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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

# Decision

**Matter of:** LaBarge Products, Inc.

**File:** B-402280

**Date:** January 19, 2010

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John M. Heida, Esq., for the protester.

Debra Talley, Esq., Department of the Army, for the agency.

Cherie J. Owen, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

1. Protester's challenge to the issuance of a delivery order valued under \$10 million--and hence outside the jurisdiction of GAO's bid protest forum to hear protests involving task and delivery orders--is dismissed.

2. Protester's contention that a delivery order was outside the scope of the underlying indefinite-delivery/indefinite-quantity (ID/IQ) contract against which the order was issued--and hence is eligible for consideration under the statutory exemption to the bar on our jurisdiction available when a protester alleges that the order increased the scope, period, or maximum value of the ID/IQ contract under which the order is issued--is dismissed where the protester itself holds one of the underlying ID/IQ contracts; this exemption is not for aggrieved competitors for the issuance of the order, but for other entities, who, because they do not hold one of the underlying ID/IQ contracts, were not allowed to compete for what is, in essence, a new procurement which improperly circumvented the competition requirements of the Competition in Contracting Act of 1984.

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## **DECISION**

LaBarge Products, Inc., of Saint Louis, Missouri, protests the Department of the Army's issuance of a delivery order for fuel and water pump assemblies, valued at \$2,411,342.40, to DRS Sustainment Systems, Inc. LaBarge alleges that the pumps quoted by the winning vendor will not meet the specifications set forth in the delivery order, and contends that the agency impermissibly changed the scope of the underlying contract by allowing the awardee's pumps to be used with the Army's Assault Hoseline System--a system with which LaBarge claims only its pumps are compatible. Protest at 3-4.

The protester acknowledges that the delivery order at issue here is valued at less than \$10 million; however, LaBarge argues that GAO has jurisdiction over its protest because it believes the delivery order impermissibly expands the scope of the underlying contract. Specifically, the protester argues that, with the issuance of the delivery order at issue here, the Army revealed an intended use of the pumps that had not been previously disclosed, thereby impermissibly expanding the scope of the contract. Id. at 1-2.

We dismiss the protest.

Section 843 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, 122 Stat. 3, 237 (2008) (to be codified at 10 U.S.C. § 2304c(e)(1)) provides:

(1) A protest is not authorized in connection with the issuance or proposed issuance of a task order or delivery order except for --

(A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(B) a protest of an order valued in excess of \$10,000,000.

Accordingly, our authority to consider protests challenging the issuance of task or delivery orders does not extend to orders valued below \$10 million, such as here, absent an allegation that the order increases the scope, period, or maximum value of the underlying contract.

LaBarge argues that our Office has jurisdiction to hear this protest because the delivery order issued to DRS is outside the scope of the underlying indefinite-delivery/indefinite-quantity (ID/IQ) contract. The protester points to the solicitation for the underlying ID/IQ contract for fuel and water pump assemblies, solicitation No. W56HZV-09-R-0461, and argues that the solicitation did not notify protesters that the pump assemblies would be used in connection with the Assault Hoseline System; the protester argues that this system imposes additional requirements for the parts, and contends that these additional requirements are not found in the underlying ID/IQ contract. LaBarge requests that our Office recommend that the agency terminate DRS's order, and issue the order to LaBarge, since LaBarge is, in its view, the only supplier of pumps that meet the agency's requirements. Protest at 6.

When a protester alleges that an order is outside the scope of the contract, we analyze the protest in essentially the same manner as those in which the protester argues that a contract modification is outside the scope of the underlying contract. The fundamental issue is whether issuance of the task or delivery order, in effect, circumvents the general statutory requirement under the Competition in Contracting

Act of 1984 (CICA) that agencies “obtain full and open competition through the use of competitive procedures” when procuring their requirements.<sup>1</sup> See 10 U.S.C. § 2304(a)(1)(A) (2000); see Anteon Corp., B-293523, B-293523.2, Mar. 29, 2004, 2004 CPD ¶ 51 at 4-5. In determining whether a task or delivery order (or modification) is outside the scope of the underlying contract, and thus falls within CICA’s competition requirement, our Office examines whether the order is materially different from the original contract. See Specialty Marine, Inc., B-293871, B-293871.2, June 17, 2004, 2004 CPD ¶ 130 at 4.

Although LaBarge cites our decision in Specialty Marine in support of its arguments that its protest here concerns a matter of scope, the protester fails to recognize that our concern in scope cases is not for aggrieved competitors for the issuance of an order (that is, current holders of an ID/IQ contract under which the orders were issued). Rather, our concern was whether the issuance of an order would circumvent the competition requirements of CICA and deprive other entities—that did not compete for and receive one of the underlying contracts—of an opportunity to compete for what was, in essence, a new procurement. See, e.g., LBM, Inc., B-290682, Sept. 18, 2002, 2002 CPD ¶ 157 at 5-7.

In contrast, LaBarge is concerned with whether the agency has properly issued a delivery order to DRS, rather than LaBarge. Thus, although LaBarge has framed its arguments as raising a question about the scope of the contract, the crux of its protest concerns the agency’s evaluation of the competing quotes. Because the value of the delivery order is below \$10 million, we do not have authority to review the issuance of this order.

Further, with regard to the protester’s argument that the specifications of the underlying ID/IQ contract should have been more restrictive, our Office generally will not consider such contentions. Our role in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect a protester’s interest in more restrictive specifications. See Simplix, B-274388, Dec. 6, 1996, 96-2 CPD ¶ 216 at 5-6.

The protest is dismissed.

Lynn H. Gibson  
Acting General Counsel

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<sup>1</sup> This is consistent with the rule applied by the United States Court of Federal Claims with respect to whether a contract modification is outside the scope of a contract. See, e.g., CCL, Inc. v. United States, 39 Fed.Cl. 780, 791 (Fed. Cl. 1997) (“Contract modifications may not materially depart from the scope of the original procurement; otherwise the modification prevents the complaining party (and other potential bidders) from competing for what is, in reality, a new and different contract.”)