



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

B-177089

December 27 1972

Electrochimica Corporation  
2485 Charleston Road  
Mountain View, California 94040

Attention: Mr. A. J. Anttila  
Contracts Administrator

Gentlemen:

Reference is made to your letter of November 7, 1972, and prior correspondence, protesting that invitation for bids (IFB) NO0197-73-B-0041, issued by the Naval Ordnance Station, Louisville, Kentucky, should have been partially set aside for small business participation.

The position of our Office with respect to similar protests has been expressed in a number of our decisions of which the following quoted portion from B-170837, March 8, 1971, is representative:

"Section 15 of the Small Business Act, 15 U.S.C. 644, provides that small business concerns shall receive any award or contract or any part thereof as to which it is determined to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small business concerns. Under section 15 of the Act, the determination as to whether a particular procurement, or part thereof, should be set aside for small business is within the jurisdiction of the procuring agency and the Small Business Administration. B-167131, July 23, 1969. It is our position that the determination to set aside a procurement for small business is within the ambit of sound administrative discretion. This authority is very broad and an administrative determination made pursuant to such authority is not ordinarily reviewed by our Office. B-150048, December 12, 1962, B-165119, October 4, 1968. Our Office will question such a determination only upon a clear showing of abuse of the discretion. B-168587, February 17, 1970."

ADMINISTRATIVE DETERMINATION

B-177089

As indicated in the administrative report upon which you commented, the determination not to partially set aside this procurement was based upon the fact that the procurement activity did not reasonably expect a response to the IFB from more than one large and one small business. Although you are correct that Armed Services Procurement Regulation (ASPR) 1-706.6(a)(iii) requires a partial set-aside where it is expected that at least one small business has the capacity and competence to perform at a reasonable price, it provides further:

"\* \* \*that a partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with technical competency and productive capacity will respond with bids or proposals.\* \* \*"

The IFB originally was sent to one large and four small businesses, the latter being your firm and three others which you recommended. Subsequently, another large business, P.R. Mallory & Co., Inc., requested an IFB as a result of the procurement being synopsisized in the Commerce Business Daily. Mallory was the successful bidder under the IFB. From the manner in which Mallory received its copy of the IFB, it does not appear that it had previously requested the procurement activity to place its name on the bidder's list for the batteries here involved or had otherwise made known to the procurement activity its interest in procurements of this nature. In addition, on previous procurements for these batteries, the only large business responding had been the Ray-O-Vac Division, ESB, Incorporated.

In the circumstances, it is not apparent that the determination not to set aside a portion of the procurement for small business was an abuse of discretion. Accordingly, there is no basis for a legal objection by our Office and the protest therefore is denied.

Very truly yours,

R.F.KELLER

Deputy Comptroller General  
of the United States