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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Global Services Corp

File: B-400229.2

Date: January 27, 2009

Robert Korroch, Esq., Williams Mullen, for the protester.
Richard D. Lieberman, Esq., McCarthy, Sweeney & Harkaway, PC, for the intervenor.
Capt. Marlin D. Paschal, Esq., Department of the Army, for the agency.
Cherie Owen, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Contracting officer's determination that award under a small business set-aside was made at a fair market price is a matter of administrative discretion which GAO will not question unless the determination is unreasonable.

DECISION

Global Services Corp¹ (GSC), of Fayetteville, North Carolina, protests the award of a contract to Assessment and Training Solutions Consulting Corporation (ATSCC), under request for proposals (RFP) No. H92239-07-R-0006, issued by the Department of the Army as a small business set-aside, for medical instructors and administrative support. GSC contends that the agency did not receive a fair and reasonable price under the set-aside, and therefore, the agency should cancel the solicitation and re-solicit the requirement on an unrestricted basis.

We deny the protest.

BACKGROUND

On January 3, 2008, the agency issued a solicitation seeking specialized medical instruction and administrative support. The government's independent cost estimate for this contract was [deleted].

¹ The protester's name is Global Services Corp—not Global Services Corporation. Accordingly, the word Corp here is not an abbreviation.

Eight offerors submitted proposals in response to the solicitation. After reviewing the proposals, the agency established the competitive range, which consisted of the proposals of two vendors: Video Masters, Inc. (VMI) and ATSCC. The agency determined that VMI's offer represented the best value to the government under the small business set-aside, and awarded the contract to VMI, in the amount of \$22,846,216.28.

After receiving notice of the award, ATSCC and another vendor filed protests with the Small Business Administration (SBA) contending that VMI was not a small business concern under the applicable size standard. The SBA sustained the protests, holding that VMI is not a small business for purposes of this procurement. Thereafter, the agency terminated the award to VMI.

Prior to awarding the contract to the only other vendor whose proposal remained in the competitive range, ATSCC, the contracting officer ("CO") determined that seven additional instructors were needed to support mission requirements. CO's Statement at 2. The agency raised this matter with ATSCC and, as a result, ATSCC proposed to provide the additional instructors at the same labor rate proposed in its initial proposal. *Id.* This additional requirement resulted in an increase of [deleted]% to ATSCC's initially offered price of [deleted]. CO's statement at 2. As a result, the contract was awarded for \$26,840,222.72.²

DISCUSSION

GSC challenges the agency's decision to award the contract to ATSCC. It argues that the agency did not receive a fair and reasonable price under the contract because the cost to the agency was 17.5% higher than the price offered by VMI. The protester argues that the 17.5% price difference made ATSCC's price inherently unreasonable.

In the agency report, the contracting officer (CO) stated that much of the price difference was due to the pre-award change in the agency's needs. CO Statement at 2. The CO stated that the difference in the prices originally proposed by VMI and ATSCC was less than 6%, and that the additional difference in prices is a result of the service requirement increase, as set forth above.

The Federal Acquisition Regulation (FAR) provides that a contracting officer shall set aside certain acquisitions for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns; and (2) award will be made at fair market prices. FAR

² The agency considered this additional service requirement to be within the scope of the original contract. CO Statement at 2. GSC has not protested this determination.

§ 19.502-2(b). In determining whether a fair market price has been achieved, FAR § 19.202-6(a)(1) directs agencies to the reasonable price guidelines in FAR § 15.404-1(b), which set forth numerous techniques available to contracting officers to analyze the reasonableness of proposed prices.

A determination of price reasonableness for a small business set-aside is within the discretion of a CO, and we will not disturb such a determination unless it is clearly unreasonable. Division Laundry and Cleaners, Inc., B-311242, May 19, 2008, 2008 CPD ¶ 97 at 2; see Ashland Sales and Serv. Co./Macon Garment Inc., a Joint Venture, B-400466, Oct. 23, 2008, 2008 CPD ¶ 196 (HUBZone set-aside); see also Building Maint. Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233 (upholding contracting officer's decision to cancel solicitation where bid was only 7.2% higher than the government estimate); Hybrid Tech. Group, Inc., B-215168, Oct. 3, 1984, 84-2 CPD ¶ 385 (upholding contracting officer's decision that an awardee's price, which was more than 100% greater than the protester's price, was reasonable).

Furthermore, in view of the congressional policy favoring small businesses, contracts may be awarded under small business set-aside procedures to small business firms at premium prices, so long as those prices are not unreasonable. Hardcore DuPont Composites, LLC, B-278371, Jan. 20, 1998, 98-1 CPD ¶ 28 at 3; Asbestos Abatement of Am., Inc., B-221891, B-221892, May 7, 1986, 86-1 CPD ¶ 441 at 4. The determination of whether a small business price premium is unreasonable depends on the circumstances of each case. Division Laundry and Cleaners, Inc., *supra*, at 2; Olsen Envtl. Servs., Inc., B-241475, Feb. 6, 1991, 91-1 CPD ¶ 126 at 2-3.

Here, the contracting officer compared the awardee's proposed price with the government estimate and all of the proposed prices received in response to the solicitation. Agency Report at 4. These are among the techniques available to a CO under FAR § 15.404-1(b)(2) to analyze the reasonableness of proposed prices. Using these techniques, the CO determined that the price offered by the awardee for the initial requirements was fair and reasonable. Also, the agency considered that the labor rate used to calculate the price for the additional quantity was the same labor rate initially proposed. Given this record, given the steps taken by the CO, and given the wide latitude afforded contracting officers in this situation, we see no basis to question the contracting officer's determination that the offered prices are fair and reasonable.

The protest is denied.

Gary L. Kepplinger
General Counsel