

DECISION

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

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FILE: B-210136

DATE: December 20, 1982

MATTER OF: Baird Corporation

DIGEST:

Protest that contracting officer's refusal to defer bid opening and willingness to make award prior to a decision by the Small Business Administration's Size Appeals Board on a challenge to the product classification used in a solicitation is without merit since decision to open bids is a discretionary one and regulation provides that once bids have been opened, subsequent decision by Appeals Board is to have prospective effect only.

Baird Corporation protests any award to another bidder under invitation for bids No. DAAB-07-83-B-E004 issued by the U.S. Army Communications-Electronics Command as a small business set-aside.

Baird states that it is the low responsive, responsible bidder but that the contracting officer "intends to disqualify us * * * on the basis that Baird is not a small business." Baird asserts that an incorrect product classification was assigned to this procurement, that the applicability of the standard has been appealed to the Small Business Administration's Size Appeals Board, and that the contracting officer is abusing his discretion by refusing to defer bid opening or award until the Board rules. Apparently, Baird believes it would be viewed as a small business under a different product classification.

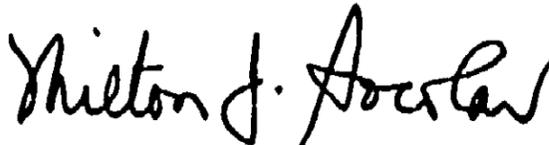
We find no merit to the protest. The applicable regulations do not require deferral of bid opening or the withholding of award pending a Size Appeals Board decision in this type of case. Rather, the regulatory provision merely provides that a contracting officer, if notified of

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the appeal prior to bid opening, "may" extend the opening date. Defense Acquisition Regulation § 1-703(c)(3). That provision further provides that if the Appeals Board ruling is received after bid opening, the decision will not apply to the current procurement but will have prospective effect only.

The protester indicates that bid opening occurred on December 8, 1982. It is not apparent to us how the contracting officer might have acted improperly by not extending the bid opening date, in light of the very discretionary nature of such a decision, and since bid opening has taken place, even a favorable ruling of the Size Appeals Board would be of no avail to the protester in this procurement. Logistical Support, Inc., B-205538, March 10, 1982, 82-1 CPD 227.

Under the circumstances, we see no legal basis for sustaining the protest, which is hereby summarily denied.

for 
Comptroller General
of the United States