



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Suddath Moving Systems, Inc.

File: B-229992

Date: April 1, 1988

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### DIGEST

1. Award made pending an appeal of an initial adverse determination concerning small business status was proper even though the contracting officer was notified of the appeal prior to making the award.
2. Where an agency specifically rebuts issues raised in the initial protest and a protester fails to address the agency's rebuttal in its comments on the agency's report, the issues are deemed abandoned.

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### DECISION

Suddath Moving Systems, Inc., protests the award of a contract to Acme Moving and Storage Co., Inc., under invitation for bids (IFB) No. DAKF11-88-B-0002, issued by the Department of the Army, for packing and containerization of personal property for movement or storage. The procurement was a total small business set-aside.

We dismiss the protest.

Suddath, the low bidder, contends that the Army should not have awarded the contract to Acme, the second low bidder, while Suddath was appealing a decision by the Small Business Administration (SBA) Regional Office that Suddath was not a small business concern for purposes of this solicitation. Suddath argues that the determination by the SBA that Suddath was not a small business was not a final decision because Suddath filed a timely appeal in accordance with Federal Acquisition Regulation (FAR) § 19.302(g)(2)(i). Suddath also contends that the contracting officer had notice of Suddath's appeal prior to awarding the contract to Acme and, therefore, the contract award is invalid under FAR § 19.302(g)(2). Suddath also disputes the contracting officer's determination that delaying the award would be detrimental to the government's interest.

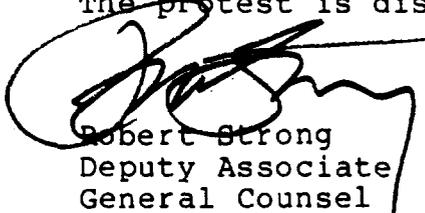
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Under FAR § 19.302(h)(1), when a size status protest has been filed, a contracting officer may not make an award until the SBA Regional Administrator has issued a determination or until 10 working days after SBA's receipt of the protest, whichever occurs first. Although the regulations provide for an appeal from an initial SBA size determination by any concern that has been adversely affected, there is no requirement that the contracting officer withhold award during the appeal period. FAR § 19.302(i). Neal & Co., B-229733, Dec. 23, 1987, 87-2 CPD ¶ 626. Thus, even if the contracting officer knew of the appeal when he made the award, the award is valid.

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, FAR § 19.302(h)(1), there is no such requirement for justifying an award during the appeal period. DJW Services, B-225587.2, Sept. 29, 1987, 87-2 CPD ¶ 312. Therefore, Suddath's contention that the contracting officer's determination did not satisfy the public interest standard is irrelevant. As there was no requirement that the agency continue to withhold the award after the initial SBA determination, Suddath has failed to state a basis for protest.

In its original protest letter, Suddath also challenged the Army's decision to set the procurement aside for small businesses and argued that the Army had not determined whether Acme was a responsible bidder. The Army responded to these allegations in its report, but Suddath did not rebut any of the Army's responses in its comments on the report. We therefore consider these protest issues abandoned and will not consider them further. PacOrd, Inc., B-224249, Jan. 5, 1987, 87-1 CPD ¶ 7.

The protest is dismissed.



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