

ment and the correlative responsibility of Edgewood Arsenal to maintain scientific and technological superiority requisite to promote and advance the effectiveness of military operations (ASPR 4-102), we believe on the basis of the record before us that the procurement responsibility was properly discharged in making the award to Nortronics. ASPR 3-805.1(a) which prescribes the negotiation procedures to be applied in the selection of offerors for negotiation and award is an implementation of 10 U.S.C. 2304(g). That provision of law reads as follows:

"(g) In all negotiated procurements in excess of \$2,500 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured, and written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price, and other factors considered. * * *"

A study of the record on this procurement as supplemented by presentations on behalf of Custom leads to the conclusions that the award as made represented a proper discharge or procurement responsibility and discretion as to which we find no legal basis to question.

Although other contentions relating to this procurement have been advanced, they relate mainly to procurement administration involving judgment determinations as to which we have no comments to offer. See B-158842, March 30, 1966. Your protest is therefore denied.

The film submitted by Custom in support of its protest is returned.

Very truly yours,

FRANK H. WEITZEL,

Assistant Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 29, 1967.

B-160809.

HON. BERNARD L. BOUTIN,
Administrator, Small Business Administration.

DEAR MR. BOUTIN: Reference is made to a letter dated June 2, 1967, from your General Counsel, commenting on the administrative report concerning the protest of the Custom Packaging Co. against the award of a negotiated research and development contract to Nortronics, a Division of Northrop Corporation, pursuant to request for proposals No. DAAA15-67-R-0116, issued by the United States Army Edgewood Arsenal for the design, development and manufacture of a multi-shot portable flame weapon system.

Enclosed is a copy of our decision of today to the company's attorney denying the protest.

In his letter, your General Counsel states that the record does not indicate that the contracting officer determined that the proposal submitted by Custom was technically nonresponsive; that since the contracting officer has stated that he conducted negotiations solely with Nortronics because its proposal was superior to all others received, there is an implication that Custom's proposal was inferior to that of Nortronics and that if this is so, this may go to the responsibility of Custom to perform the procurement. Your General Counsel requests that our Office determine whether the contracting officer should have referred the question of the responsibility of Custom to perform the procurement to the Small Business Administration for determination under the certificate of competency procedures.

By enactment of section 8(b) (7) of the Small Business Act, 15 U.S.C. 637(b) (7), the Congress has limited the authority of administrative officers to make final determinations of responsibility of small business bidders by providing that where a small business concern is certified by SBA to be a competent Government contractor with respect to capacity and credit, the procuring officers of the Government must accept such certification as conclusive. However, this limitation on the administrative authority relates only to determinations of "capacity and credit." In this connection, Armed Services Procurement Regulation (ASPR) 1-705.4(c), in recognition of the SBA authority, contemplates the referral to SBA of only bids or proposals of small business concerns which contracting officers propose to reject solely for the reason that the bidders or offerors have been