

Becker



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Braswell Services Group, Inc.  
**File:** B-259844.2  
**Date:** July 27, 1995

## DECISION

Braswell Services Group, Inc. protests the award of a contract to Detyens Shipyards, Inc. by the Department of Commerce, National Oceanic and Atmospheric Administration under solicitation No. 52-SPNA-4-00005, a small business set-aside.

We dismiss the protest.

The contract at issue was originally awarded in May of 1995 to Bender Shipbuilding and Repair Co., Inc., as the low-priced, responsive, responsible offeror. Detyens Shipyards, Inc. and Braswell were the second and third low offerors, respectively. On June 20, the agency terminated the award to Bender for failure to provide acceptable performance and payment bonds in accordance with the requirements of the contract. On June 22, the agency awarded the contract to the second-low offeror, Detyens Shipyards. The instant protest was filed on June 23, alleging that the agency improperly awarded the contract to Detyens Shipyards, which is other than a small business, and that the agency failed to provide pre-award notice of the selection, see Federal Acquisition Regulation § 15.1001(b)(2), which precluded Braswell from timely challenging Detyens Shipyards's size to the Small Business Administration (SBA).

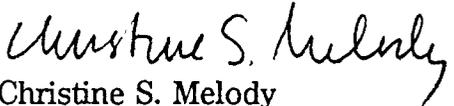
The Small Business Act, 15 U.S.C. § 637(b)(6) (1988), gives the SBA, not our Office, the conclusive authority to determine matters of small business size status for federal procurements. 4 C.F.R. § 21.3(m)(2); Survive Eng'g Co., B-235958, July 20, 1989, 89-2 CPD ¶ 71. Thus, we will not review a protester's challenge to another company's size status, nor will we review a decision by the SBA that a company is, or is not, a small business for purposes of conducting federal procurements. Survive Eng'g Co., *supra*; Antenna Prods. Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297. Further, although the agency did not timely provide Braswell with notice of

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award, Braswell was not prejudiced by the agency's error. In fact, on June 23, SBA received Braswell's protest and regarded it as timely filed under the circumstances. SBA then determined, on July 7, that Detyens Shipyards is a small business under this procurement. Where, as here, an agency fails to give the required notice, but the SBA ultimately decides the protester's challenge to the awardee's size status, the protester is not prejudiced by the lack of pre-award notice. Phillips National, Inc., B-253875, Nov. 1, 1993, 93-1 CPD ¶ 252.

Braswell further contends that since offers had expired, award to Detyens Shipyards becomes in effect a sole-source procurement. However, we have held that an offeror may extend its acceptance period, and thus revive its expired proposal, if doing so would not compromise the integrity of the competitive bidding system. Sublette Electric, Inc., B-232586, Nov. 30, 1988, 88-2 CPD ¶ 540. Where, as here, the next low offeror originally provided that its proposal would be open for the minimum acceptance period required by the solicitation, and subsequently extends the acceptance period when requested to do so after the period has lapsed, the integrity of the bidding system is not compromised. Rentfrow, Inc., B-243215, July 5, 1991, 91-2 CPD ¶ 25.

Accordingly, the protest is dismissed.

  
Christine S. Melody  
Acting Associate General Counsel