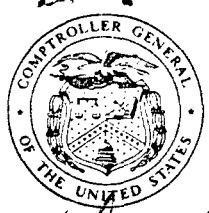


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DECISION

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

[Request for Withdrawal of Contract Termination Recommendation]

FILE: B-200260.3

DATE: April 15, 1981

MATTER OF: Mil-Tec Systems Corp.; ACR
Electronics, Inc. - Reconsideration *DLG06048*
DLG06049

DIGEST:

Awardee's filing of request for reconsideration with SBA Size Appeals Board provides no basis to withdraw recommendation that improperly awarded contract be terminated since for purposes of determining propriety of award, reliance on Size Appeals Board's initial determination is appropriate.

Quadratic Electronics, Inc., requests reconsideration of our decision Mil-Tec Systems Corp.; ACR Electronics, Inc., B-200260; B-200260.2, February 9, 1981, 81-1 CPD _____. In that decision, we recommended termination of a contract awarded to Quadratic since the Air Force did not provide the pre-award notice to other offerors required by Defense Acquisition Regulation (DAR) § 1-703(b)(1) (1976 ed.), and the Small Business Administration (SBA) subsequently found Quadratic not to be small pursuant to a timely size status protest filed by ACR Electronics, Inc.

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Quadratic argues that it is and always has been a small business and states that it has filed a request for reconsideration with the SBA Size Appeals Board. Therefore, Quadratic contends our February 9, 1981 recommendation for contract termination should be withdrawn.

We do not view Quadratic's filing of a request for reconsideration with the SBA Size Appeals Board as providing any basis on which to withdraw our recommendation. While it is possible that the Size Appeals Board might reverse its prior position on reconsideration, we believe that for the purposes of determining the propriety of a contract award, reliance upon the initial Size Appeals Board determination is appropriate.

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In this regard, we note that in the case of an appeal the applicable regulations (DAR § 1-703(b)(3)) provide only for withholding contract award for 30 working days from the time the protest is initially filed with the SBA District Office. If no decision on the appeal has been rendered at the end of this period, the contract may be awarded on the basis of the SBA District Director's size determination. S&G Services, Inc., B-195980, April 15, 1980, 80-1 CPD 268. There is no provision for withholding award for any length of time pending a request for reconsideration.

Thus, the applicable regulations establish a point at which the contracting officer may regard the SBA's decision as final for purposes of determining the propriety of an award under the pending procurement. As we have emphasized with respect to our own Bid Protest Procedures, the resolution of protests stemming from the award or proposed award of Government contracts requires the balancing of conflicting considerations: the need for the Government procurement process to proceed in an orderly and expeditious manner, and the need to afford protesters and interested parties a fair opportunity to present their cases. Bird-Johnson Company - Request for Reconsideration, B-199445.3, October 14, 1980, 80-2 CPD 275. To that end, we recognize the need for the resolution of such protests in an expeditious manner and at a point at which corrective action, if necessary, is most practicable and thus least burdensome on the conduct of the procurement. Id.

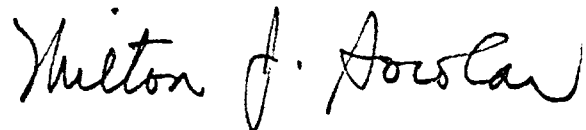
In this case, the Air Force failed to notify the unsuccessful offerors of the apparent successful offeror's identity prior to award, as required by DAR § 1-703(b)(a). This omission prevented the filing of a size status protest prior to award, the time at which corrective action would have been most practicable, and for which the regulations established a procedure for determining the propriety of award in the face of such a protest. See DAR § 1-703(b)(3).

Had the applicable regulations been followed, award would have been made either on the basis of the District Director's size status determination or the Size Appeals Board's initial decision, depending on the circumstances of the case. Id. The filing of a request for reconsideration with the Size Appeals Board would have had no bearing on the propriety of award. We see no reason why the result should be any different

where the established procedures have been circumvented by the agency's failure to provide the pre-award notice on which the procedures are predicated. Nor do we think it appropriate to allow an individual, by the simple expedient of filing a request for reconsideration with the Size Appeals Board, to delay the recommended termination of a contract beyond the point at which, based on the extent of contract performance, such termination remains a practicable remedy. See Dyneteria, Inc., B-178701, February 22, 1974, 74-1

CPD 89.

Our decision of February 9, 1981, is affirmed.



Acting Comptroller General
of the United States