



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

B-179179

November 5, 1973

40160

Frank & Warren, Inc.
57 Front Street
Brooklyn, New York 11201

Attention: Mr. Warren Frank
President

Gentlemen:

Reference is made to your letters of July 9 and September 19, 1973, protesting against award to any bidder other than Frank & Warren, Inc. (Frank & Warren), under invitation for bids No. DSA700-73-B-2883, issued by the Defense Supply Agency, Defense Construction Supply Center, Columbus, Ohio.

Although you did not thoroughly advise our Office of the bases of your protest, we have been informed by the procurement activity of the circumstances surrounding the matter.

Four bids for this procurement were opened on the bid opening date of June 11, 1973. Frank & Warren was the low bidder, and consequently, the Defense Contract Administration Services Region, New York, was requested by the procurement activity to conduct a preaward survey of your firm. The completed preaward survey report, dated June 27, 1973, recommended that no award be made to your company because it was rated unsatisfactory as to production capability, plant facilities and equipment, plant safety, labor resource, performance record, and ability to meet the required production and delivery schedule. The contracting officer by letter of July 23, 1973, informed Frank & Warren that the survey report had contained unfavorable recommendations and that the matter was being referred to the Small Business Administration (SBA) pursuant to paragraph 1-705.4(c) of the Armed Services Procurement Regulation to determine if a certificate of competency (COC) would be issued.

By letter dated August 30, 1973, the SBA, New York Region, informed the contracting officer that a COC would not be issued to Frank & Warren. You appealed this decision to the regional SBA office and, we are advised, that you were informed that the decision was final and that no reevaluation of the bases for the denial would be made.

[Protest Against Nonresponsibility Determination]

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This Office has consistently recognized that it is a basic function of the contracting officer to determine the responsibility of the prospective contractor and that an administrative determination of non-responsibility will not be questioned by our Office unless it is arbitrary, capricious or not based on substantial evidence. See B-170540, November 18, 1970; B-166275, October 17, 1969; B-164908, August 6, 1968; and 39 Comp. Gen. 705 (1960).

Further, we have consistently held that the refusal by SBA to issue a COC must be viewed as an affirmation of the contracting officer's negative determination. 43 Comp. Gen. 228 (1963); 39 id. 705 (1960); B-162665, December 19, 1967. Nor is it the function of our Office to review SBA determinations or require issuance of a COC. B-153446, May 8, 1964.

In view of the foregoing, your protest must be denied.

Sincerely yours,

Paul G. Deabling

For the Comptroller General
of the United States