

DECISION

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

FILE: B-215894

DATE: November 15, 1984

MATTER OF: A. H. Robins Company, Inc.

DIGEST:

"Fair proportion" requirement in the Small Business Act is applicable to the totality of government procurement and does not require that only a portion of procurements for a particular item or class of items be set aside for small business.

A. H. Robins Company, Inc. protests invitation for bids (IFB) No. DLA120-84-B-1177, a total small business set-aside, issued by the Defense Personnel Support Center, Defense Logistics Agency (DLA), Philadelphia, Pennsylvania. Robins contends that restriction of the procurement to small business concerns is unfair and illegal.

The IFB was issued as a "Total Small Business set-aside with price differential for Labor Surplus area Concerns" for a quantity of 1,293,000 bottles of Guai-fenesin Syrup. DLA set aside the procurement pursuant to Federal Acquisition Regulation § 19.502-2 which implements the Small Business Act of 1958, 15 U.S.C. § 631 (1982), and requires that procurements be set aside for exclusive small business participation--

"...if the contracting officer determines that there is a reasonable expectation that (a) offers will be obtained from at least two responsible small business concerns. . . and (b) awards will be made at reasonable prices. . . ."

The contracting officer's determination to set aside the procurement was based on bids received in response to a previous solicitation for the same product. In that solicitation, which was a partial small business set-aside, eight bids were received, including six from small businesses. Awards of both the unrestricted and set-aside portions of that procurement were made to a small business.

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Robins, however, contends that the words, "fair proportion" used in the Small Business Act, 15 U.S.C. § 644(a), only require that a portion of procurements for a particular item or class of items be awarded to small business concerns and that a set-aside of all or most of the procurements for a particular item does not carry out the spirit and letter of the law. The section in question provides that contracts shall be awarded to small business concerns if it is determined,

" . . . (3) 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. . . ."

The "fair proportion" requirement refers to a proportion of total government contracts for all goods and services. J. H. Rutter Rex Manufacturing Co., Inc. v. United States, 706 F.2d. 702 (5th Cir. 1983); Fermont Division Dynamics Corporation of America; Onan Corporation, 59 Comp. Gen. 533 (1980), 80-1 CPD ¶ 438. That term does not require, as Robins contends, that only a portion of procurements for a particular item or a class of items be set aside for small business so as not to prevent large businesses such as Robins, from supplying products to the government. The mere fact that small business may receive a significant proportion of government contracts in a particular industry does not necessarily mean that more than a fair proportion of the government's total contracts has been awarded to small business. Dynapac Mfg. Co., B-206362, June 2, 1982, 82-1 CPD ¶ 523.

The protest is denied.

Milton J. Fowler
for Comptroller General
of the United States