

DECISION



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

FILE: B-207136

DATE: August 26, 1982

MATTER OF: International Limousine Service, Inc.

DIGEST:

1. The Small Business Administration has exclusive authority to decide matters regarding small business size standards and status.
2. A contracting officer's designation of the size standard applicable to a small business set-aside is final unless appealed to the Small Business Administration Size Appeals Board. Where the Board dismisses such an appeal as untimely filed, GAO has no basis upon which to question award based on the size standard set forth in the solicitation.

International Limousine Service, Inc. protests the award of a contract to Beltway Limousine Service, Inc. under Nuclear Regulatory Commission (NRC) solicitation No. RS-ADM-82-378. The contract is for shuttle bus service between several NRC office locations. International protests that the NRC utilized an improper small business size standard in soliciting bids, and that Beltway did not even meet the small business size standard set forth in the solicitation, which limited a concern's average annual receipts for the preceding three fiscal years to \$2 million. We dismiss the protest.

International initially filed a challenge to Beltway's size status with the NRC, and the contracting officer forwarded the matter to the Small Business Administration (SBA) for consideration. The SBA's Philadelphia regional office determined that Beltway met the \$2 million size standard. It also observed that the proper size standard should have been that which limited a concern's number of employees to 500 persons. Since no firm had appealed the size standard in a timely

fashion, however, the regional office noted that the size standard of \$2 million would govern for the purpose of NRC's procurement.

Based on the regional office decision, International now contends that the NRC's use of an improper size standard in the solicitation renders the award improper. International further contends that Beltway did not meet the solicitation's size standard in any case. International requests that we recommend that the NRC terminate the contract with Beltway and readvertise its requirement utilizing the proper size standard. Alternatively, International suggests that NRC not exercise the renewal options in Beltway's contract.

We have no legal basis to object to award based on the \$2 million size standard. Under 15 U.S.C. § 637(b)-(6)(1976), the SBA has exclusive authority to determine matters of small business size standards and small business size status for Federal procurement purposes. Man-Tech International Corporation, B-205859, January 25, 1982, 82-1 CPD 53. The determination of the appropriate small business size standard for inclusion in a solicitation is for the contracting officer with right of appeal by a disaffected party to the SBA Size Appeals Board. 13 C.F.R. § 121.3-8 and § 121.3-6 (1982). International filed an appeal with the Board two months after bid opening. The Board summarily dismissed the appeal as untimely filed. Under the circumstances, the contracting officer's designation of the \$2 million size standard is final. 13 C.F.R. § 121.3-8. Similarly, the SBA's decision that Beltway met the \$2 million standard is conclusive in view of the agency's authority under 15 U.S.C. § 637(b)(6).

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel