

DECISION

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

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FILE: B-213048**DATE:** October 4, 1983**MATTER OF:** Fairfax Hospital Association**DIGEST:**

A procurement for alcohol and drug abuse counseling services may be set aside for small businesses since legislation authorizing agencies to establish such programs do not exclude procurements for such services from the Small Business Act's requirements.

Fairfax Hospital Association, a non-profit institution, protests the designation of solicitation No. N00600-83-R-3474 as a total small business set-aside by the Department of Transportation (DOT). The solicitation sought offers to provide certain government employees with alcohol and drug abuse counseling. Fairfax contends that the set-aside unduly restricts competition.

We summarily deny the protest.

Fairfax argues that the restriction of this solicitation to small business concerns contradicts Congressional policy underlying the legislation authorizing the counseling programs.¹ See 21 U.S.C. § 1102(3) and 42 U.S.C. § 4541(b)(4) (Supp. IV 1980). Specifically, Fairfax believes that, since non-profit institutions have long provided those types of services throughout the country, exclusion of those institutions from competition prevents the government from benefiting by their expertise, thus conflicting with the Congressional policy of combating drug and alcohol abuse through the development of comprehensive and effective treatment programs. Fairfax notes that, in setting aside this solicitation, the contracting officer apparently reversed an earlier determination not to set this procurement aside. We find no merit to Fairfax's protest.

The Small Business Act mandates that a fair proportion of government purchases and contracts for property and

¹ These programs are authorized under 21 U.S.C. § 1180(a) (Supp. IV 1980) and 42 U.S.C. § 290dd-1 (formerly § 4561, which was amended and relocated by Public Law 98-24, April 26, 1983).

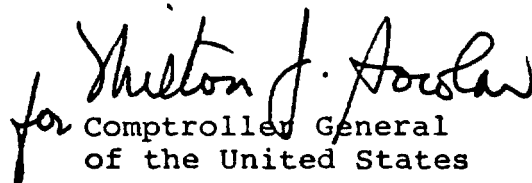
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services be placed with small business concerns. 15 U.S.C. §§ 631(a) and 644(a) (1982). Agencies are required under applicable regulations to set aside procurements for small business concerns where there exists a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible concerns so that awards will be made at reasonable prices. See Federal Procurement Regulations §§ 1-1.706-1(c) and 1-1.706-5(a).

We have recognized that nothing in the legislation authorizing the drug and alcohol abuse counseling programs restricts the Small Business Act's mandate. Fairfax Hospital Association, B-211874, September 2, 1983, 83-2 CPD _____. In determining the propriety of DOT's set-aside, then, the fact that non-profit institutions might offer high quality services is not relevant. Rather, the only consideration is whether the contracting officer reasonably anticipated the receipt of bids from a sufficient number of small firms capable of supplying the services at a reasonable price. Since Fairfax does not allege that the number of capable small businesses here was insufficient to support the set-aside determination, we have no basis to question the contracting officer's judgment that a set-aside was appropriate. See Fairfax Hospital Association, B-211872, August 8, 1983, 83-2 CPD ____.

The protest is summarily denied.

for 
Comptroller General
of the United States