



The Comptroller General
of the United States

Washington, D.C. 20548

Wash

Decision

Matter of: Service Engineering Company
File: B-225623
Date: April 28, 1987

DIGEST

Protest of alleged failure by contracting agency to comply with regulatory requirements concerning the handling of a protest challenging a small business certification is dismissed since, in light of a determination by the Small Business Administration that the certifying firm is indeed a small business concern for this procurement, protester was not prejudiced by the alleged procedural deficiencies and thus no useful purpose would be served by consideration of the protest.

DECISION

Service Engineering Company protests the award of a contract to Northwest Marine Iron Works by the Navy's Military Sealift Command, Pacific, under request for proposals (RFP) No. N62383-87-R-0005. We dismiss the protest.

The agency issued the RFP, which was for repairs to USNS OBSERVATION ISLAND, as a total small business set-aside. Northwest Marine certified in its initial proposal dated October 27, 1986, that it was a small business concern under the size standard applicable to the solicitation. Following its receipt and evaluation of best and final offers, the agency selected Northwest Marine for award and so notified the protester. The protester received the agency's notice of the proposed award on December 22, and on December 23 filed a protest with the agency challenging Northwest's small business certification.

The agency forwarded the size status protest to the Small Business Administration (SBA) for resolution. In this connection, the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.302(c)(1) (1986), provides that a contracting officer who receives a protest challenging an offeror's small business certification promptly must forward the

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protest to the SBA Regional Office for the geographical area where the principal office of the certifying firm is located. The SBA received the size status protest (which the Navy reports it sent to SBA on December 23 by commercial overnight courier) on December 29.^{1/} The FAR provides further that the contracting officer may not award a contract until either SBA has made a size determination or 10 business days have elapsed from SBA's receipt of the protest, whichever is earlier, unless the contracting officer determines in writing that an award must be made to protect the public interest. FAR, § 19.302(h)(1). Here, the contracting officer made such a determination on December 29 and awarded the contract to Northwest Marine on December 30.

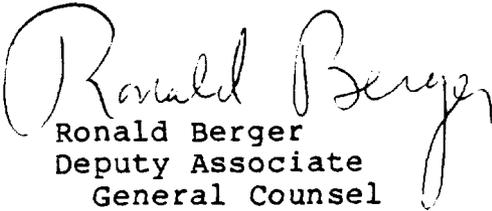
The grounds for Service Engineering's protest to this Office are that the agency improperly delayed forwarding the firm's size status protest to SBA, that there was no factual or legal basis for the agency's determination that an award prior to SBA's resolution of that protest was in the public interest, that the Navy did not consult with SBA prior to awarding the contract, and that the Navy purposely delayed notifying both the protester and SBA of the award to Northwest. The protester also complains that the agency-incorrectly informed SBA that Northwest had certified that it was a small business concern as of December 15, rather than October 27. When SBA discovered the error, says the protester, it was forced to grant Northwest an extension of 2 additional days for submission of its response to the size protest.

In our view, no useful purpose would be served by our consideration of this protest. Basically, the protester is complaining that it was prejudiced by the contracting officer's alleged failure to comply with the regulatory requirements for handling a size status protest. While such failures may operate to prejudice a protester should the SBA ultimately determine that the certifying firm was not a small business concern, see, e.g., Consolidated Construction, Inc., B-219017.2, Nov. 7, 1985, 85-2 CPD ¶ 529, where the SBA determines that the certifying firm is small for purposes of a particular procurement, a protest to this Office alleging procedural deficiencies

^{1/} There has been no explanation of why SBA's records do not show receipt of the protest until December 29. We note, however, that the period from December 23 to December 29 included two federal holidays, one weekend, and Christmas Eve.

by the contracting agency in connection with the size status protest will be dismissed. See Eterna-Line Corp. B-211073.2, Apr. 15, 1983, 83-1 CPD ¶ 418. In this case SBA determined on January 16, 1987, that Northwest is indeed a small business for this procurement. Such determinations are conclusive with respect to size status issues.^{2/} 15 U.S.C. § 637(b)(6) (1982); Allied Sales and Engineering, Inc., B-224346, June 26, 1986, 86-2 CPD ¶ 13.

The protest is dismissed.


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^{2/} Service Engineering Company has appealed the determination to SBA's Office of Hearings and Appeals pursuant to 13 C.F.R. § 121.11 (1986). The SBA's decision on the appeal will not apply to this procurement. FAR, § 19.302(i).