

DECISION



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

FILE: B-184034

DATE: June 19, 1975

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MATTER OF: Wil-Da Mechanical & Electrical Co., Inc.

DIGEST:

Question concerning small business size status of bidder is not for consideration since conclusive authority over the question is vested by statute in SBA.

Wil-Da Mechanical & Electrical Co., Inc. (Wil-Da), protested against award being made to Robert L. Guyler (Guyler), under invitation for bids No. DACA63-75-B-0126, issued by the Corps of Engineers, Fort Worth District, Fort Worth, Texas.

Wil-Da contends that Guyler is not a small business concern as its alleged parent company has current Government contracts in excess of \$20 million which would exclude it from the small business category.

Pursuant to 15 U.S.C. § 637(b)(6) (1970), the Small Business Administration (SBA) is empowered to determine a business concern's size status for procurement purposes. Offices of the Government having procurement powers must accept as conclusive any determination reached by SBA as to which concerns are to be designated as small business. In discharge of this responsibility, SBA has promulgated regulations which have the force and effect of law (Otis Steel Products Corporation v. United States, 161 Ct. Cl. 694 (1963)), found at part 121 of chapter I of the Code of Federal Regulations (C.F.R.), title 13 (1974).


Section 121.3-4 (1974), "Size determinations," states, in pertinent part, that:

"Original size determinations shall be made by the Regional Director, or his delegatee, serving the region in which the principal office of the concern (not including its affiliates) whose size is in question is located, * * *. Such determination shall be final unless appealed in the manner provided in

§ 121.3-6. For the purpose of Government procurements or sales a size determination shall be made only in the event of a protest pursuant to § 121.2-5, * * *."

Section 121.3-6(a) (1974) provides that the Size Appeals Board shall review appeals from determinations made pursuant to §§ 121.3-4 and 121.3-5 (1974) and shall make final decisions as to whether such determinations should be affirmed, reversed or modified. Sections 121.3-6(b)(1)(i) and (ii) (1974) provide that an appeal may be filed with the Size Appeals Board by any concern or interested party which has been adversely affected by a decision of a regional director, his delegatee, or by the Associate Administrator for Financial Assistance. The time for filing an appeal is set forth in § 121.3-6(b)(3)(i) (1974). An opportunity for reconsideration by the Size Appeals Board is provided in § 121.3-6(g)(5) (1974) which states that the decision of the Size Appeals Board shall constitute the final administrative remedy of SBA. Armed Services Procurement Regulation (ASPR) §§ 1-703(b)(1) and (3) (1974 ed.) repeat the provisions of 13 C.F.R. § 121.3-5 (1974) and § 121.3-6(b)(3)(i) (1974), respectively, recited above. When viewed in conjunction with 15 U.S.C. § 637(b)(6) (1970) and ASPR, the SBA regulations clearly establish it as the sole adjudicator of the size standard issue in question. See 53 Comp. Gen. 434, 435 (1973); B-181511, July 15, 1974; and B-182548, November 20, 1974.

In view of the foregoing, this matter is not properly for consideration by the General Accounting Office. Accordingly, we are closing our file on the matter without consideration of the merits of the protest.


Deputy Comptroller General
of the United States