

**DECISION**



*10, 924* *PLCA*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-195405

**DATE:** August 1, 1979

**MATTER OF:** Pacific Diving Industries, Inc.

**DIGEST:**

[Protest against small business size standard classification] in solicitation is not for consideration by GAO since SBA Size Appeals Board is clearly established as sole adjudicator of size standard issues.

*DW 02447*  
*AGC 00175*

Pacific Diving Industries, Inc. (Pacific), protests the small business size standard classification in solicitation No. N00024-79-R-4321(Q), issued by the Naval Sea Systems Command. The procurement is to clean a ship's hull of all forms of marine growth.

The size standard for the procurement is "The average annual receipts of the concern and its affiliates for the preceding three fiscal years not in excess of \$9,000,000." Pacific contends that the size standard should be \$2,000,000.

Pursuant to 15 U.S.C. § 637(b)(6) (1976) the Small Business Administration (SBA) has been granted conclusive authority to determine a small business concern's size status for procurement purposes. In view of this responsibility, SBA has promulgated regulations having the force and effect of law. 13 C.F.R. part 121 (1979).

Section 121.3-8, "Definition of small business for Government procurement," states in part:

*006043*

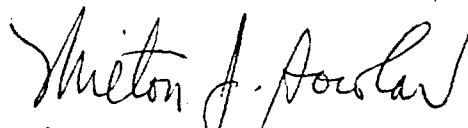
"\* \* \* The determination of the appropriate classification of a product or service shall be made by the contracting officer. Both classification and the applicable size standard \* \* \* shall be set forth in the solicitation and such determination of the contracting officer shall be final unless appealed in the manner provided in § 121.3-6.  
\* \* \*"

Pursuant to section 121.3-6(a) the Size Appeals Board has the authority to review appeals from determinations made under § 121.3-8 and shall make final decisions as to whether such determination should be affirmed, reversed, or modified.

Section 121.3-6(b)(1)(iii) provides that an appeal may be filed with the SBA Size Appeals Board by any concern or interested party which has been adversely affected by a decision of a contracting officer regarding classification. The time for filing an appeal is set forth in section 121.3-6(b)(3)(ii).

The opportunity for reconsideration is provided for in section 121.3-6(g)(5) which states that the Size Appeals Board decision shall constitute the final administrative remedy of SBA. The provisions of 13 C.F.R. §§ 121.3-8 and 121.3-6(b)(3)(ii) are repeated in Defense Acquisition Regulation § 1-703(c)(1) and (2) (1976 ed.). When the SBA regulations are viewed in conjunction with 15 U.S.C. § 637(b)(6) and DAR, they clearly establish the Size Appeals Board as the sole adjudicator of size standard issues. See Dynamic International, Inc., B-185337, January 5, 1976, 76-1 CPD 11.

Therefore, the protest is dismissed.



Milton J. Socolar  
General Counsel