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**DECISION**



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

FILE: B-192075

DATE: August 9, 1978

MATTER OF: Moorehead Electric Co., Inc.

**DIGEST:**

1. Protest concerning small business size status of bidder is not for consideration by GAO since by law it is matter for decision by Small Business Administration.
2. Bidder is not precluded from award because bid price may have been below cost and as result bidder may suffer loss on contract.
3. Allegation that award to low bidder which submitted below cost bid will result in increase in contract administration costs and numerous change orders is speculative and involves matters of contract administration. Matters of contract administration are not for resolution under GAO's Bid Protest Procedures which are reserved for considering whether award or proposed award of contract complies with statutory, regulatory and other legal requirements.

The Veterans Administration (VA) solicited bids for correcting electrical deficiencies at the VA hospital in Marion, Indiana. The procurement was a 100-percent set-aside for small business.

Webb Electric Company of Florida Inc. (Webb) submitted the low bid of \$1,367,504. Moorehead Electric Co., Inc. (Moorehead), the only other bidder, submitted a bid of \$2,295,000. The contracting officer requested that Webb verify its bid. In so doing, the contracting officer called Webb's attention to the fact that its low bid was 41 percent below Moorehead's and 7 percent below the Government's estimate of \$1,461,400. Webb verified its bid.

After bid opening, Moorehead protested to the VA contending that Webb was not a small business concern, and, consequently, its bid was nonresponsive. More particularly, Moorehead alleged that Webb is a very large contractor, which, either now or in the past, performed work at various locations throughout the United States and overseas.

As a result of Moorehead's protest, the VA requested that Webb provide a complete list of its recent and current projects. After reviewing the list, the VA concluded that there was no evidence that Webb was a large business concern, as Moorehead alleged. In addition, the VA referred Moorehead's size protest to the Small Business Administration (SBA). The SBA subsequently dismissed Moorehead's protest on the grounds that it was unspecific and presented no factual basis which would qualify it for SBA action.

Moorehead also filed a protest with our Office. As its first ground of protest, Moorehead repeats its allegation that Webb is not a small business concern. In this regard, Moorehead asserts that it has no available means of securing Webb's books and records or to otherwise require that Webb prove that it is a small business concern, except by subpoena or other court process. According to Moorehead, needless litigation would be avoided if the General Accounting Office or the SBA would require that a low bidder submit satisfactory proof of its small business status so that an administrative determination could be made regarding the matter. As its second ground of protest, Moorehead contends that Webb's bid is nonresponsive because Webb cannot properly perform the contract at its bid price. According to Moorehead, subcontractor materials and services alone are estimated to cost \$35,000 more than Webb's low bid. The estimated labor to complete the contract will cost an additional \$92,140. Moorehead also contends that as a result of a conference which it had with the procuring activity's engineering firm, the engineering firm is now convinced that the Government's estimate is substantially below cost. Moorehead suggests that the General Accounting Office should ask the engineering firm to verify the Government's estimate.

Finally, Moorehead states that if Webb's low bid is accepted, the procuring activity will incur additional costs in administering the contract, and it will eventually be required to issue numerous change orders.

Under 15 U.S.C. § 637(b)(6) (1970), the SBA is empowered to conclusively determine whether a business enterprise is a small business concern for Federal procurement purposes. Consequently, decisions of the SBA and its Size Appeals Board are not subject to review by our Office. Gibraltar Industries, Inc., B-187567, January 31, 1977, 77-1 CPD 78. Since Moorehead's size protest has been considered by SBA, we will take no further action on this matter. Janke and Company, Incorporated, B-188880, May 16, 1977, 77-1 CPD 345.

Although Moorehead alleges that Webb's bid is nonresponsive because it is below cost, we have consistently held that the fact that a bidder may have bid too low and as a result suffer a loss on the contract affords no grounds for precluding award to the low bidder. Universal Propulsion Co., B-186845, January 26, 1977, 77-1 CPD 59. Consequently, we see no need for the procuring activity's engineering firm to verify the Government's estimate.

Moreover, Moorehead's assertion that the procuring activity will incur additional costs in administering Webb's contract and will be required to issue numerous change orders is pure speculation. If Webb's low bid is accepted, Webb will be required to perform the contract in strict compliance with all the terms and conditions of the IFB. In addition, the issuance of change orders and the cost of administering a contract are matters of contract administration. Matters of contract administration are not for resolution under our Bid Protest Procedures, 4 C.F.R. part 20 (1977), which are reserved for considering whether an award or proposed award of a contract complies with statutory, regulatory and other legal requirements. Maritime Supply Corporation, B-188915, August 30, 1977, 77-2 CPD 161.

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Based on the foregoing, Moorehead's protest is dismissed in part and denied in part.

*R. F. Keller*  
Deputy Comptroller General  
of the United States