

**DECISION**



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

50990

FILE: B-184294

DATE: July 14, 1975

MATTER OF: Sunshine Peninsula, Inc.

97384

**DIGEST:**

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

Sunshine Peninsula, Inc. (Sunshine), has protested against an award to Fennell and Associates (Fennell), under small business set-aside invitation for bids No. N62467-74-B-0538, issued by the Department of the Navy, Naval Facilities Engineering Command, Charleston, South Carolina.

Sunshine contends that Fennell is not a small business concern because it has reason to believe that the parties which own the controlling interest of Fennell also own the controlling interest of Mamba Engineering, Inc., which has receipts approaching \$18 million for the preceding fiscal year. Sunshine claims that this violates the small business regulation at 13 C.F.R. § 121.3-2(a)(1) (1974).

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 C.F.R., title 13 (1974).

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

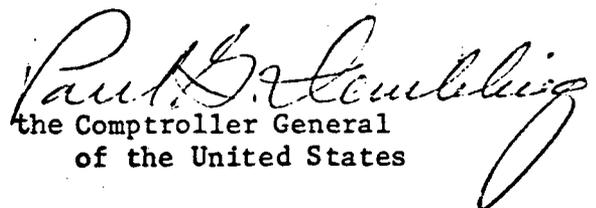
"Original size determinations shall be made by the Regional Director, or his delegatee, serving the region in which the principal office of the concern (not including its affiliates) whose size is in question is located \* \* \*. Such determination shall be final unless appealed

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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 sections 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 section 121.3-6(b)(3)(i) (1974). An opportunity for reconsideration by the Size Appeals Board is provided in section 121.3-6(g) (1974), subsection (5) of 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, 438 (1973); B-181511, July 15, 1974; and Wil-Da Mechanical & Electrical Co., Inc., B-184034, June 19, 1975.

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.

  
For the Comptroller General  
of the United States