

DECISION

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

FILE: B-181511

DATE: July 15, 1974

40936
95254

MATTER OF: National Electrical Contractors Association

DIGEST: Question concerning average annual receipts requirement for concern to be considered small business is not for consideration by GAO, since conclusive authority over such questions is vested by statute in SBA which has promulgated regulations having force and effect of law to resolve such matters.

The Puget Sound Chapter, National Electrical Contractors Association questions the applicability of the March 18, 1974, modification of 13 CFR 121.3-8 to the instant procurement, NAVFAC specification #13-74-3738. The modification to 13 CFR 121.3-8 reduces the limit on total annual receipts of a specialty contractor to a maximum of \$2,000,000 if it is to be classified as small business.

Pursuant to 15 U.S.C. 637(b)(6), the Small Business Administration (SBA) is empowered to determine a business concern's size status for procurement purposes. Offices of the Government having procurement powers must accept as conclusive SBA's determination as to which concerns are to be designated small business. In discharge of this responsibility, SBA has promulgated regulations, which have the force and effect of law (Otis Steel Products Corps. v. United States, 161 Ct. Cl. 694 (1963)), found at part 121 of chapter I of CFR title 13.

Section 121.3-8, "Definition of small business for Government procurement," states in part that,

"* * * The determination of the appropriate classification of a product or service shall be made by the contracting officer. Both classification and the applicable size standard (number of employees, average annual receipts, etc.) shall be set forth in the solicitation and such determination of the contracting officer shall be final unless appealed in the manner provided in section 121.3-6.* * *"

Section 121.3-6(a) provides that the Size Appeals Board shall review appeals from determinations made pursuant to section 121.3-8 and shall make final decisions as to whether such determinations should be affirmed, reversed, or modified. Section 121.3-6(b)(1)(iii) provides that an appeal may be filed with the Size Appeals Board by any concern or interested party which has been adversely affected by a decision of a contracting officer regarding classification. The time for filing an appeal is set forth in section 121.3-6(b)(3)(ii). An opportunity for reconsideration by the Size Appeals Board is provided in section 121.3-6(g)(5) which states that the decision of the Size Appeals Board shall constitute the final administrative remedy of SBA. Armed Services Procurement Regulation (ASPR) 1-703(c)(1) and (2) repeat the provisions of 13 CFR 121.3-8 and 121.3-6(b)(3)(ii), respectively, recited above. When viewed in conjunction with 15 U.S.C. 637(b)(6) and ASPR, the SBA regulations clearly establish it as the sole adjudicator of the size standard issue in question. See 53 Comp. Gen. _____ (B-178701, December 28, 1973); B-181371, June 25, 1974.

Therefore, the issues presented are not for consideration by the General Accounting Office.


Deputy Comptroller General
of the United States