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**DECISION**



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

**FILE:** B-220935 **DATE:** November 6, 1985  
**MATTER OF:** Space Systems Technology, Inc.

**DIGEST:**

1. GAO will not consider a protest of a bidder's small business size status because the Small Business Administration has conclusive authority to determine size status.
2. Protest that award to a firm that employs a former officer of the United States Army will result in a violation of the Ethics in Government Act of 1978 (18 U.S.C. § 207) and is improper provides no basis for objection by GAO in the absence of any evidence suggesting that the former officer exerted any improper influence on the award.

Space Systems Technology, Inc. (SST) protests the Department of the Army's proposed contract award to International Mobile Machines Institute, Inc. (IMM) under invitation for bids No. DABT60-85-R-0031. We dismiss the protest.

SST asserts that IMM is not qualified as a small business for purposes of this solicitation. SST also alleges that award of the contract to IMM will result in a violation of the Ethics in Government Act of 1978, 18 U.S.C. § 207 (1982), because a director of the company is a former Army officer.

The Small Business Administration (SBA) has conclusive authority to determine matters of small business size status for federal procurement purposes. 15 U.S.C. § 637(b)(6) (1982). Therefore, this Office does not consider size status protests. 4 C.F.R. § 21.3(f)(2) (1985). The Federal Acquisition Regulation requires a

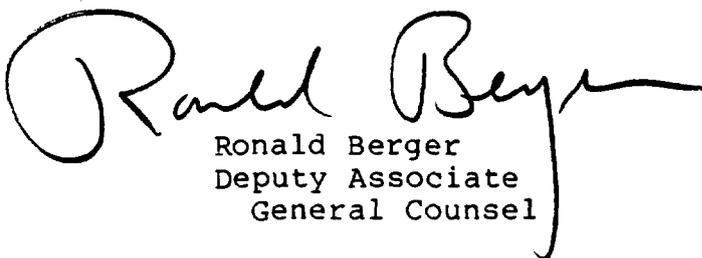
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protest of a bidder's small business size status to be filed with the contracting officer, who then forwards the matter to SBA for resolution. 48 C.F.R. § 19.302 (1984). Accordingly, we will not review this basis for protest.

We also dismiss SSI's allegation that award to IMM will result in a violation of 18 U.S.C. § 207, which forbids a person from representing others before the government in connection with matters in which the individual participated as a government employee. 18 U.S.C. § 207 is a criminal statute, whose interpretation and enforcement are primarily matters for the Department of Justice, not this Office. Wall Colmonoy Corp., B-217631, Jan. 8, 1985, 85-1 CPD ¶ 27. Our interest, within the confines of a protest, is to determine whether any action on the part of the former government employee resulted in prejudice for, or bias in behalf of, the proposed awardee. D. J. Findley, Inc., B-213310.2, Nov. 30, 1984, 84-2 CPD ¶ 588. The protester has submitted no evidence to suggest that the former Army officer who is now an IMM director exerted any improper influence on the award outcome here. Therefore, we find no basis for questioning anything here.<sup>1/</sup>

The protest is dismissed.



Ronald Berger  
Deputy Associate  
General Counsel

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<sup>1/</sup>The protester suggests that we should conduct an investigation into the allegations raised by its protest. This Office does not conduct investigations under its bid protest function for the purpose of establishing the validity of a protester's assertions. William A. Stiles, III--Reconsideration, B-215922.3, Feb. 19, 1985, 85-1 CPD ¶ 208.