

DECISION

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

FILE:

B-222519

DATE: April 25, 1986**MATTER OF:**

Longview Construction Company

DIGEST:

After the Small Business Administration Regional Office issues its determination that the protester is not a small business concern, the contracting agency may make award to another bidder without waiting for the protester's appeal of the size status determination to be resolved.

Longview Construction Company (Longview) protests the award of any contract under invitation for bids (IFB) No. DE-FB96-869013002, a small business set-aside issued by the Department of Energy, Strategic Petroleum Reserve Office, New Orleans, Louisiana (DOE), for the construction of 24 miles of 36-inch crude oil pipeline. Longview requests that GAO direct DOE to withhold award under the IFB until Longview's appeal of a decision by the Small Business Administration (SBA) that Longview is not a small business concern is decided by the SBA Office of Hearings and Appeals.

We dismiss the protest.

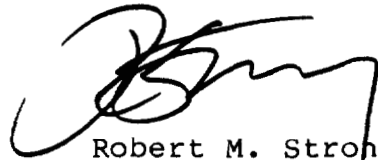
While the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.302(i) (1985), provides for an appeal from an SBA size status determination by any concern that has been adversely affected by a size status decision, there is no requirement that a contracting agency withhold award during the appeal period. See Jensen Corp., B-220770, B-220771, Oct. 21, 1985, 85-2 C.P.D. ¶ 434. The FAR, 48 C.F.R. § 19.302(i) (Federal Acquisition Circular 84-12, January 20, 1986), recognizes that a contracting agency may make award while an SBA size determination appeal is pending. The FAR states that if the SBA appeal decision is received before award, the appeal decision will apply to the pending acquisition but that SBA rulings received after award shall not apply to that acquisition. Therefore, DOE may properly

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make an award under the instant IFB before the SBA decision on Longview's size determination appeal is received. Jensen Corp., B-220770, B-220771, supra.

A handwritten signature in black ink, appearing to read 'R. Strong', with a large, stylized initial 'R'.

Robert M. Strong
Deputy Associate
General Counsel