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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20543

2/156

FILE: B-206290; B-206361

DATE: March 16, 1982

MATTER OF: Omega Container, Inc.

DIGEST:

1. GAO will not consider allegation that certain bidders are not small businesses eligible for set-aside award since exclusive authority to decide matters concerning small business size status is vested in the Small Business Administration.
2. Allegation that firms are fraudulently certifying themselves as small businesses in order to qualify for set-aside awards is matter of criminal conduct for consideration by SBA and the Department of Justice, and thus will not be reviewed by GAO.

Omega Container, Inc. protests the award of any contract to Ajax Paper Tube company under invitation for bids (IFB) No. DAAA09-82-B-7207, or to American Paper Products under IFB No. DAAK10-82-B-0010. Both solicitations were issued as total small business set-asides by the Department of the Army. Omega contends that although Ajax and American are affiliates of United Ammunition Container, a large business, and have themselves been found to be other than small by the Small Business Administration (SBA), both have fraudently certified themselves as small businesses for not only these procurements but others in the past. Omega asks that Ajax and American, the apparent low bidders on these two procurements, be declared ineligible for award. We dismiss the protest.

In order to rule on Ajax's and American's eligibility for award, we would necessarily have to consider whether those firms were in fact small businesses under the size standard applicable to these procurements.

As we have stated in numerous prior decisions, our Office is neither equipped nor empowered to make such determinations. Rather, under 15 U.S.C. 637(b) (6) (1976), SBA has exclusive authority to determine matters of small business size status for procurement purposes. Therefore, we will not consider whether Ajax and American qualify for award as small businesses. Industrial Lease, Inc. of Fayetteville, B-204446, August 3, 1981, 81-2 CPD 191.

Our Office will review an award of a small business set-aside where it is alleged that award was made to a firm which the SBA determined to be other than a small business. Such is not the case here. No award has yet been made to Ajax or American, and the Army has advised us that it has asked the SBA to issue size status determinations on both firms. We have no reason to believe that the Army will not abide by SBA's determination in making the award.

To the extent that Omega alleges that United and its affiliates are engaging in fraudulent bidding practices, this matter should be taken up with the SBA and the Department of Justice. Gillette Industries, Inc., B-204232, August 13, 1981, 81-2 CPD 139.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel