

found to be nonresponsible as to capacity and credit. In the instant case, however, it appears that the proposal of Custom would not meet the urgent military requirements of the Army. The technical evaluation of Custom's proposal was reported to us as follows:

"This company proposes to improve the basic weapon which was demonstrated at Edgewood Arsenal in February 1966. The one piece launcher and stock is too long; when the magazine is attached the weapon takes on a bulky appearance. The performance of the unit is not supported by any data and the described characteristics are probably the subjective judgment of the promoters.

"Most of the approach and scope repeat the information that is in the RFP. The use of a non-standard rocket motor would present serious delays in the man-firing program. No alternative designs are given. There are no calculations to support the proposed design."

Moreover, although not referred to in the administrative report, there is for consideration ASPR 1-705.4(b) which reads in part:

"In procurement where the highest competence obtainable or the best scientific approach is needed, as in certain negotiated procurement of research and development, highly complex equipment, or personal or professional services, the certificate of competency procedure is not applicable to the selection of the source offering the highest competence obtainable or best scientific approach. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and, prior to award, the contracting officer determines that the concern is not responsible because of lack of capacity or credit, the certificate of competency procedure is applicable."

On the basis of the record before us, we are of the view that Custom's proposal was technically nonresponsive to the Army's requirements as detailed in the statement of work accompanying the request for proposals. In reaching this view, we are aware that some of Custom's deficiencies disclosed in the technical evaluation related to its capacity and credit. However, Custom received only a rating of 2 on its technical approach to the Government's requirements out of a possible weighted factor of 40. We feel that this reasonably demonstrates that the failure of Custom to be considered for negotiation was due to its deficiencies in the area of compliance with the Government's expressed requirements.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 14, 1967.

B-160809.

HON. JOHN L. MCCLELLAN,
*Chairman, Senate Permanent Subcommittee on Investigations,
Committee on Government Operations,
U.S. Senate.*

DEAR MR. CHAIRMAN: Reference is made to your letter of August 15, 1967, referring to certain information your subcommittee developed with regard to the \$167,608 fixed-price proposal of the Custom Packaging Co. under request for proposals DAAA-15-67-R-0116, issued by the United States Army Edgewood Arsenal, which was passed over in favor of a Northrop Nortronics \$387,000 cost-plus-incentive-fee proposal. Our review of the matter is requested particularly within the context of 10 U.S.C. 2304(g) and the implementation in ASPR 3-805.1.

This matter was the subject of two decisions (B-160809) of June 29, 1967; one to the attorney for Custom Packaging Co. and the other to the Administrator of the Small Business Administration. The former decision stated that considering the objective of research and development procurement and the correlative responsibility of Edgewood Arsenal to maintain scientific and technological superiority requisite to promote and advance the effectiveness of military operations, our Office believed that, on the basis of the record before it, the award made to Nortronics represented a proper discharge of procurement responsibility and discretion and was not subject to question by our Office. The latter decision held that since the contracting officer did not reject the Custom Packaging proposal for lack of responsibility, the matter was not required to be submitted to the Small Business Administration for consideration under the certificate of