

Cate 52-I



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Stanford Telecommunications, Inc.
File: B-226957
Date: April 8, 1987

DIGEST

Protest against award of contract while size status protest was pending is dismissed, since agency properly waited more than 10 business days after filing of size protest before making award.

DECISION

Stanford Telecommunications, Inc., protests the Defense Communications Agency's (DCA) award of a contract to Femme Comp, Inc., under request for proposals (RFP) No. DCA 100-86-R-0174, a small business set-aside. Stanford contends that the award was improper because Stanford had provided DCA with proof that Femme was not a small business and, therefore, not eligible for award of the contract. We dismiss the protest.

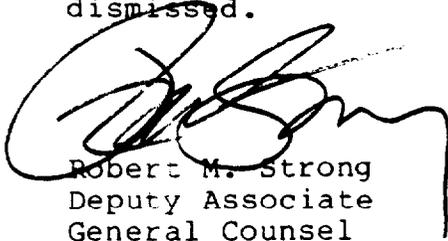
The RFP was issued to acquire system engineering and technical assistance for the Defense Satellite Communications System. Stanford and Femme each certified that it was a small business. DCA notified the unsuccessful offerors of its intent to award the contract to Femme in a letter dated February 9, 1987, and Stanford, in a February 13 letter, protested Femme's status as a small business to the Small Business Administration (SBA). DCA awarded the contract to Femme on March 6. The SBA determined that Femme was other than a small business on March 13; Femme has appealed this determination to the SBA.

Stanford contends that it was improper for DCA not to wait until the SBA had determined Femme's size status before awarding the contract. In this regard, Stanford asserts that SBA issued its determination within 10 days of receipt of the size protest and Femme's response, as required by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.302(g) (1986), and argues that the FAR prohibits award of the contract

038566 -132670

during this period. The FAR, however, provides that the contracting officer may award a contract on which there is a size protest after (1) the SBA has made a size determination or (2) 10 business days have expired since the SBA's receipt of the protest, 48 C.F.R. § 19.302(h)(1), and does not require that the contracting officer wait 10 days from SBA's receipt of the response to the protest. After the 10 business days have passed without a determination by the SBA, the contracting officer may continue to withhold award, but is not required to do so.

Since it is apparent that DCA waited more than the required 10 business days after Stanford's size protest was filed with the SBA before awarding the contract to Femme, we have no legal basis on which to object to the award. The protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel