



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Newgard Industries, Inc.--
Reconsideration
File: B-226272.2
Date: April 17, 1987

DIGEST

Since the Small Business Administration has conclusive statutory authority to determine small business status for federal procurement purposes, the General Accounting Office does not consider size status protests.

DECISION

Newgard Industries, Inc., protests our dismissal of its protest against the Small Business Administration's (SBA) decision to dismiss its size status protest against Oro Manufacturing Company, under invitation for bids No. DAAJ09-87-R-0281, issued by the United States Army Aviation Systems Command.

Newgard essentially contends that the SBA improperly determined that Oro was a small business because it allegedly erroneously interpreted the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.219-1 (1986), definition of a small business concern. The regulation defines a small business as "a concern including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards" in the solicitation. Newgard advises that the SBA has taken the position that the size standards alone automatically establish that a small business is not dominant in the field of operation in which it is bidding. Newgard, however, contends that the requirement for no dominance was an additional, separate and deliberate requirement inserted by Congress in anticipation of dominance by a rich small business concern capable and wishing to destroy its competitor. Newgard alleges that while Oro meets the solicitation's size standards, it is dominant in the contract field, which disqualifies it from being a small business suitable to compete for this contract.

038664

Under 15 U.S.C. § 637(b)(6) (1982), the SBA is empowered to conclusively determine matters of small business size status for federal procurement purposes. Therefore, this Office will neither make nor review size status determinations. See 4 C.F.R. § 21.3(f)(2) (1986); Junger Utility and Paving Co., B-223557, July 15, 1986, 86-2 C.P.D. ¶ 71. Although Newgard disputes the SBA's interpretation of the definition of a small business concern, it essentially is challenging the SBA's determination that Oro is a small business. Therefore, we will not consider this matter. It must avail itself of the appeal mechanism provided for in the regulations, as it indicates it has already done. See FAR, 48 C.F.R. § 19.302(i) (1986).

Finally, to the extent that Newgard is alleging that Oro is illegally dominating the market by engaging in monopolistic practices, we note that our Office does not consider allegations of anti-trust violations; any evidence of such violations properly is for consideration by the Department of Justice. See Independent Metal Strap Company, Inc., B-223894, Aug. 18, 1986, 86-2 C.P.D. ¶ 196.

Our dismissal of the prior protest is affirmed.

for Seymour Efron
Harry R. Van Cleve
General Counsel