

**DECISION**

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

**FILE:** B-210001**DATE:** May 31, 1983**MATTER OF:** Deepwater Construction Co.**DIGEST:**

Protest that the contracting agency afforded insufficient time for a pre-award size status protest is dismissed since post-award protest was referred to the Small Business Administration which subsequently ruled in favor of the company against whom protest was made.

Deepwater Construction Co. protests the award of a contract to Delta Support Services, Inc. by the Department of the Army under request for proposals No. DACW38-82-R-0020, (a small business set-aside.) Deepwater contends that because of improper actions by the contracting officer and his representatives, Deepwater was unable to file a size status protest before award. We dismiss the protest.

Proposals for the operation and maintenance of the Yazoo Headwater Project were received on August 10, 1982. Negotiations then were conducted, and best and final offers were submitted on November 1. Deepwater, after discovering that the contract was going to be awarded to Delta, orally protested Delta's size status to the Army on November 8, which was the same date the award was made. According to the contracting officer, the oral protest was made shortly after the award, and he therefore referred the matter to the Small Business Administration (SBA) for consideration in connection only with (future procurement actions) pursuant to Defense Acquisition Regulation § 1-703(b)(1)(c) (1976 ed.).

Deepwater complains that it was led to believe when it orally protested that the contract had not yet been awarded. Deepwater suggests that if award indeed had been made before the firm protested, the award was rushed to avoid a pre-award size status protest, which generally would require withholding award for the SBA's decision. See DAR § 1-703(b)(3)(iv).

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We need not consider the merits of Deepwater's complaint about the timing of the award in relation to its size status protest and the consequences that flow from that timing. The reason is that the SBA in fact examined all of Deepwater's allegations and concluded that Delta was a small business concern for this procurement. In this respect, because the SBA is empowered under 15 U.S.C. § 637 (b)(6) (1976) to make conclusive determinations about the size status of small businesses, our Office will not question the SBA's actions unless there is a prima facie showing of fraud or bad faith on the part of the SBA, which is not the case here. Covan World-Wide Moving, Inc.; Coleman American Moving Services, Inc., B-210740.2, B-201923, February 22, 1982, 82-1 CPD 149.

Thus, Delta, having been found a small business by the SBA, was entitled to the award notwithstanding Deepwater's complaint. The protest therefore is dismissed.

*Jr* *J. H. Barclay Jr.*  
Harry R. Van Cleve  
Acting General Counsel