



---

**Comptroller General  
of the United States**

Washington, D.C. 20548

---

# Decision

**Matter of:** Hardcore DuPont Composites, L.L.C.

**File:** B-278371

**Date:** January 20, 1998

---

David G. Obarski for the protester.

Lester Edelman, Esq., and Brian Kennedy, Esq., Department of the Army, for the agency.

Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

Contracting agency's determination that small business set-aside offer is reasonably priced is legally unobjectionable where it was based on the agency's comparison of proposed prices received in response to the solicitation, including the price submitted by the protester; while the protester reduced its price following its disqualification as a small business, the award price was lower than the protester's initial offer.

---

## DECISION

Hardcore DuPont Composites, L.L.C. protests the award of a firm, fixed-price contract to Lancaster Composites, Inc. under request for proposals (RFP) No. DACW39-97-R-0038, a total small business set-aside, issued by the U.S. Army Corps of Engineers, Waterways Experiment Station, for a composite fender pile system to be installed on both sides of a channel under the Lake Pontchartrain causeway bridge in Louisiana. The system is being procured in support of an intergovernmental agreement between the agency and the Greater New Orleans Expressway Commission.<sup>1</sup>

We deny the protest.

---

<sup>1</sup>The RFP specifies that the fender piles shall be composed substantially of fiber reinforced polymer composite materials to protect bridge piers along the channel, and will replace an existing timber pile system with one more suitable for the lake's environment in terms of structural and material performance, longevity, and environmental protection. Although the successful offeror under this RFP will provide all necessary structural elements, other system components, and connectors that constitute a fully functional fender pile system, the actual removal of the existing fender system and installation of the new system will be accomplished under a separate construction contract with the Commission.

The Corps received six proposals, including Hardcore's and Lancaster's. As a result of the ensuing technical evaluation, Hardcore's proposal, which was rated highest and offered the lowest price, was included in the competitive range, along with two other acceptable proposals, including Lancaster's. In considering Hardcore for award, the contracting officer sought a size determination from the Small Business Administration (SBA) regarding Hardcore's status as a small business. SBA determined that Hardcore did not qualify as a small business for purposes of the procurement and the Corps did not further consider that firm's proposal for award.

The contracting officer proceeded to conduct discussions with the remaining eligible offerors in the competitive range, including Lancaster. Hardcore referenced these discussions in an unsolicited letter to the contracting officer in which Hardcore revised its overall price downwards from its initial proposal price of \$1,313,496.42 to \$1,134,462.42 "to provide the Army Corps the greatest value and ability to determine 'fair market value' without a formal government estimate." Following receipt of best and final offers from the remaining offerors, the Corps determined that Lancaster's proposal was the most advantageous to the government and awarded the contract to Lancaster at a price of \$1,298,984.48.

Hardcore essentially contends that the contract was not awarded to Lancaster under the set-aside at a fair market price and that the set-aside should be withdrawn. In this regard, Hardcore argues that, in the absence of a government estimate, the contracting officer failed to properly perform the required price analysis by failing to give any weight to Hardcore's reduced price as a reliable indicator of fair market price. According to Hardcore, its revised price is 14.5 percent lower than Lancaster's price, and this difference is amplified by the technical superiority of Hardcore's system. Hardcore seeks resolicitation of the requirement on an unrestricted basis.

Under Federal Acquisition Regulation (FAR) § 19.506(a), a contracting officer may withdraw a set-aside before award if he or she determines that award to a small business concern would be detrimental to the public interest because, for example, the award would be at more than fair market price. The contracting officer has discretion to determine price reasonableness in a small business or other set-aside, and we will not disturb such a determination unless it is unreasonable. A. Hirsh, Inc., B-271829, July 26, 1996, 96-2 CPD ¶ 55 at 2. In making a determination of price reasonableness in this context, the contracting officer may, among other things, perform a comparison of proposed prices received in response to the solicitation, including prices submitted by an otherwise ineligible large business. Id.; FAR §§ 19.202-6(a), 15.805-2 (June 1997).

However, 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. Vitronics, Inc., 69 Comp. Gen. 170, 171 (1990), 90-1 CPD ¶ 57 at 2, aff'd, B-237249.2, 90-1 CPD ¶ 391. In this regard, we have noted that a small business bidder's price is not unreasonable merely because it is greater than the price of an ineligible large bidder, since there is a range over and above the price submitted by the large business that may be considered reasonable in a set-aside situation. The determination of whether a particular small business price premium is unreasonable depends upon the circumstances of each case. See, e.g., Advanced Constr., Inc., B-218554, May 22, 1985, 85-1 CPD ¶ 587 at 2 (contracting officer in a set-aside procurement properly found reasonable a small business bid which was more than 11 percent higher than large business courtesy bid); Browning-Ferris Indus., B-209234, Mar. 29, 1983, 83-1 CPD ¶ 323 at 2-3 (small business bid which was 51 percent higher than large business bid was properly found reasonable); CDI Marine Co., B-188905, Nov. 15, 1977, 77-2 CPD ¶ 367 at 2-3 (small business offer which was 17 percent higher than that of other qualified firms, large and small business alike, was properly found reasonable).

Here, the Corps awarded the contract to a small business at an amount less than Hardcore itself initially offered.<sup>2</sup> Consequently, to conclude that the award price exceeds fair market value would be tantamount to concluding that Hardcore's initial offer reflected an attempt to secure that contract at substantially more than a fair price (in later reducing its price, Hardcore did not suggest any technical changes to its proposal). We are unwilling to do so. Rather, we see nothing improper in the agency judging the reasonableness of Lancaster's price by comparing it to that of the other offerors, including Hardcore's initial offer, as the agency states it did in making its determination of fair market price.

The record shows that the agency considered Lancaster's price reasonable based on the competitive nature of the procurement and the state-of-the-art nature of the materials used in the pilot system. The agency contends that Lancaster's price reasonableness is further evidenced by the company's competitive published price lists and its similar pricing rates in previous contracts with other agencies and private firms. Although Hardcore argues that the agency failed to consider significant installation costs associated with Lancaster's system, we think the agency properly did not consider such installation costs in its price analysis because, notwithstanding that offerors' approaches to installation were considered

---

<sup>2</sup>Moreover, as admitted by Hardcore, its prices do not include the complete system or the cost of filling hollow piles with concrete, whereas Lancaster's price did. While Hardcore disputes the agency's calculations as to the impact of this omission, it concedes that \$68,000 for the concrete should be added to its prices and that more piles will be required than it proposed.

in the technical evaluation, installation was not separately priced or listed as a price-related factor, and will be performed under a separate construction contract with the Greater New Orleans Expressway Commission.

Based upon our review of the record, we cannot say that the agency's determination that the awardee's price was a fair market price was unreasonable.

The protest is denied.

Comptroller General  
of the United States