

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

61075

FILE: B-186503; B-186577

DATE: July 2, 1976

MATTER OF: Handi-John; Mobil Johnny of Albany, Inc.

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**DIGEST:**

1. Protests concerning small business size status of bidders are not for consideration by GAO since conclusive authority over question of bidder's size status is vested by statute in SBA.
2. GAO is aware of no regulation which precludes agencies from proceeding with procurement actions under awarded Federal Supply Schedule contract to firms whose size status has been protested to SBA. GAO is not empowered to effectively enjoin agency actions since exercise of equitable jurisdiction by GAO is not authorized by statute.

The protest of Handi-John was filed in connection with the multiple award of Federal Supply Schedule contract No. GS-04S-21543 by the General Services Administration (GSA). The subject contract was awarded pursuant to a small business set-aside. The protester states that on May 10, 1976, it received a listing from GSA which indicated that Brown and Mixon, Inc., Augusta-My-Tanik and Sani-Serva System, Inc., are classified as small business concerns and are participating in the procurement actions in the prohibited areas. The protester points out that in our decision Handi-John Portable Chemical Toilet Company, B-184144, December 8, 1975, 75-2 CPD 373, involving another invitation for bids for portable toilets, we noted that on August 28, 1975, the Small Business Administration (SBA) Size Appeals Board determined that Sani-Serva System, Inc., was affiliated with the Phil Carter System and Revel Craft, Inc., and that, as a result of the combined receipts, exceeded the \$1 million size standard then in effect. Handi-John has requested that GAO direct that supplies for the items in question not be procured from the above-listed firms until such time as proper inquiry can be made into their appropriate size classification.

We have been advised by GSA that since the date of the issuance of the SBA Size Appeals Board decision referred to above, the size standard in question has been raised to \$2 million, and that in accordance with that size standard the firms in question have certified themselves to be small business.

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We have also received a protest from Mobil Johnny of Albany, Inc., protesting an award by GSA under Federal Supply Schedule contract No. GS-04S-21513 on the basis that the awardee, Poly-Jon of Savannah, Inc., and its affiliates exceeded the small business size standard for this small business set-aside procurement. The protester also notes that a protest has been filed with SBA and is presently there pending on the question of Poly-Jon's size status. Mobil Johnny requests that "\* \* \* all action to begin performance on the item in question be held in abeyance, pending resolution of size determination by the SBA."

As indicated in La Crosse Garment Manufacturing Company, B-185462, December 17, 1975, 75-2 CPD 399, protests concerning the small business size status of bidders are not for consideration by the General Accounting Office since conclusive authority over the question of a bidder's size status is vested by statute in SBA. That is--

"Pursuant to 15 U.S.C. § 637 (b)(6) (1970), 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 any determination reached by SBA as to which concerns are to be designated as small business. Therefore, the SBA is the sole adjudicator of the size standard issue in question. See 52 Comp. Gen. 434, 435 (1973); National Electrical Contractors Association, B-181511, July 15, 1974, 74-2 CPD 29; and T&D Transfer and Storage; International Movers, Inc., B-182548, November 20, 1974, 74-2 CPD 274."

Therefore, the question of the size status of the firms noted above is not subject to GAO scrutiny. Moreover, we are aware of no regulation which precludes agencies from proceeding with procurement actions under awarded Federal Supply Schedule contracts to the above-noted firms during pendency of any size protest properly lodged with SBA. Furthermore, GAO is not empowered to effectively enjoin agency actions since to do so would constitute an exercise of equitable jurisdiction and such jurisdiction can be exercised only where it is specifically

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granted by statute (The R. H. Pines Corporation, 54 Comp. Gen. 527 (1974), 74-2 CPD 385; 46 Comp. Gen. 874 (1967)) and there is no such authority for our Office to issue the relief sought.

In view of the foregoing, the matters raised both by Handi-John and Mobil Johnny are hereby dismissed. We do note, however, that by letters dated May 17 and 24, 1976, GSA has requested that SBA determine the size of Brown and Mixon, Augusta-My-Tanik and Poly-Jon.

  
Paul G. Dembling  
General Counsel