



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sterling Services Incorporated
File: B-233477
Date: November 28, 1988

DIGEST

When an appeal of an initial small business size status determination has been filed with the Small Business Administration against a prospective awardee, the contracting officer need not await the results of the appeal as the regulations do not prohibit an award based on the initial determination.

DECISION

Sterling Services Incorporated protests award of a contract to American National Management Corporation (ANMC) under request for proposals (RFP) No. F17600-88-R-0001, a small business set-aside, issued by the Air Force. Sterling claims that award to ANMC is improper because Sterling is appealing a Small Business Administration (SBA) Regional office's determination that ANMC qualifies as a small business concern for the purposes of this solicitation.

Under Federal Acquisition Regulation (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 comes first. While 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); see also Neal & Co., B-229733, Dec. 23, 1987, 87-2 CPD ¶ 626. Here, Sterling received notice from the SBA's Philadelphia Regional Office on September 27, 1988 that ANMC qualified as a small business. On October 6, it appealed the regional office decision. On October 11, the Air Force awarded the contract.

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Since there is no requirement that the agency continue to withhold the award after the initial SBA decision, Sterling has failed to state a valid basis for protest.

Sterling also complains that the agency failed to stay performance of the contract in the face of its protest to this Office as required by FAR § 33.104(c). That regulation requires an agency to suspend performance of a contract when it receives notice from this Office within 10 calendar days after award that a protest has been filed. However, that provision is clearly inapplicable here since the protest was filed 23 calendar days after award was made.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Associate General Counsel