

117575

208 Cohen

DECISION



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

FILE: B-206267

DATE: February 17, 1982

MATTER OF: Gulf Apparel Corp.

DIGEST:

1. The Small Business Administration is empowered to make conclusive determinations of small business size status.
2. GAO has no authority to order that an award under a small business set-aside be withheld pending the Small Business Administration's final determination of the proposed awardee's small business size status.

Gulf Apparel Corp. protests the proposed award of a contract to Gibraltar Industries, Inc., under solicitation DLA100-81-B-1463, a total small business set-aside issued by the Defense Logistics Agency (DLA). The protester contends that Gibraltar Industries is not a small business. Gulf Apparel also asserts that the Small Business Administration (SBA) Size Appeals Board is considering a size appeal concerning Gibraltar Industries in connection with another DLA solicitation. The protester suggests that it therefore is unnecessary for it to appeal Gibraltar Industries' size for purposes of the protested award, but instead requests that the award be withheld until the Size Appeals Board concludes its review in the other procurement.

We will not consider the protest.

Under 15 U.S.C. § 637(b) (Supp. III, 1979), the SBA is empowered to make conclusive determinations of small business size status for Federal procurement and sales purposes. Kelley Name Pin Co., Inc., B-204735, September 22, 1981, 81-2 CPD 242. Therefore, we do not consider small business size status protests.

Regarding Gulf Apparel's request that the award to Gibraltar Industries be withheld, our Office has no authority to prohibit a contract award pending the SBA's

final determination of a firm's size status. See Dauphine Corporation, B-202665, April 4, 1981, 81-1 CPD 284. In this respect, the procurement regulations do require a contracting officer to withhold an award for a prescribed time pending a Size Appeals Board ruling unless award is necessary to protect the public interest. Defense Acquisition Regulation (DAR) § 1-703(b)(3) (DAC 76-19, July 1979). The regulation only applies, however, if an initial size status protest for that procurement was timely filed with the contracting officer, or if the contracting officer independently asked the SBA to review the matter before awarding the contract. DAR § 1-703(b)(1) and (2).

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel