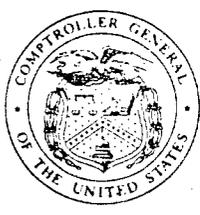


DECISION



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

FILE: B-195932

DATE: October 1, 1979

MATTER OF: Collins and Company General Contractors, Inc.

[Protest of SBA Size Status Determination]

DIGEST:

- 1. When material issues involved are before court of competent jurisdiction, GAO policy is not to decide protests unless court expects, requests, or otherwise expresses interest in our opinion.
- 2. SBA conclusively determines matters of small business size status for Federal procurement purposes.

Collins and Company General Contractors, Inc. (Collins), the low bidder on a solicitation issued by the Southern Division, Naval Facilities Engineering Command (the Navy), protests award to any other bidder of a contract for construction of a fire station, administration building, and security facility at the nuclear submarine base on Kings Bay, St. Marys, Georgia.

According to the protest, 20 days after bid opening Griffin Construction Company (Griffin), the second-low bidder, protested to the Navy regarding Collins' size status. Griffin alleged that Collins was not qualified for award in a competition limited to small business concerns. The Navy referred the matter to the Atlanta Regional Office of the Small Business Administration (SBA), which on August 20, 1979, found that Collins was other than small for the procurement in question. Collins is appealing this decision.

In its submission to our Office, Collins argues that (1) it is a small business; (2) Griffin's challenge to its size status was untimely; and (3) the Navy must suspend action on the procurement until SBA acts on its appeal.

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DLG 2415

CNG-211

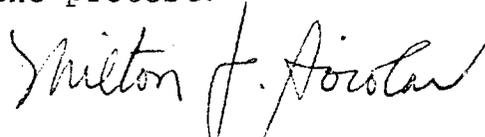
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Collins also has filed an action in the United States District Court for the Northern District of Georgia, Atlanta Division, to restrain the Navy from making award to Griffin or any other contractor until a final determination is made by SBA's Size Appeals Board or, in the alternative, to compel the Navy to award the contract to it. According to counsel for Collins, the court granted a preliminary injunction on August 31, 1979; Collins now is seeking a permanent injunction.

It is the policy of our Office not to decide protests where the material issues involved are before a court of competent jurisdiction unless the court expects, requests, or otherwise expresses an interest in receiving our opinion. Nartron Corporation and DC Electronics, Incorporated, 53 Comp. Gen. 730 (1974), 74-1 CPD 154; 4 C.F.R. 20.10 (1979). The court has not expressed an interest in our opinion on the issues raised by Collins in its protest.

Nevertheless, the issue raised by Collins regarding its size status would not be subject to our review, as 15 U.S.C. 637(b)(6)(1976) provides that the SBA will conclusively determine matters of small business size status. National Ambulance Service of Louisiana, Inc., B-193447, January 22, 1979, 79-1 CPD 40.

We therefore dismiss the protest.



Milton J. Socolar
General Counsel