

DECISION



177444
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-202665

DATE: April 14, 1981

MATTER OF: Dauphine Corporation

DIGEST:

[Protest Against Award of Small Business Set-Aside Contract]

Since General Accounting Office has no authority to order withholding of award pending determination of bidder's small business status by Small Business Administration, protest requesting such relief is dismissed.

Dauphine Corporation (Dauphine) [protests an award of a contract] under solicitation No. DLA100-B-81-0499, issued by the Defense Personnel Support Center (DPSC) [to any firm other than Dauphine.]

[Dauphine states that it is a small business concern and low bidder on this 100-percent small business set-aside. However, Dauphine has been notified by DPSC that Dauphine cannot be awarded the contract since the district office of the Small Business Administration (SBA) has determined it is not a small business concern. Dauphine indicates that it timely appealed the district office SBA decision to the SBA Size Appeals Board on March 20, 1981, and expects a decision within 2 weeks.] Dauphine [requests that we prohibit any award under the solicitation until the Size Appeals Board renders a decision and that in the event Dauphine is determined a small business, it be awarded the contract.]

Regarding Dauphine's request that this Office prohibit the award until final determination by the SBA, [we have no authority to order the withholding of an award.] See Kleen-Rite Corporation, B-184917, October 21, 1975, 75-2 CPD 249.

However, under Defense Acquisition Regulation § 1-703 (b)(3)(iv) (DAC76-19, July 1979), [where the contracting officer is notified of a size status appeal

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prior to award, the contracting officer is required to suspend procurement action until receipt of the SBA Size Appeals Board determination of the size status or expiration of a 30-day period from the date the protest was filed initially with the SBA district office unless he determines in writing that this is an urgent acquisition action which requires that award be made without delay to protect the public interest.

Accordingly, Dauphine's request to withhold the award is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel