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**DECISION**



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

FILE: B-187499

DATE: November 16, 1976

MATTER OF: Baltimore Business Forms, Inc.

**DIGEST:**

Protest alleging bidder is not eligible for award because of existence of FTC investigation to determine whether bidder engaged in practices in violation of Section 5 of Federal Trade Commission Act and/or Section 2(a) of Clayton Act as amended by Robinson-Patman Act is not for consideration since GAO does not review affirmative determinations of responsibility except where fraud is alleged or where definitive responsibility criteria allegedly have not been applied.

Baltimore Business Forms, Inc. (Baltimore) protests the award of a contract to Moore Business Forms, Inc. (Moore) under IFB N00600-76-B-0179 issued by the Naval Regional Procurement Office, Washington Navy Yard. It is Baltimore's position that Moore, by bidding below the break-even point for small concerns such as Baltimore is attempting to eliminate all competition. In this connection Baltimore requests that the Navy withhold the award under the subject IFB until a Federal Trade Commission (FTC) investigation of Moore is completed.

The record indicates that the FTC had by August 1976 commenced a preliminary investigation to determine whether Moore may be engaged in acts or practices in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and/or Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C. 13). The FTC has indicated that the existence of an investigation does not in any way indicate that a violation of law exists.

The Navy on October 22, 1976, awarded the contract to Moore after it had denied by letter dated October 14, 1976 a protest submitted to it based on the same contentions which form the subject matter of the instant protest. The award was made prior to our receipt of Baltimore's protest letter.

In essence, Baltimore's protest questions the Navy's affirmative finding that Moore is a responsible bidder, having a satisfactory record of integrity and eligible for the contract award. This Office

has discontinued its review of protests involving affirmative determinations of responsibility unless fraud is alleged on the part of the procuring officials or the solicitation contained definitive responsibility criteria which allegedly have not been applied. See United Hatters, Cap and Millinery Workers International Union, 53 Comp. Gen. 931 (1974), 74-1 CPD 310; Central Metal Products, 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Shiffer Industrial Equipment, Inc., B-185372, January 27, 1976, 76-1 CPD 52. Although we will consider protests involving determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids, affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of the contractor's nonresponsibility.

Moreover, allegations of noncompetitive practices concern matters which are properly for consideration by the agency pursuant to debarment and suspension procedures, as provided in Armed Services Procurement Regulation (ASPR) 1-600. This Office has no authority to administratively debar or suspend except for violation of the Davis-Bacon Act (40 U.S.C. 276(a)(2)) which is not relevant to this case. In bid protest cases, our Office is primarily concerned with determining whether proposed awards are in accordance with applicable procurement laws and regulations; we are not directly concerned with enforcement of anti-trust laws. Automated Datatron, Inc., B-184022, September 16, 1975, 75-2 CPD 153.

Accordingly, the protest is not for consideration.

*Milton Acosta*  
for Paul G. Dembling  
General Counsel