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DECISION



25274 Moarhouse

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

FILE: B-210314.4

DATE: June 1, 1983

MATTER OF: Four Star Maintenance Corporation--Second
Reconsideration Request

DIGEST:

Small Business Administration has conclusive authority to determine small business size status for Federal procurement purposes.

Four Star Maintenance Corporation requests, for the second time, reconsideration of our decision in Consolidated Marketing Network, Inc.; Four Star Maintenance Corporation, B-210314; B-210314.2, February 7, 1983, 83-1 CPD 134, in which we dismissed Four Star's protest against the proposed award of a contract for base housing repair and maintenance services at Beale Air Force Base, California, under invitation for bids No. F04666-82-B-0039. We affirmed the decision on March 9, 1983 in response to Four Star's first request. Four Star Maintenance Corporation--Reconsideration, B-210314.3, March 9, 1983, 83-1 CPD 240. We again affirm our February decision.

The basis for Four Star's original protest and subsequent request for reconsideration was the allegation that the low bidder and ultimate awardee, Alliance Properties, Inc., did not meet the small business size standard contained in the solicitation. We noted in both decisions that the Small Business Administration (SBA) has conclusive authority to determine a concern's small business size status for procurement purposes. 15 U.S.C. § 637 (b)(6) (1976). Further, we stressed that if Four Star had wished to challenge the size status of the eventual awardee, it should have protested to the contracting officer within 5 days after bid opening, in accordance with SBA regulations at 13 C.F.R. § 121.3-5(a) (1982). In the event of a timely protest, the contracting officer would have referred the matter to the SBA Regional Director, whose decision, if adverse, could have been appealed to the SBA Size Appeals Board within 5 days under 13 C.F.R. § 121.3-6(b)(3)(i). (It appeared from the record before us that no timely size status challenge was filed by Four Star with either the contracting officer or the SBA.) We also stated that, in any event, our Office would not consider a small business size status complaint.

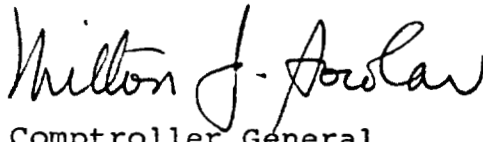
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Four Star now alleges that the complaints by Consolidated Marketing Network, Inc., to the Size Appeals Board on September 23, 1982, and to both the contracting officer and this Office on December 23, 1982, constituted timely filings within the meaning of 13 C.F.R. § 121.3-5(a). We do not agree. The record clearly shows that those complaints concerned the small business size standard announced in the solicitation as applicable to the procurement, and were not protests regarding the eventual awardee's size status. It also is clear that Four Star did not protest the size status in issue until December 31, 1982, 10 days after bid opening. Therefore, its protest was not timely filed within the 5-day period specified in 13 C.F.R. 121.3-5(a).

In any case, we again stress that our Office will not consider a protest concerning a small business concern's size status, as the Small Business Act gives the SBA conclusive authority in such matters.

Accordingly, we again affirm our initial decision.

for 
Comptroller General
of the United States