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**Comptroller General  
of the United States**

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

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## Decision

**Matter of:** Jackson Contractor Group, Inc.

**File:** B-402348.2

**Date:** May 10, 2010

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Nicholas D. Kovarik, Esq., Dunn & Black, for the protester.  
Larry M. Anderson, Esq., Department of the Air Force, for the agency.  
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency decision, in response to a protest, to reopen competition to amend solicitation provisions relating to the evaluation of past performance, and to provide offerors with an opportunity to submit revised past performance information and/or revised prices, is unobjectionable, even where the awardee's price has been properly disclosed.

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### DECISION

Jackson Contractor Group, Inc., of Missoula, Montana, protests corrective action taken by the Department of the Air Force in response to a prior protest of an award to Jackson under request for proposals (RFP) No. FA4626-09-R-0026 for the removal and replacement of the heating-ventilation-air conditioning system at the youth activity center building at Malmstrom Air Force Base, Montana.

We deny the protest.

The Air Force issued the RFP on August 4, 2009, as a small business set-aside. The RFP provided that the best value award decision would be based on the evaluation of past performance and price. The RFP detailed what past information should be provided by the offerors and described how past performance would be evaluated and considered in the best value decision.

Two proposals were received in response to the RFP by the September 10, 2009 closing date: one from Jackson and one from James Talcott Construction. Talcott submitted the lowest-priced proposal and its past performance rating was "satisfactory confidence." Jackson's higher-priced proposal received a past performance rating of "significant confidence." The agency made award to Jackson

on December 2, at which time it properly disclosed the award price. Talcott then protested the evaluation of its past performance and the award selection of Jackson to our Office.

On December 29, the agency advised our Office that it would take corrective action in response to the protest. In this regard, the contracting officer concluded that the original RFP and evaluation that were used to select the awardee were flawed, and that corrective action was required because clauses relevant to the past performance evaluation included in the solicitation were outdated and not in compliance with the current Air Force Federal Acquisition Regulation Supplement Informational Guidance 5315.101-1, dated January 2008. Contracting Officer's Statement at 9. Therefore, on February 9, 2010, the agency issued amendment No. 5 to the RFP that made changes in the past performance proposal instructions and evaluation description, and provided Talcott and Jackson with the opportunity to submit final proposal revisions that could include revised past performance information and/or revised prices.

On February 12, Jackson filed this protest objecting to the corrective action. Jackson asserts that it is prejudiced by the corrective action because its price has been revealed and this will provide Talcott with an unfair competitive advantage in the reopened competition.

In negotiated procurements, agencies have broad discretion to take corrective action where they determine that such action is necessary to ensure fair and impartial competition. MayaTech Corp., B-400491.4; B-400491.5, Feb. 25, 2009, 2009 CPD ¶ 55 at 3. We will not object to the specific corrective action so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3. Where the corrective action taken by an agency is otherwise unobjectionable, a request for revised price proposals is not improper merely because the awardee's price has been exposed. Strand Hunt Constr., Inc., B-292415, Sept. 9, 2003, 2003 CPD ¶ 167 at 6.

In its report responsive to the protest, the Air Force explained that its proposed corrective action was expressly designed to address its concern that the solicitation contained obsolete definitions for the terms "recent" and "relevant" past performance, and that this discrepancy in the solicitation would lead to questions from offerors regarding how much weight certain past performance was to be accorded, as was demonstrated by Talcott's protest. Agency Report at 6. In its comments on the report, Jackson does not disagree with the Air Force's asserted need to modify the solicitation regarding the evaluation of past performance and to permit revised past performance submissions. Protester's Comments at 2. However, Jackson contends that because its award price has been disclosed, the agency should "freeze the price element . . . and only [allow] re-submi[ssion] of proposals] on the past performance," so as not to "give Talcott an unfair advantage." Id.

In our view, the corrective action here is within the discretion afforded to contracting agencies in these circumstances. Jackson argues that because offerors were informed of its price, rescinding the original award and reopening the competition would foster an auction and put Jackson at a competitive disadvantage. We have previously noted that the Federal Acquisition Regulation does not prohibit auctions, and agencies are not otherwise prohibited from taking corrective action in the form of requesting revised price proposals even where the original awardee's price has been disclosed. In this regard, we have repeatedly observed that the possibility that the contract may not have been awarded based on a fair determination of the most advantageous proposal has a more harmful effect on the integrity of the competitive procurement system than does the possibility that the original awardee, whose price has been properly disclosed, will be at a disadvantage in the reopened competition. Partnership for Response and Recovery, B-298443.4, Dec. 18, 2006, 2007 CPD ¶ 3 at 3-4; PCA Aerospace, Inc., B-293042.3, Feb. 17, 2004, 2004 CPD ¶ 65 at 4.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel