



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Laboratory Systems Services, Inc.

File: B-258519.2

Date: April 3, 1995

Leslie B. Walker, Jr. for the protester,
Col. Riggs L. Wilks, Jr., and Maj. Michael G. Skennion,
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

Small purchase orders for servicing laboratory equipment,
which were required to be set aside for small business, were
improperly awarded to a large business.

DECISION

Laboratory Systems Services, Inc. (LSS) protests the various
awards of purchase orders to Hewlett Packard, Inc. made
under small purchase procedures by the Walter Reed Army
Medical Center for servicing and maintenance of laboratory
equipment.¹ LSS contends that the awards were improper
because the purchases were required to be set aside for
small business yet awards were made to a large business.

We sustain the protest.

The laboratory equipment includes mass spectrometers and
gas chromatographs manufactured by Hewlett Packard. The
equipment is located at the Forensic Toxicology Drug Testing
Laboratory, Ft. Meade, Maryland and at the Walter Reed Army
Medical Center's Chemical Toxicology Laboratory in
Washington, D.C. LSS, a small business, had previously
serviced much of this laboratory equipment under contract

¹The protested purchase orders are: DADA15-94-M-0008,
DADA15-94-W-0080, DADA15-94-W-0531, DADA15-94-W-0323,
DADA15-94-W-0286, DADA15-94-W-0087, DADA15-94-W-0267,
DADA15-94-W-0452, DADA15-94-W-0774, DADA15-94-W-0702,
DADA15-94-W-0744, DADA15-95-W-0003, and DADA15-95-W-0004.

No. DADA15-91-C-0139 through September 30, 1993. The agency decided not to exercise the 2nd option year of LSS' contract beginning October 1 because significant additional equipment had been acquired.² Upon learning that the option would not be exercised, LSS telephoned and wrote agency contracting officials to express its interest in providing future services to the agency.

From October 1993 through October 1994 (shortly after LSS' protest was filed), the agency issued purchase orders for the repair or maintenance of specific pieces of equipment on an as-needed basis.³ Most of these purchase orders (13) were issued to Hewlett Packard; 4 purchase orders were issued to Compco Analytical, Inc., a small business. The amount of each purchase order, save three, was less than \$2,500; two purchase orders were for \$3,000 and one for \$4,500. The agency did not solicit competition for any of the purchase orders; LSS has never been solicited to repair any of the laboratory equipment it had previously maintained.

Federal Acquisition Regulation (FAR) § 13.105(a) requires that each acquisition of supplies or services that has an anticipated dollar value of \$25,000 or less and is subject to small purchase procedures be reserved exclusively for small business concerns. See Southeastern Chiller Serv., Inc., B-254925, Jan. 28, 1994, 94-1 CPD ¶ 49. Before an agency can proceed on an unrestricted basis, the contracting officer must determine that there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns (or at least one if the purchase does not exceed the \$2,500 threshold for

²To the extent LSS protests that the agency should have exercised its' second option, an agency's decision not to exercise an option is a matter of contract administration outside our bid protest jurisdiction. Digital Sys. Group, Inc.--Recon., B-252080.2, Mar. 12, 1993, 93-1 CPD ¶ 228.

³The protester first became aware of the existence of these purchase orders on September 2, 1994, as the result of the agency's response to a Freedom of Information Act request by the protester. The protest was timely filed with our Office on September 19, 1994. 4 C.F.R. § 21.2(a)(2) (1995).

obtaining competition and price reasonableness) that will be competitive in terms of market price, quality, and delivery. FAR § 13.105(d).⁴

The agency concedes that the protested purchase orders issued to Hewlett Packard were improper because that firm is a large business and it is apparent that there were at least two qualified small businesses, Compco (to which the Army issued some purchase orders) and LSS (the apparently qualified incumbent contractor who had requested to be solicited) that could perform the servicing/repair work. The agency explains that this error occurred because Hewlett Packard was erroneously listed in the Army's computer system as a small business and the error was only discovered when LSS filed this protest. The agency's awards to Hewlett Packard, a large business, violated FAR § 13.105. See Southeastern Chiller Serv., Inc., supra. The Army argues that since it was only required to solicit a single source for those purchase orders valued less than \$2,500,⁵ FAR § 13.106(a)(1), it was not necessarily required to solicit LSS. We note, however, that the Army had an obligation to distribute such small purchases "equitably among qualified suppliers," FAR § 13.106(a)(2),⁶ and the Army has not alleged that LSS, which expressly requested to be solicited for this work, was not qualified.

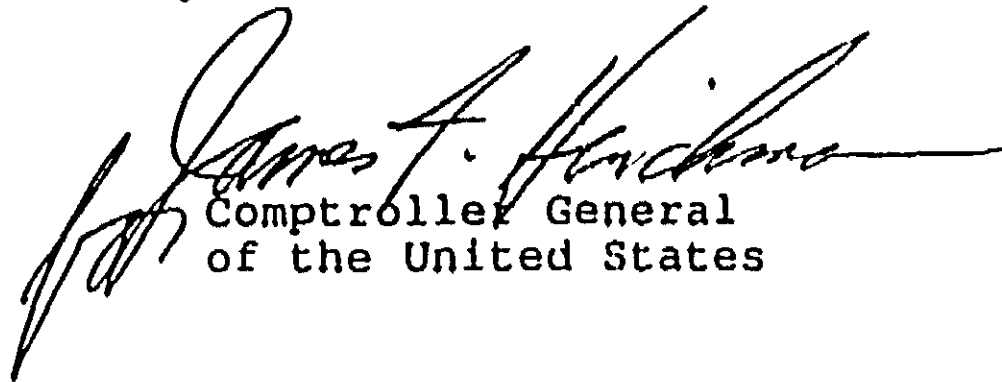
⁴Section 4301(a) of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. No. 103-355, 108 Stat. 3243, 3346 (effective Oct. 13, 1994) (to be codified at 41 U.S.C. § 428(b)) removed the small business set-aside requirement applicable to small purchase acquisitions with regard to purchases below \$2,500.

⁵For the purchase orders issued in excess of \$2,500, the agency was required by FAR § 13.106(b) to solicit quotations from a reasonable number of sources to promote competition to the maximum extent practicable. Ultraviolet Purification Sys., Inc., B-226941, Sept. 10, 1987, 87-2 CPD ¶ 229. The record contains no evidence that this regulation was complied with for the three protested Hewlett Packard orders that exceeded \$2,500.

⁶FASA continues the requirement for equitable distribution among qualified suppliers of purchases below \$2,500. Pub. L. No. 103-355, § 4301(a), 108 Stat. 3347 (to be codified at 41 U.S.C. § 428(e)).

All of the protested purchase orders have been fully performed, so no remedial action is possible.⁷ The agency states that the protester will be given the opportunity to submit quotations for future purchase orders. Under the circumstances, we find that LSS is entitled to recover its costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d). In accordance with 4 C.F.R. § 21.6(f), LSS should submit its certified claim for such costs, detailing the time expended and cost incurred, directly to the agency within 60 working days of receipt of the decision.

The protest is sustained.



James A. Hendon
Comptroller General
of the United States

⁷During the pendency of this protest, the agency awarded purchase order No. DADA15-95-P-0121 to Hewlett Packard in the amount of \$21,264 for a 1-year period to furnish hardware maintenance support for similar laboratory equipment at the Armed Forces Institute of Pathology. While the protester contends this purchase order was improperly awarded on a sole source basis, the agency persuasively stated, and the protester did not successfully rebut, that the work involved the servicing and maintenance of Hewlett Packard's proprietary HP RTE 6 v/m operating system, which only that firm was qualified to perform.