



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-156383

MAY 6 1965

Mr. John L. Kilcullen
Attorney at Law
Barr Building
Washington, D.C. 20006

Dear Mr. Kilcullen:

Reference is made to your letter of March 22, 1965, protesting for Jervis B. Webb Company, Inc., the total set-aside for small business of a two-step procurement of a mechanized materials hauling system covered by Defense Supply Agency request for technical proposals DSA 611-65-11A.

You protest that the set-aside is inconsistent with the nature of the system the Government seeks to procure; that it is unrealistic in terms of available manufacturing capacity, experience and know-how of small firms; that it will deprive the Government of an opportunity to obtain a well-designed system and that it will result in lack of adequate competition with the Government obtaining a "jerry-built" system.

These possibilities were considered in making the determination that the procurement should be set aside. It was in recognition of the complexity of the system and the need for large business participation that a broad standard, determined jointly by the Small Business Administration and the Defense Supply Agency, was used in the solicitation which would permit large business to participate with small business. In that connection, the solicitation provides that a small business firm will be considered small business as long as it incurs in manufacturing the equipment by itself or with other small business firms over 30 percent of the costs of all equipment to be provided; or installs the equipment; or performs a combination of design, manufacture and installation amounting to no less than 20 percent of the contract price. Moreover, the Defense Supply Agency has indicated that there is no likelihood that it will wind up with a "jerry-built" mixture of parts and units from various manufacturers and that it will have an increased maintenance and replacement problem, since paragraph 1.1.7 of the specifications permits component parts of the system to be the products of different manufacturers as long as "Where two or more units of the same type or kind of equipment are required, these units shall be products of a single manufacturer" and since, in addition, the evaluation criteria

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on page 3 of the request for technical proposals provide for an evaluation of technical soundness and of ease and simplicity of system maintainability. Further, the Defense Supply Agency has stated that if it becomes apparent that there is a lack of competition or inadequate small business interest the Government could dissolve the set-aside and accomplish the procurement without a restriction to small business.

The record in this case shows that the Small Business Administration requested a total set-aside of this procurement and the Defense Supply Agency eventually concurred in the request. Section 15 of the Small Business Act, 15 U.S.C. 644, authorizes the restriction of entire procurements to small business concerns upon joint determination of the Small Business Administration and the contracting agency. Our Office has held that a determination to set aside a procurement for small business under such statutory authority is within broad administrative discretion which ordinarily is not reviewed by our Office. B-154393, August 18, 1964; B-150048, December 12, 1962; and B-149130, August 27, 1962.

Since the determination to set aside the procurement appears to have been made within the framework of the Small Business Act, the determination will not be questioned by our Office.

Very truly yours,

Joseph Campbell

Comptroller General
of the United States