



Comptroller General  
of the United States

Washington, D.C. 20548

106281

# Decision

**Matter of:** Southeastern Chiller Services, Inc.

**File:** B-254925

**Date:** January 28, 1994

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John Bentley, for the protester.  
Paul M. Fisher, Esq., and David J. Rowland, Esq., Department of the Navy, for the agency.  
Jonathan H. Barker, Esq., and Robert G. Crystal, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

An agency improperly converted a small business-small purchase set-aside into an unrestricted procurement when its weekend staff did not use the small purchase source list in its unsuccessful attempt to contact a small business concern to perform urgently needed repair work.

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## DECISION

Southeastern Chiller Services, Inc. (SE Chiller), protests the award of a contract<sup>1</sup> to the Trane Company by the Public Works Center, Naval Facilities Engineering Command, for the replacement of a compressor motor in an air conditioning system at the Naval Air Station in Jacksonville, Florida. SE Chiller asserts that as a small business concern, it was wrongly denied an opportunity to compete for the procurement in question.

We sustain the protest.

On Friday, August 20, 1993, the Public Works Center Zone Manager discovered that an air conditioning system that serviced a training classroom building was not functioning properly. That day the manager's staff contacted several local air conditioning service contractors, including the protester, to see if any could repair the air conditioning

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<sup>1</sup>The contract was first issued as a small purchase order, but as a result of a price increase caused by the need for additional work was converted into a contract.

system on short notice. SE Chiller responded that it could do so.

The next day, Saturday, August 21, 1993, the air conditioning system stopped functioning entirely. The agency states that without air conditioning the classroom building was not useable. The weekend staff was not aware that SE Chiller had been contacted the day before, and attempted to contact five other firms, which the agency states were all small business concerns. The staff did not use the small purchase source list in selecting the five firms it attempted to contact. Since these firms were either unable to respond on an emergency basis or could not be reached, the Trane Company (not a small business) was contacted and started the repair work that weekend. SE Chiller protested that it was not given an opportunity to compete.

Small purchases, such as the one conducted here, are required to be reserved exclusively for small business concerns, unless none is available to meet the agency's needs. Federal Acquisition Regulation (FAR) § 13.105(d)(2). In order to ensure that small business concerns are given opportunities to submit quotations for small purchase procurements, the FAR requires each contracting office to maintain a small business source list. The regulation provides that the list "shall be used to ensure that small business concerns are given opportunities to submit quotations in response to small purchase solicitations." FAR § 13.106(b)(4)(ii).

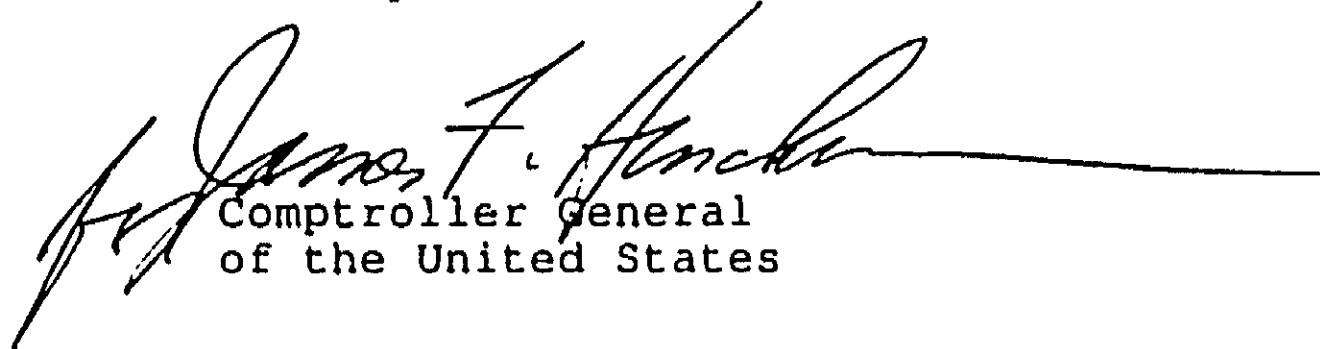
The Navy concedes that the weekend staff was unfamiliar with the specific procurement procedures to be followed and that if the source list had been used, the protester would have had an opportunity to compete. It asserts, however, that it substantially complied with the applicable requirements of the FAR.

The source list identifies small business concerns that are interested in doing business with the government. The agency has not asserted that any of the five firms called is a listed firm, or that these firms were otherwise known to the staff to be interested in competing for government contracts. As noted above, nothing in the record indicates how the weekend staff chose the five concerns it called.

Based on the foregoing, we conclude that the actions taken by the weekend staff did not comply with the applicable requirements of the FAR concerning the award of small purchases to small business concerns, and that the protester was prejudiced by this violation. In this connection, the Navy reports that it has initiated corrective action to ensure that personnel responsible for weekend emergency work comply with the requirements requiring the solicitation of small business concerns for the acquisition of services under the small purchase procedures.

The protest is sustained.

Since the repair work has been completed, we are not recommending reprocurement of the compressor motor. However, we find that SE Chiller is entitled to recover its costs of filing and pursuing the protest under 4 C.F.R. § 21.6(d) (1993). See Futura Systems, Incorporated, 70 Comp. Gen. 365 (1991), 91-1 CPD ¶ 327. In accordance with 4 C.F.R. § 21.6(f), SE Chiller should submit its certified claim for such costs, detailing the time expended and cost incurred, directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.6(e).

  
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