



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** Tri-Services, Inc.  
**File:** B-233185  
**Date:** November 17, 1988

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### **DIGEST**

Protest of failure to timely notify unsuccessful offeror of Small Business Administration size determination on its size protest of awardee is dismissed since the contracting officer did not make award until the ruling by the SBA and, therefore, the protester was not prejudiced by the procedural deficiency.

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### **DECISION**

Tri-Services, Inc., protests the award of a contract to Access Flight Services under request for proposals (RFP) No. F04626-88-R0027, a small business set-aside issued by the Department of the Air Force for air transportation services. Tri-Services contends that the contracting officer did not comply with the procedures regarding Tri-Services' size protest of the awardee prior to making award.

We dismiss the protest under section 21.3(m) of our Bid Protest Regulations since it is clear the protest is without legal merit.

Tri-Services filed a timely written size status protest with the contracting officer. The contracting officer forwarded Tri-Services' size protest to the Small Business Administration's Regional Office (SBA) which determined, on September 22, 1988, that Access was an eligible small business concern. This determination was made in response to an earlier size protest filed by Travis Aircraft Services, another offeror under the solicitation. Both Travis's and Tri-Services' protests were based on the alleged affiliation of Access with another firm.

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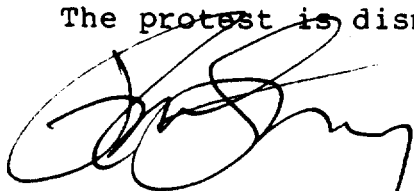
Following notification from the SBA, the contracting officer made award to Access on October 3, and subsequently notified Tri-Services of the award. However, the SBA failed to notify the protester of its determination of Access's size status before the contract award.

Tri-Services' protest with our Office charges that the contracting officer failed to comply with the Federal Acquisition Regulation (FAR) requirement that under a small business set-aside a contracting officer shall not award a contract after a timely size protest until SBA has made a size determination, or 10 days after SBA's receipt of the protest, whichever is earlier. FAR § 19.302(h)(1) (FAC 84-12). Tri-Services complains that while the firm's protest for determination of size was pending, the contracting officer made the contract award to Access.

Since it is apparent from the record that the Air Force waited until the SBA had determined Access's size status before awarding the contract, there is no legal basis on which to object to the award. While the SBA concedes that its notification of size determination was delayed, we will not sustain protests involving procedural deficiencies in connection with a size status protest where SBA previously determined that the certifying firm is small for the purposes of a particular procurement. See A.S.K. Assocs., B-228367, Nov. 30, 1987, 87-2 CPD ¶ 539.

While the protester contends that it lost the ability to appeal the SBA regional office's decision to SBA's Office of Hearings and Appeals before an award was made, there is no requirement that a contracting agency withhold award until SBA renders a decision on an appeal from an SBA regional office size determination. See Dakota Tribal Industries, Inc., B-227939, Oct. 5, 1987, 87-2 CPD ¶ 334. Therefore, Tri-Services, which has now filed an appeal to SBA, was not prejudiced by the delayed notice from SBA.

The protest is dismissed.



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