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DECISION



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

FILE: B-201370

DATE: December 29, 1980

MATTER OF: Home Oxygen & Medical Equipment, Inc.

DIGEST:

1. [Protest relating to small business size status] is not for consideration by GAO since exclusive authority is statutorily vested with Small Business Administration.
2. Question of whether supplies and equipment bid complies with solicitation specifications is matter of contract administration which is responsibility of procuring agency, not GAO.

Home Oxygen & Medical Equipment, Inc. (Home Oxygen), protests the award by the Veterans Administration (VA) of a contract for rental of certain oxygen supplies and equipment to Oxygen Therapy Services, Inc. (OTS), under invitation for bids (IFB) No. 688-23-81. The IFB in question was a small business set-aside containing a size standard of fewer than 100 employees.

Home Oxygen alleges, in substance, that the awardee is not a small business under the size standards stated by the VA, and that the awardee proposes not to supply certain backup equipment which Home Oxygen believes is required under the IFB. Home Oxygen also asserts that, at a meeting with the contracting officer, it was advised that there was an additional size standard of less than \$2 million sales revenue per year. For the reasons which follow, the protest is dismissed.

When award was made to OTS, Home Oxygen protested to the VA by letters dated October 24 and 28, 1980, asserting that OTS had sales revenue in excess of \$2 million. Home Oxygen also contended that the contracting officer had waived the revenue limitation merely because it had been inadvertently omitted from the IFB and thereby had prejudiced Home Oxygen and

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possibly other bidders. The VA referred the protest to the Small Business Administration (SBA), which dismissed it by letter dated November 13, 1980, on the grounds that Home Oxygen did not allege that OTS failed to meet the 100-employee size standard contained in the IFB. SBA indicated that the allegation that OTS exceeded the revenue limitation was irrelevant since the limitation did not appear in the IFB; the SBA further noted that there was no evidence that OTS revenues exceeded \$2 million and, in fact, sales revenues as stated in OTS's Bidders Mailing List Application did not exceed that amount.

Home Oxygen apparently elected not to appeal this determination to the SBA Size Appeals Board and, instead, filed this protest with our Office. However, under 15 U.S.C. § 637(b) (1976), the SBA is empowered to conclusively determine matters of small business size status for Federal procurement and sales purposes, and its determination is not subject to review by GAO. Gateway Van & Storage Company, B-198900, July 1, 1980, 80-2 CPD 4; Marquette Electronics, Inc., B-196497, November 5, 1979, 79-2 CPD 327.

With regard to the oral advice concerning the dollar limitation which Home Oxygen alleges it received, we find no basis to conclude this had a prejudicial effect since all bidders competed on the basis of the size standard stated in the IFB.

Home Oxygen's other allegation is based on its understanding that the IFB requires the supply of certain backup equipment because inclusion of this equipment reflects current industry practice. Whether the equipment which OTS provides complies with the IFB specifications is a matter of contract administration which is the responsibility of the procuring agency, not our Office. Marquette Electronics, Inc., supra.

Accordingly, the protest is dismissed.



Milton J. Socolar
General Counsel