

PLCG

109,366

DECISION



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

10,150

FILE: B-194671

DATE: May 11, 1979

MATTER OF: Stanley Vidmar

DIGEST:

1. Protest concerning small business size status is not for consideration by GAO since by law it is matter for decision by SBA.
2. Where protester contends that procurement should not have been set aside for small business, GAO will not review since determination is basically business judgment requiring broad discretion by contracting officer not subject to question in absence of fraud or bad faith.

Stanley Vidmar (Vidmar) protests the small business size status of Deluxe Lista Corporation of Holliston, Massachusetts (Deluxe), under solicitation No. N00189-79-R-0227, a total small business set-aside, issued by the United States Naval Supply Center, Norfolk, Virginia. Vidmar contends that Deluxe should be disqualified as a small business concern because it is the American division of Lista International Company of Erlen, Switzerland, a large business with manufacturing and distributing facilities worldwide.

Under 15 U.S.C. § 637(b) (1976), the Small Business Administration is empowered to conclusively determine matters of small business size status for Federal procurement and sales purposes and it is not subject to GAO review. Cardan Company, B-193839, January 31, 1979, 79-1 CPD 76; Mann's Construction Co., B-191462(2), March 29, 1978, 78-1 CPD 245.

Vidmar also contends that the procurement should be reclassified from a total small business set-aside to unrestricted to insure that the Government gets a "fair and reasonable price" for the items being procured.

We have held that a contracting agency's determination that under a small business set-aside adequate competition may reasonably be anticipated so that awards will be made at reasonable prices is basically a business judgment requiring the exercise of broad discretion by the contracting officer. Generally, the exercise of that discretion is not subject to question in the absence of fraud or bad faith. In the present case, neither fraud nor bad faith has been shown. Triple "A" South, B-193765, March 23, 1979.

Therefore, the protest is dismissed.

A handwritten signature in cursive script, reading "Milton J. Socolar".

Milton J. Socolar
General Counsel