



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: CardioMetrix
File: B-241344
Date: January 31, 1991

Robert J. Loring for the protester.
Pat A. Dowdy, Department of Transportation, for the agency.
David Hasfurther, Esq., and Andrew T. Pogany, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

An agency's failure to solicit the incumbent contractor for procurements conducted under small purchase procedures is not improper where the incumbent contractor was not deliberately or consciously excluded and competition "to the maximum extent practicable" was obtained.

DECISION

CardioMetrix protests the issuance of three purchase orders for clinical laboratory services by the United States Coast Guard, Maintenance and Logistics Command, Governors Island, New York. The protester, the incumbent contractor, contends that the issuance of these purchase orders was improper because the agency failed to advertise the requirements in the Commerce Business Daily (CBD) and failed to afford the firm an opportunity to participate. We dismiss the protest.
4 C.F.R. § 21.3(m) (1990).

The three purchase orders were issued under small purchase procedures (see Federal Acquisition Regulation (FAR) Part 13) and covered services to be performed for 6 to 7-month periods for the Coast Guard Headquarters in Washington, D.C., and for Coast Guard locations in Boston and Cape Cod, Massachusetts, respectively. These purchase orders were issued to local firms after competition for the respective procurements had been opened to three firms. Procurement actions leading to the purchase orders were initiated after the agency decided not to exercise existing yearly options under two CardioMetrix contracts--one covering the Coast Guard Headquarters and one covering the Boston and Cape Cod locations. The Coast Guard chose not to exercise the options because it wanted to review

000474 / 14 3065

the requirements and the contracting approach/method that had resulted in the CardioMetrix awards, and it did not want to commit itself to contracts with 1-year durations while making the review. CardioMetrix was not informed of these decisions since no provision in the contracts required the contractor to be notified that the options would not be exercised.^{1/}

We find that CardioMetrix fails to state a valid basis of protest. First, CardioMetrix contends that the procurement actions should have been advertised in the CBD. The protester points to no regulation requiring such advertisements. FAR § 5.101 sets forth the circumstances requiring the advertisement of a procurement in the CBD. These generally do not include procurements that are valued at under \$25,000. The agency advises, and CardioMetrix does not contest the fact, that orders placed will not exceed \$5,000. Thus, we can only conclude that CBD advertisements of the protested procurements were not required.

Second, CardioMetrix contends that the procurements were faulty because the protester was not given the opportunity to compete for them. It contends that, because it was not permitted to compete, the procurements were not subjected to full and open competition as is required by the pertinent statutes. Generally, under the Competition in Contracting Act of 1984, agencies are required, when procuring property or services, to obtain full and open competition through the use of competitive procedures. 41 U.S.C. § 253(a)(1)(A) (1988). However, the use of small purchase procedures is exempted from the "full and open competition" requirement, and when using these procedures an agency is required only to "promote competition to the maximum extent practicable." 41 U.S.C. § 253(g). This the agency did when it solicited three firms for each procurement. FAR § 13.106(b)(5). Consequently, the agency's failure to solicit CardioMetrix for the procurements does not constitute a violation of small purchase procedures and does not require that the procurements be resolicited. Omni Elevator, B-233450.2, Mar. 7, 1989, 89-1 CPD ¶ 248. Termination and resolicitation are warranted only where a showing has been made--and none has been made here--that the

^{1/} CardioMetrix also protests the agency's failure to exercise its options. We will not consider this portion of the protest since the decision whether to exercise an option under a contract is a matter of contract administration outside the scope of our bid protest function. United Coupon Clearing House, B-241204, Sept. 21, 1990, 90-2 CPD ¶ 250.

agency made a deliberate or conscious attempt to preclude the protester from competing. Id.

The protest is dismissed.

Michael R. Golden

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