Tempo, the second low bidder, because a final ruling as to JRR's size status has not been issued by the Small Business Administration's (SBA) Office of Hearings and Appeals. JRR is appealing a decision by the SBA's Chicago Regional Office that the firm is other than a small business concern.

JRR asserts that the contracting officer acted improperly in making the September 26, 1985 award for reasons of urgency in order to protect the public interest, as evidenced by the fact that the contracting officer asked JRR after the Chicago Regional Office rendered its initial decision on September 10 to extend its bid through October 31, thus apparently allowing additional time for resolution of JRR's appeal. JRR contends that the award constitutes an abuse of discretion and is clearly not in the public interest given that JRR's bid is some \$410,000 lower than Tempo's.

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Under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.302(h)(1) (1984), when a size status protest has been filed, a contracting officer may not make an award until the SBA Regional Administrator has issued a determination or until 10 working days after SBA's receipt of the protest, whichever occurs first. Although the FAR provides for an appeal from an initial SBA size determination by any concern that has been adversely affected, 48 C.F.R. § 19.302(i), once an initial determination has been issued, there is no requirement that the contracting officer then continue to withhold award pending a final ruling on an appeal from that determination. H. Angelo & Co., Inc., B-218573, May 9, 1985, 85-1 CPD ¶ 519. Similarly, although to make an award before the initial 10 days expire the contracting officer must make a finding that the award is necessary to protect the public interest, 48 C.F.R. § 19.302(h)(1), supra, there is no such requirement for justifying an award during the appeal period. H. Angelo & Co., Inc., B-218573, supra, at 2. Therefore, since the contracting officer's actions here were consistent with the FAR, there is no legal basis for asserting that the award to Tempo was improper or otherwise constituted an abuse of the contracting officer's discretion.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel