

DECISION

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

60162

FILE: B-184431

DATE: November 14, 1975

MATTER OF: Alton Iron Works, Inc.

97736

DIGEST:

Referral of nonresponsibility determination to SBA for Certificate of Competency was not required where record shows that items being procured were urgently needed and contracting officer obtained approval of his urgency determination from higher authority and SBA was furnished a copy of such determination and supporting documentation in accordance with ASPR 1-705.4(c)(iv).

Request for proposals (RFP) No. DAAG02-75-R-0054 was issued on April 8, 1975, by the Department of the Army, Anniston Army Depot, Anniston, Alabama, for the procurement of 200 pinion sets required in support of the M48A5 Tank Conversion Program. The procurement was negotiated under the exigency authority of 10 U.S.C. 2304(a)(2). A closing date of May 8, 1975 was established at which time offers were received from Alton Iron Works, Inc. (Alton), \$225.00 per unit; Jo-Bar Manufacturing Corp. (Jo-Bar), \$290.00 per unit; and Thomas and Thomas Engineering, Inc., \$414.96 per unit. After a preaward survey was made on Alton, with an unsatisfactory rating, it was recommended that no award be made to that firm. As a result of an earlier preaward survey of March 11, 1975, made on Jo-Bar for 125 of these same procurement items, it was recommended that award be made to Jo-Bar. Based on the preaward surveys and recommendations, the contracting officer determined that Alton was nonresponsible, and rejected its offer. Although Alton qualified as a small business, the contracting officer determined that award had to be made without delay and without referral to the Small Business Administration (SBA) of the determination of Alton's nonresponsibility. Jo-Bar was determined to be the low responsible offeror and award was made to it on June 11, 1975.

Alton received notice of the rejection of its offer on June 11, 1975, and protested to this Office by letter of June 13, 1975. Alton alleged that the award was illegally made since the matter should have been referred to SBA for investigation and evaluation prior to award to Jo-Bar.

The preaward survey indicated that Alton's production capacity, purchasing and subcontracting, quality assurance capability, performance record, and ability to meet the required schedule were given unsatisfactory ratings. Out of nine areas examined, Alton was rated

unsatisfactory in five categories. For example, Alton's production capability was unsatisfactory because it failed to present a firm quotation on the subcontracting work. The survey also gave Alton an unsatisfactory performance record rating based on a substantial number of delinquent contracts.

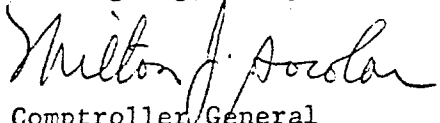
The preaward survey of Alton was made on May 28, and the determination of nonresponsibility made June 6. The report from the contracting officer indicates that immediate action on the procurement was necessary since the procurement carried a priority designation and a delay would cause a break in the continuity of the rebuild program. Furthermore, we were advised that the failure to obtain sufficient quantities of the requirement on schedule could potentially lead to a shutdown of the maintenance rebuild program on the M48 tank series and would have an adverse effect upon all the Army's procurement commitments.

With regard to Alton's charge that the SBA should have been notified of the nonresponsibility determination prior to contract award, ASPR 1-705.4(c)(iv) (1974 ed.) provides that a referral of nonresponsibility need not be made to the SBA provided that the contracting officer certifies his determination in writing, and his certification is approved by the Chief of the purchasing office, that the award must be made without delay, includes such certification and supporting documentation in the contract file, and promptly furnished a copy to the SBA.

In prior decisions we have stated that our Office will not question the administrative determination of urgency of a procurement when a review of the entire record affords no basis for concluding that the contracting officer's decision to make an award without referral to SBA was unreasonable or unjustified. Cal-Chem Cleaning Company, Incorporated, B-179723, March 2, 1974, 74-1 CPD 127.

In this case, the record shows that the contracting officer certified in writing that the award had to be made without delay and that this determination was approved by the Chief of the Purchasing and Contract Division and a copy furnished to the Small Business Administration, New York. Based on the record we find that the contracting officer's action was justified.

Accordingly, in view of the foregoing, the protest is denied.


Acting Comptroller General
of the United States