



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** River City Railroad Contractors, Inc. and  
Railroad Constructors, Inc.

**File:** B-253644

**Date:** June 14, 1993

James J. Daloisio for the protester.

### DIGEST

Award of a contract while an appeal of a small business size status determination is pending is not improper, even where the contracting officer is notified of the appeal prior to award, since the regulations do not require award to be withheld during the appeal period.

### DECISION

River City Railroad Contractors, Inc. and Railroad Constructors, Inc., a joint venture (River City), protests any award of a contract to Metroplex Corporation under solicitation No. DTRS57-92-B-00040, issued by the Department of Transportation, for railroad rehabilitation and construction at the U.S. Army Garrison in Bayonne, New Jersey. The procurement is set aside for disadvantaged businesses under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. III 1991).

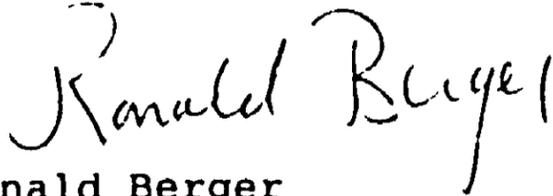
We dismiss the protest because on its face the protest does not state a valid basis for protest. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1993).

On May 18, in response to the joint venture's protest, the Small Business Administration (SBA) Regional Office determined that Metroplex was a small business concern. River City appealed this decision to the SBA's Office of Hearings and Appeals on May 26. River City contends that no contract should be awarded to Metroplex while the appeal is pending since the contracting officer has been notified of the appeal.

Under Federal Acquisition Regulation (FAR) § 19.302(h), when a size status protest has been filed, a contracting officer generally 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. Ultra Technology Corp., B-230309.6, Jan. 18, 1989, 89-1 CPD ¶ 42; Suddath Moving Sys., Inc., B-229992, Apr. 1, 1988, 88-1 CPD ¶ 332.

The protest is dismissed.



Ronald Berger  
Associate General Counsel