

DECISION



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

19LGD1664

10,309

FILE: B-194806

DATE: May 29, 1979

MATTER OF: Winfield Manufacturing Co., Inc.

DIGEST:

[Protest concerning small business size status] is by law matter for decision by SBA and not for consideration by GAO.

Winfield Manufacturing Co., Inc. (Winfield), protests the award of a contract by the Defense Logistics Agency to any other bidder under invitation for bids (IFB) No. DLA100-79-B-0261. The subject procurement is a partial small business set aside.

Winfield contends that it is the low responsive and responsible bidder on the procurement. Winfield states that it had been awarded the unrestricted portion of the contract and argues that since Winfield was a legitimate small business as of the date of bid opening, it is entitled to the set-aside portion of the IFB. Winfield has notified our Office that the Small Business Administration (SBA) has determined its firm to be other than small business.

Under 15 U.S.C. § 637(b) (1976), the SBA is empowered to conclusively determine matters of small business size status for Federal procurement and sales purposes and its determination is not subject to GAO review. Cardan Company, B-193839, January 31, 1979, 79-1 CPD 76; Mann's Construction Co., B-191462(2), March 29, 1978, 78-1 CPD 245. We note that Winfield has filed an appeal with the SBA Size Appeals Board, which decisions are final. Moorehead Electric Co., Inc., B-192075, August 9, 1978, 78-2 CPD 109.

Therefore, the protest is dismissed.

Milton J. Socolar

Milton J. Socolar
General Counsel

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