



Comptroller General
of the United States

Washington, D.C. 20548

PR

91-1 CPD 210

Decision

Matter of: Stewart Associates, Inc.

File: B-242836

Date: February 25, 1991

Elizabeth Dusaniwskyj, Esq., Giordano, Halleran & Ciesla, for the protester.
Pamela J. Mazza, Esq., Piliero, Tobin & Mazza, for Technical and Management Services Corporation, an interested party.
Jacqueline Maeder, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award made pending an appeal of an initial adverse determination concerning small business status was proper even though the contracting officer was notified of the appeal prior to making the award.

DECISION

Stewart Associates, Inc. protests the award of a contract to Technical and Management Services Corporation (TAMSCO) under request for proposals (RFP) No. DAAB07-90-R-B802, issued by the U.S. Army Communications-Electronic Command in Fort Monmouth, New Jersey, for integrated logistics support. The procurement was a total small business set aside.

We dismiss the protest without requiring the submission of an agency report because on its face the protest does not state a valid basis for protest. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1990).

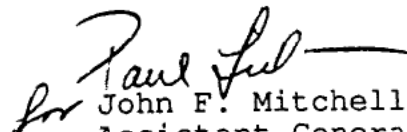
After the agency notified offerors on October 24, 1990, that TAMSCO was the apparent successful offeror, Stewart and three other offerors separately protested TAMSCO's small business size status to the Small Business Administration (SBA). On December 3, the SBA Regional Office determined that TAMSCO was a small business concern. Stewart and a second offeror appealed this decision to the SBA's Office of Hearings and Appeals on December 12. Stewart sent a copy of its appeal to the contracting officer. On January 18, the agency awarded the contract to TAMSCO. Stewart then filed a protest with our Office.

Stewart contends that the Army should not have awarded the contract to TAMSCO while Stewart was appealing a decision by the SBA Regional Office that TAMSCO was a small business concern for purposes of this solicitation. Stewart argues that the size determination made by the SBA Regional Office is not final since that determination was appealed to the SBA's Office of Hearings and Appeals and the contracting officer was notified of the appeal before award, as required by Federal Acquisition Regulation (FAR) § 19.302(g)(2). Stewart also argues that the agency never determined in writing that an award must be made to protect the public interest as required by FAR § 19.302(h).

We previously have considered, and denied, the argument made by Stewart. Under FAR § 19.302(h) when a size status protest has been filed, a contracting officer 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. FAR § 19.302(i). Suddath Moving Sys., Inc., B-229992, Apr. 1, 1988, 88-1 CPD ¶ 332. Thus, even if the contracting officer knew of the appeal when he made the award, the award is valid.

Although to make an award before the initial 10 days expire the contracting officer must make a written finding that the award is necessary to protect the public interest, FAR § 19.302(h)(1) there is no such requirement for justifying an award during the appeal period. Suddath Moving Sys., Inc., B-229992, supra. Therefore, Stewart's contention that the contracting officer's determination did not satisfy this standard is irrelevant. Since there is no requirement that the agency continue to withhold the award after the initial SBA determination, Stewart has failed to state a valid basis for protest.

Accordingly, the protest is dismissed.


 John F. Mitchell
 Assistant General Counsel