

MR. Riback



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** RNJ Interstate Corporation  
**File:** B-241946  
**Date:** February 26, 1991

D. Lee Roberts, Jr., Esq., Smith, Currie & Hancock, for the protester.  
Paul M. Fisher, Esq., Department of the Navy, for the agency.  
Scott H. Riback, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency reasonably canceled invitation for bids (IFB) which had been set aside for small disadvantaged businesses (SDBs), and reissued IFB on an unrestricted basis where agency received three bids from SDBs which were significantly in excess of government estimate as well as funds available for acquisition.

### DECISION

RNJ Interstate Corporation protests the cancellation of invitation for bids (IFB) No. N62472-85-B-0166 (IFB-0166) and the subsequent issuance of IFB No. N62472-90-B-100 by the Department of the Navy. Both IFBs are for construction services at the Naval Weapons Support Center in Crane, Indiana. RNJ argues that the Navy should have awarded a contract to the firm under the original IFB.

We deny the protest.

IFB-0166 was issued as a 100 percent small disadvantaged business (SDB) set-aside and called for bids to perform the construction of a battery test center. The IFB, in describing the acquisition, stated that the estimated cost range was between \$1 million and \$5 million. In response to the IFB, the Navy received three timely bids ranging from \$4,486,000 to \$4,710,000, with the protester submitting the lowest of the three bids.

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After bid opening, the contracting officer became concerned about the accuracy of the government estimate of the cost for the work, which was \$3.5 million, since the lowest bid received was almost \$1 million higher, and therefore he initiated a review of the government estimate for accuracy. In response to the contracting officer's request, the government estimate was reviewed and revised upward in the amount of \$200,000 to account for an apparent error on the part of the agency in estimating various unit prices for building materials as well as the cost of subcontractor overhead. The low bid remained more than 20 percent higher than the estimate. Accordingly, the contracting officer determined cancellation of IFB-0166 was appropriate and reissued the requirement on an unrestricted basis. This protest followed.

RNJ alleges that, although its bid exceeded the government estimate, it nonetheless represented the "fair market price" for this requirement because it was in line with the other bids and within the government cost range as stated in the IFB. Consequently, RNJ argues that the agency improperly canceled the acquisition. RNJ also alleges that the agency's cancellation after bid opening puts it at a competitive disadvantage for the resolicitation since its price has been exposed.

The agency responds that it properly withdrew the SDB set-aside, canceled the solicitation and reissued the acquisition on an unrestricted basis. Specifically, the agency argues that it reasonably determined that the bids received were in excess of the acquisition's fair market value and, consequently, it properly withdrew the set-aside. In support of this, the agency has provided its government cost estimate which was reviewed and revised upward after the receipt of bids and which shows that the protester's low bid exceeded the government estimate by more than 20 percent. In addition, the agency points out that the small and disadvantaged business utilization specialist (SADBUS) concurred in the determination to withdraw the set-aside. As to the determination to cancel the IFB after bid opening, the agency argues that the protester's low bid exceeded the funds available for the requirement by \$386,000 and that it was, therefore, proper to cancel the IFB.

We conclude that the agency properly withdrew the set-aside and reissued this requirement on an unrestricted basis. In this regard, an agency may properly withdraw an SDB set-aside

where it determines that award to an SDB will result in the agency paying a price which exceeds the fair market value of the goods or services to be acquired by more than 10 percent. See Federal Acquisition Regulation (FAR) § 19.506; Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 219.506(a) (DAC 88-13). Above this 10 percent price premium, the agency may reject SDB bids and resolicit on an unrestricted basis. See McGhee Constr., Inc., B-241556, Jan. 10, 1991, 91-1 CPD ¶ \_\_\_\_.

Here, we are satisfied that the record supports the Navy's determination to cancel IFB-0166 and reissue the acquisition on an unrestricted basis. We have no basis to question the accuracy of the government estimate. The agency reexamined the estimate for error after bid opening and adjusted it upward. The protester has offered no evidence in support of or explanation detailing its general assertion that the government estimate was low, and relies instead upon the closeness of the three bids tendered and the government's stated cost range. The mere fact that the prices bid are substantially higher than the government estimate does not, in and of itself, demonstrate that the government estimate is unreasonably low. See Durocher Dock & Dredge, Inc., B-189704, Mar. 29, 1978, 78-1 CPD ¶ 241. Also, we find no inconsistency between the stated cost range of \$1 million to \$5 million and the actual government estimate. FAR § 36.204 prescribes the cost estimate ranges to be stated in construction solicitations and specifically provides that, for a project of the magnitude contemplated under this IFB, a cost estimate range of \$1 million to \$5 million is to be stated. The cost range merely establishes the general parameters of the acquisition, and even if an estimated cost range is inaccurately listed in the IFB, it is without effect since bid prices are not limited to the confines of the estimated cost range and bidders are responsible for independently preparing their own bids. See Speer Constr. Co., Inc., B-228339.2, Feb. 10, 1988, 88-1 CPD ¶ 131. Thus, since the low bid received exceeded the amended government estimate by more than 20 percent, the contracting officer properly rejected RNJ's bid as unreasonable. Given that the three SDB prices received were excessive, the

contracting officer, with the concurrence of the SADBUS, properly canceled IFB-0166 and reissued the acquisition on an unrestricted basis.1/

The protest is denied.

  
for James F. Hinchman  
General Counsel

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1/ RNJ alleges that the agency failed to refer the withdrawal of the set-aside to the SADBUS, as required by FAR § 19.506. The record shows that, contrary to RNJ's allegation, the referral was made. Specifically, the record contains the appropriate set-aside review from containing the signature of the SADBUS and acknowledging his concurrence in the withdrawal. The record also contains an affidavit from the SADBUS which describes the facts surrounding the withdrawal and affirms that the SADBUS concurred in it.