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

B-179025

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October 26, 1973

Raymond H. Jacobson, Esq.
Federal Bar Building West
Washington, D.C. 20006

Dear Mr. Jacobson:

Reference is made to your letter and prior correspondence from American Steel Impact Corporation (ASIC), protesting the award of a contract to Lansdowne Steel & Iron Company (Lansdowne), under invitation for bids No. H00104-73-B-1126, issued by the United States Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania.

Bids received under the invitation were opened on May 23, 1973. By letters dated May 24, 1973, ASIC, the low bidder, and Morwald Steel Products, the second low bidder, were requested to verify their offers. The following day, Lansdowne, the third low bidder, was requested to extend the time for acceptance of its bid from June 22 to July 23, 1973. Lansdowne, however, by letter of May 31 advised that it could not extend the acceptance time of its bid to July 23 due to stringent limitations placed upon it by raw material suppliers.

Preaward surveys were requested on May 25, 1973, for the two lowest responsive bidders. The survey performed on ASIC was completed on June 12, 1973, and recommended "No Award" based on unsatisfactory findings in almost all of the areas surveyed. The results of the survey on Morwald dated June 15, 1973, also were unfavorable.

It is reported that in view of the urgent need for the projectiles in the invitation and in view of the unfavorable preaward surveys, the contracting officer, after consultation with technical specialists, determined that the delay incident to referral to the Small Business Administration (SBA) for Certificate of Competency (COC) consideration on the low bidders would be prejudicial to the interest of the Government. Consequently, approval for a Certificate of Urgency permitting award to the next low responsive bidder, Lansdowne, was approved on June 21, 1973, and a copy of the certificate was furnished to the SBA in accordance with Armed Services Procurement Regulation (ASPR) 1-705.4(c)(iv). The award to Lansdowne was made on June 22.

The award is protested on the grounds that (1) the preaward survey was erroneous; (2) the matter of responsibility should have been referred to SBA pursuant to ASPR 1-705.4 immediately after the determination that

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ASIC would receive a "no award" rating; and (3) this was not an urgent situation that necessitated the issuance of a Certificate of Urgency.

As concerns the first contention, our Office does not make independent determinations as to a bidder's responsibility to perform a Government contract. Such determinations are made by the contracting agency, and in the absence of any showing of bad faith or lack of reasonable factual basis for the determination, we will not object to the determination as made. See 39 Comp. Gen. 705 (1960); 38 Comp. Gen. 248 (1958); B-173021, September 3, 1971. On the present record, we find no basis to question the determination of nonresponsibility.

Secondly, as you have contended, ASPR 1-705.4 does require the contracting officer to refer the question of a small business concern's responsibility to the SBA for the possible issuance of a COC when the proposal of that concern is to be rejected because the concern has been determined to be nonresponsible solely as to "capacity" or "credit." See 50 Comp. Gen. 67 (1970). However, there is an exception to this rule (ASPR 1-705.4(c)(iv)) which provides that a referral need not be made to the SBA if a Certificate of Urgency has been issued.

In this particular case, the contracting officer determined that award had to be made without further delay and prepared a Certificate of Urgency dated June 21, 1973, which was duly approved by the Chief of the Procurement Office, and forwarded to SBA.

Concerning the matter of urgency, the contracting officer's determination of nonresponsibility was made on June 21, 1973, after considering information presented by ASIC by letter of June 13, 1973, and by meeting of June 21, 1973, and further consultation with the preaward survey office on the latter date. Further, the contracting officer contacted the SBA Detroit office to determine how much time would be required to survey ASIC. SBA indicated that 15 days would be necessary. The contracting officer, having to consider the possibility that referral to SBA might result in the denial of a COC, also realized that at that late date Lansdowne's offer would have expired and there would have been no reasonable offer capable of acceptance. This was a matter of concern to the contracting officer since it had been determined that the projectiles on hand were far below required inventory levels and there would be a further added delay if the procurement were to be resolicited. It was based upon these factors that the contracting officer determined the procurement to be urgent and decided not to refer the matter to SBA.

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Moreover, as a general rule, our Office will not question the administrative determination of urgency of a procurement. B-167686, October 14, 1969. Our review of the record as a whole affords no basis for concluding that the contracting officer's decision to make an award without incurring the delay incident to an EBA referral was unjustified or unreasonable. B-162095, October 30, 1967.

In view of the foregoing, the protest is denied.

Sincerely yours,

Paul G. Dembling
For the Comptroller General
of the United States