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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Nutech Laundry & Textiles, Inc.

File: B-291739

Date: February 10, 2003

Jack H. Robinson for the protester.

Mike Colvin, Department of Health & Human Services, and John W. Klein, Esq., and Kenneth Dodds, Esq., Small Business Administration, for the agencies.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly cancelled solicitation, issued as a small business set-aside, where the agency could not determine that the protester's proposed price, which exceeded the government estimate by more than 50 percent and was almost double the offer of a large business, was fair and reasonable.

DECISION

Nutech Laundry & Textiles, Inc. protests the cancellation of request for proposals (RFP) No. CC-02-07, issued as a small business set-aside, by the National Institutes of Health (NIH), Department of Health & Human Services, for laundry services. Nutech contends that NIH improperly cancelled the RFP based on its allegedly unreasonable determination that the price of Nutech, the sole eligible small business offeror, was not fair and reasonable.

We deny the protest.

The RFP contemplated award of a fixed-price requirements contract for a base year with four 1-year options. Offerors were to provide unit pricing for bulk linen and 21 other laundry service line items, based upon estimated quantities provided by NIH. Award was to be made to the small business contractor that provided the "best overall value to the Government," cost and other factors considered.

By May 29, 2002, two offerors, including Nutech, submitted proposals in response to the RFP.¹ Both proposals were found technically acceptable; however, Nutech's price was more than twice that of the other offeror (Offeror A) and well above the government estimate (dated February 21, 2002). Discussions followed, during which Nutech was informed that its "costs appear to be excessive" and was asked to "verify and reconsider" its costs. Protest, exh. 3, Letter from NIH to Nutech (June 28, 2002). Nutech reduced its price slightly. Final pricing was as follows:

	Government Estimate	Offeror A	Nutech
Bulk linen	\$.33 per lb.	\$.30 per lb.	\$.54 per lb.
Base year	\$ 977,151.76	\$ 714,586.48	\$ 1,457,774.40
Total	\$ 5,187,862.08	\$ 3,687,586.90	\$ 7,572,178.55

NIH determined that Nutech's price, which was more than 50 percent above the government estimate, was not fair and reasonable, and selected Offeror A, whose price was determined to be fair and reasonable, for award. Supplemental Agency Report, encl. 5, Cost Analysis, at 10, 16. However, Offeror A was later determined ineligible for award because it was a large business.

NIH then reopened discussions with Nutech, informing it that its price was still "substantially excessive" based upon the competitive market and again requesting that Nutech reconsider its costs. NIH stated that, at Nutech's current price, the contracting officer could not make the required determination that Nutech's price was fair and reasonable. Protest, exh. 9, Letter from NIH to Nutech (Sept. 18, 2002); see Federal Acquisition Regulation (FAR) § 15.402(a). In response, Nutech did not reduce its price, but argued that it believed its price was fair and reasonable, primarily because it was similar to that in its incumbent contract with NIH.² Protest, exh. 10, Letter from Nutech to NIH (Sept. 23, 2002).

However, NIH suspected that Nutech's price under its incumbent contract might not be fair and reasonable, because there had been no price competition (Nutech's had been the only acceptable proposal received). Supplemental Agency Report at 2. Additionally, a November 2001 study, performed by a laundry-linen management consultant retained by NIH, concluded that the prices NIH paid under the incumbent contract were "exorbitant" and recommended that NIH take steps to revise its procurement practices to increase competition. Agency Report, Tab 3, Linen Study, at 2.

¹ Nutech is the incumbent contractor.

² Nutech also provided an alternative pricing structure, offering a flat weekly rate for all services, which was not contemplated by the RFP.

In addition to comparing Nutech's price to Offeror A's price and the government estimate, NIH also compared Nutech's proposed price to that of another laundry services contract that Nutech was performing for the Department of the Navy in the immediate geographical vicinity to where the NIH contract would be performed. NIH found that Nutech's unit price for bulk linen under the Navy contract was approximately \$.29 per pound, which was barely half of Nutech's proposed unit price for the NIH effort, yet was similar to Offeror A's proposed unit price and the government estimate. Contracting Officer's Statement at 8-9. Nutech was asked to explain this apparent discrepancy, and it informed the agency that the Navy effort required fewer manhours because it required "more presorting on site," "less sideloader work," "less hand folding," "better quality linens," and fewer deliveries. Protest, exh. 14, Nutech's Navy Contract Analysis. NIH did not find that these differences credibly justified the massive price differential between the Navy contract and the NIH contract. Supplemental Agency Report at 2.

Nutech also explained that its proposed NIH contract price was higher because its price was based upon its understanding of the work as the incumbent, rather than the actual requirements of the RFP. According to Nutech, the real requirements to provide laundry services are substantially in excess of those specified in the RFP. NIH disagreed. In support of this contention, Nutech provided an analysis that reflected the alleged "efforts in excess" of what was stated in the RFP that Nutech asserted had to be performed to successfully meet NIH's laundry requirements.

Thereafter, NIH informed Nutech that it would not be awarded the contract because NIH believed Nutech's proposed price was not fair and reasonable. NIH stated it would be canceling the RFP and recompeting the work via unrestricted full and open competition. Protest, exh. 1, Letter from NIH to Nutech (Nov. 19, 2002).

Nutech protests NIH's determination that its price was not fair and reasonable.³ Specifically, it objects to NIH's reliance on the linen study, Offeror A's proposed

³ Nutech also argues that, once issued as a small business set-aside, the RFP may not be recompeted under full and open competition. This is incorrect. FAR § 19.506 expressly provides for the withdrawal of small business set-asides where the award would be detrimental to the public interest—for example, where the award would involve the payment of more than a fair market price. See Fluid Power Int'l, B-278479, Dec. 10, 1997, 97-2 CPD ¶ 162 at 2 (RFP properly cancelled as small business set-aside and resolicited on unrestricted basis where agency received no acceptable offers from small business concerns); Tender Loving Care Ambulance & Ambulette Co., Inc., B-276571.2, July 17, 1997, 97-2 CPD ¶ 25 at 2 (only eligible small business was not entitled to award where cancellation was reasonable and in government's best interest). NIH is required, however, to give notice to the Small Business Administration (SBA) of its intent, before withdrawing this requirement from the set-aside program, so that the SBA can appeal this determination. FAR

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price, and Nutech's price under its Navy contract, as a basis of comparison in determining that its price was not fair and reasonable.⁴ Nutech argues that its proposed price is per se reasonable because it is similar to its price under its incumbent NIH contract.

A procuring agency has broad authority to cancel a solicitation issued under negotiated procedures and need only establish a reasonable basis for cancellation. Bahan Dennis, Inc., B-249496.3, Mar. 3, 1994, 94-1 CPD ¶ 184 at 3. If an agency cannot purchase at a "fair and reasonable" price, as required by the FAR, then cancellation is warranted. Id.; see FAR § 15.402 (price must be "fair and reasonable"). A determination of price reasonableness is a matter of agency discretion, involving the exercise of business judgment, which our Office will not question unless it is shown to be unreasonable. Selecta Corp., B-252182, May 26, 1993, 93-1 CPD ¶ 421 at 2; Sletager, Inc., B-240789.6, Oct. 11, 1991, 91-2 CPD ¶ 328 at 2. In determining price reasonableness, an agency may consider a number of factors, including prior contract history (if price reasonableness can be established), courtesy bids from ineligible large business contractors, and the government estimate. Vitronics, Inc., B-237249, Jan. 16, 1990, 90-1 CPD ¶ 57 at 2; see FAR § 15.404-1(b). In this regard, we have found cancellations proper where the protester's price exceeded the government estimate by as little as 7.2 percent. See Building Maint. Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233 at 4.

Based upon our review of the record, we find no basis to find unreasonable NIH's determination that Nutech's price was not fair and reasonable. As noted above, NIH compared Nutech's price to the government estimate and, given that Nutech's price was more than 50 percent above the government estimate, we think the agency could reasonably conclude Nutech's price was excessive based on this analysis alone. See Bahan Dennis, Inc., supra, at 3 (cancellation reasonable based solely on comparison to government estimate). Significantly, Nutech does not specifically challenge the reasonableness of this government estimate.

In fact, Nutech's own pricing analysis seemingly confirms the validity of the government estimate for the work actually called for by the RFP. As previously noted, Nutech tried to justify its pricing to NIH by arguing that the RFP did not

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§ 19.506. In this regard, we note that the SBA's submissions to our Office support the protester's position.

⁴ Nutech also alleges that Offeror A engaged in acts of fraud and misconduct, and that the contracting officer acted in bad faith towards Nutech. These allegations are not supported by the record and appear completely unfounded. See E.F. Felt Co., Inc., B-289295, Feb. 6, 2002, 2002 CPD ¶ 37 at 3-4 (protester has heavy burden of proving bad faith and must provide "convincing evidence" of malicious intent to harm the protester).

reflect all of the agency's actual requirements, even though Nutech's price included these requirements, and provided NIH with a pricing analysis to illustrate its argument.⁵ Nutech's analysis calculated that its price to perform the requirements without the "efforts in excess" of the RFP would be \$978,075.27, which included \$.33 per pound for bulk linen.⁶ This approximates the government estimate and is also in line with Offeror A's proposed price and Nutech's unit price under its Navy contract. Protest, exh. 15, Nutech's NIH Pricing Analysis.

In addition to the government estimate, NIH properly considered Offeror A's proposed price and Nutech's Navy contract price as a basis of comparison. As stated above, Offeror A's status as a large business did not preclude consideration of its price as evidence of reasonableness. Vitronics, Inc., *supra*, at 2. Also, we find no evidence that Offeror A submitted a "low ball" price, as Nutech contends, because Offeror A's price was close to the government estimate. Similarly, Nutech's unit price under its Navy contract was remarkably close to the unit price in NIH's government estimate, and thus appears to be another reasonable indicator of unit pricing for bulk linen laundry services. Based upon our review of the record, we do not think that Nutech's explanations of performance distinctions between the NIH and Navy efforts adequately justify why Nutech's proposed NIH unit pricing was almost double that of the Navy contract.

Nutech argues that the linen study should have been ignored because the consultant is a competitor and therefore had a "conflict of interest." However, we find no evidence in the record to support this allegation. Furthermore, a review of the consultant's web site reveals that it provides only consulting and management services, and does not perform laundry services. We recognize that Nutech disagrees with the consultant's conclusions, but we cannot say, based upon the record before us, that NIH's reliance on this study was unreasonable.

Finally, we disagree with Nutech that its incumbent contract price requires a determination that its proposed price is per se reasonable. Indeed, FAR § 15.404-1 identifies that previous contract prices "may" be considered "if both the validity of the comparison and the reasonableness of the previous price(s) can be established." Here, as NIH explains, price competition did not occur under the prior procurement and, as noted in the linen study, NIH may have been paying "exorbitant" costs for laundry services as a result. Based upon this information, we think NIH had

⁵ To the extent that Nutech contends that the RFP did not reflect NIH's actual requirements, this argument concerns an alleged solicitation defect and is untimely. See 4 C.F.R. § 21.2(a)(1) (2002) (protest of solicitation defect must be filed prior to date set for receipt of initial proposals).

⁶ Significantly, Nutech did not offer to perform the work for this reduced price.

sufficient reason to question the reasonableness of Nutech's incumbent contract price.

Nutech was repeatedly warned that NIH considered its price excessive and was provided a number of opportunities to reduce its price. It failed to do so and, therefore, NIH concluded that it could not find Nutech's price to be fair or reasonable. Accordingly, we think the agency had a reasonable basis to cancel the RFP. See Bahan Dennis, Inc., *supra*, at 3.

The protest is denied.

Anthony H. Gamboa
General Counsel