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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Hughes & Sons Sanitation

**File:** B-270391

**Date:** February 29, 1996

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Stacey Hughes for the protester.

Sherry Kinland Kaswell, Esq., Department of the Interior, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Protest of agency's decision to convert small business set-aside into an unrestricted procurement under simplified acquisition procedures is denied where the decision to withdraw the set-aside was based on the receipt of unreasonably high quotations from small business concerns as judged by the most recent contract prices for similar services and two quotations received from otherwise ineligible large businesses.

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## **DECISION**

Hughes & Sons Sanitation protests the issuance of request for quotations (RFQ) No. 1590-6-0005 as an unrestricted procurement under simplified acquisition procedures, by the Department of the Interior, National Park Service (NPS), for trash collection at Zion National Park and Kolob Canyons. Hughes, a small business, argues that the agency was required to set aside the RFQ for small business concerns because, it asserts, two responsible, responsive small businesses submitted competitive prices under a recently canceled solicitation for these services.

We deny the protest.

Under the simplified acquisition procedures, an acquisition of services that has an anticipated dollar value exceeding \$2,500 and not exceeding \$100,000 is reserved exclusively for small business concerns and must be set aside. Federal Acquisition Regulation (FAR) § 13.105(a) (FAC 90-29). An agency can proceed on an unrestricted basis, however, if the contracting officer determines that there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery. FAR § 13.105(c)(2). Moreover, if an agency, having set a procurement aside, fails to receive a reasonable quotation from a responsible small business

concern, the contracting officer may cancel the set-aside and complete the purchase on an unrestricted basis. FAR § 13.105(c)(3); see Western Filter Corp., B-247212, May 11, 1992, 92-1 CPD ¶ 436.

NPS reports that the contracting officer's decision not to set aside the procurement was based on the results of the quotations received under recent RFQs that indicated that a set-aside award at a fair market price could not be anticipated. On September 5, 1995, the agency had issued an RFQ for the trash collection services as a small business set-aside. The agency estimated the services would not cost more than \$25,000. The agency received quotations from four firms, two of which were large business concerns ineligible for award under the set-aside. The agency determined that Hughes's quotation of \$29,758 and Staheli Waste Removal Inc.'s quotation of \$36,193 were unreasonable because they exceeded the current market price for the services as established by the price paid in fiscal years 1994 (by 15 percent) and 1995 (by 30 percent). Also, each of the two large business quotes received was approximately \$20,000. Because the two small business quotations were found to be unreasonably high, NPS decided to withdraw the set-aside, and the agency issued another RFQ on September 27.<sup>1</sup>

By the September 28 closing date, only one small business--Hughes--submitted a price quote, again \$29,758; two large contractors again responded with quotes of \$20,000. A purchase order was awarded to Laidlaw Waste Systems, a large business, on October 6. However, the purchase order and the amended RFQ were canceled on October 11 because the RFQ failed to specify the number of trash pickups at Kolob Canyons. The services were resolicited in the instant solicitation, issued on October 26 on an unrestricted basis.

Hughes challenges NPS's conclusion that the quotations received from the two small business concerns that responded to the initial small business set-aside were unreasonable which, effectively, was the basis for both the September 27 and October 26 unrestricted solicitations.<sup>2</sup> According to the protester, the prices quoted by itself and Staheli were reasonable and reflected current market prices given the significant increase in landfill fees (from \$9.00 per ton to \$16.80 per ton) for that area and the most recent contract price for these services.

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<sup>1</sup>Both small businesses filed timely agency-level protests challenging the withdrawal of the set-aside; the protests were denied by the agency on October 5.

<sup>2</sup>The September 27 RFQ was not restricted based on FAR § 13.105(c)(3) (*i.e.*, the failure to receive a reasonable small business quotation in response to the September 5 RFQ). The October 26 RFQ was not restricted based on FAR § 13.105(a) (no reasonable expectation of competitively priced small business offers).

The contracting officer has the discretion to determine price reasonableness in a small business set-aside, and we therefore will not disturb such a determination unless it is unreasonable. General Metals, Inc., B-248446.3, Oct. 20, 1992, 92-2 CPD ¶ 256. The record in this case supports NPS's determination that neither small business concern had submitted a reasonable price quotation.

Both small business quoted prices that substantially exceeded the current market price as established by the prices paid within the last 2 years by NPS, and by the quotes received from the two large businesses. The Hughes quote exceeded the last 2 years' contract prices by 15 percent and 30 percent, respectively—the FAR specifically provides that a price reasonableness determination may be based on a comparison with previous purchase prices. FAR § 13.106-2(a). Further, we have recognized that a contracting officer properly may consider the low quote of an otherwise ineligible offeror in making a price reasonableness determination. See General Metals, Inc., supra. Here, the quotes received from the large firms were approximately \$9,000 lower than that submitted by Hughes, and also were in line with both the most recent prices paid and the agency's estimate that the dollar value of these services would not exceed \$25,000. Finally, while the protester argues that recent landfill-fee increases justified its offer, the record shows that the agency had modified the 1995 contract for the services to recognize the increases and that the total cost of that contract still was less than \$25,000.

Under the circumstances, we have no basis to question the contracting officer's decision to issue RFQ No. 1590-6-0005 on an unrestricted basis. The protest is denied.

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of the United States