



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Blue Tee Corporation--Reconsideration

**File:** B-258976.2

**Date:** January 5, 1995

### DIGEST

Challenge to a firm's status as a small business on the basis of its publicly held status was properly held to be a matter for the Small Business Administration, which is responsible for taking into account all small business criteria, including whether the firm is independently owned and operated, in determining a firm's small business status.

### DECISION

Blue Tee Corporation requests reconsideration of our decision dismissing its protest of the award of contract to Mobile Drilling, Inc. by Reynolds Electric & Engineering Company, Inc. (REECO), a prime contractor for the Department of Energy, under REECO's request for proposals No. 184-SJ-94, issued as a small business set-aside. Blue Tee alleged that Mobile did not qualify as a small business because Mobile is a publicly held company. We dismissed the protest because our Office has no jurisdiction to determine small business size status.

On reconsideration, Blue Tee alleges that it did not challenge Mobile's small business size status but the prime contractor's decision that "a private company as defined by [the Federal Acquisition Regulation] could somehow also be a public company" even though a concern, to be qualified as a small business, must be "independently owned and operated."

We remain of the view that this is not a matter appropriate for decision by this Office. The Small Business Act, 15 U.S.C. § 637(b)(6) (1988), gives the Small Business Administration (SBA), not our Office, the conclusive authority to determine matters of small business size status for federal procurements, as follows:

"it shall be the duty of the Administration and it is empowered, whenever it determines such action is necessary . . . to determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated 'small business concerns' for the purposes of

effectuating the provisions of this chapter. To carry out the purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a 'small business concern' in accordance with the criteria expressed in this chapter [and] shall accept as conclusive the Administration's determination as to which enterprises are to be designated 'small business concerns.'"

The criteria referred to above are found in 15 U.S.C. § 632(a), which states:

"For the purposes of this chapter, a small-business concern . . . shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation . . . . In addition . . . the Administrator, in making a detailed definition, may use these criteria among others: Number of employees and dollar volume of business."

The SBA's regulations implement these statutory provisions, further defining a small business concern, see 13 C.F.R. § 121.403, and dealing with company affiliation, see 13 C.F.R. § 121.401; dominance in a particular field, see 13 C.F.R. § 121.406; number of employees, see 13 C.F.R. § 121.407; and dollar volume, see 13 C.F.R. § 121.402. We think it is clear from these statutory provisions and SBA's implementing regulations that all aspects of small business size status, including the domination in a particular field and independently owned and operated criteria, are within the exclusive domain of the SBA. Therefore, the prior dismissal was proper, and is hereby affirmed.

  
Ronald Berger  
Associate General Counsel