



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Jones Lang LaSalle Americas, Inc.

File: B-406019.2

Date: February 14, 2012

Fernand A. Lavallee, Esq., Seamus Curley, Esq., Samuel B. Knowles, Esq., and Dionis M. Gauvin, Esq., DLA Piper US LLP, for the protester.
Rand L. Allen, Esq., Kara M. Sacilotto, Esq., Jon W. Burd, Esq., and Nooree Lee, Esq., for Booz Allen Hamilton, Inc., an intervenor.
Maureen A. McAndrew, Esq. and Madeline Shay, Esq., Department of the Army, U.S. Army Corps of Engineers, for the agency.
Jacqueline Maeder, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest objecting to proposed corrective action taken in response to earlier protest is denied where agency reasonably determined that the proposals received in earlier acquisition indicated that there were two reasonable interpretations to an amendment requesting proposal revisions and therefore offerors did not compete on an equal basis.

DECISION

Jones Lang LaSalle Americas, Inc. (JLL), of Washington, D.C., protests the corrective action taken by the Department of the Army, U.S. Army Corps of Engineers, in response to the protest of Booz Allen Hamilton, Inc. (BAH), of McLean, Virginia, against the agency's award of a contract to JLL, under request for proposals (RFP) No. W912DR-10-R-0022, for professional financial and real estate development services in connection with the Army's Military Housing Privatization Initiative. JLL maintains that the agency's proposed corrective action is unreasonable.

We deny the protest.

BACKGROUND

The solicitation, issued on June 10, 2010, contemplated the award of a fixed-price contract for a base year with four 1-year options for financial and real estate development services. Agency Report (AR), Contracting Officer (CO) Statement, at 2; RFP at 3-5. Award was to be made to the offeror whose proposal represented the best value to the agency, considering technical capacity, past performance, small business subcontracting plan, and price. RFP at 141.

The agency received six proposals, including proposals from JLL (the incumbent contractor) and BAH, by the July 13 due date. On August 12, 2011, the agency issued amendment 0010. As relevant here, amendment 0010 included the following preprinted language in Block 11 of the solicitation cover page (Standard Form 30):

The . . . solicitation is amended as set forth in item 14. . . . If by virtue of this amendment you desire to change an offer already submitted, such change may be made . . . provided . . . [it] is received prior to the opening hour and date specified.

RFP, amend. 0010, SR 30, at 1. The attachment to the amendment, consisting of a list of modifications to the RFP, incorporated a revised Service Contract Act wage determination, and revised paragraph 5.18.2 of the performance work statement, increasing (from 11 to 21) the number of facilities that the contractor would manage under contract line item (CLIN) 0005. The attachment instructed offerors to “review their pricing for CLIN 0005 and to provide changes, if any, as associated with the above change to Paragraph 5.18.2.” RFP, amend. 0010, at 2.

After the amendment was issued, the agency received an inquiry asking whether the amendment 0010 “change to Section C-5.18.2 [will] also require a change to the technical volume.” AR, Tab 21, Questions and Answers, at 1. In response, the agency sent an email to all offerors on August 15 which stated that:

No revision is required to your technical volume. Only change should be to pricing of CLIN 0005 as indicated in the amendment.

AR, Tab 21, Questions and Answers, at 1; AR, CO Statement, at 5.

In response to amendment 0010, two offerors, including JLL, revised their prices for CLIN 0005 and other CLINs as well; four offerors, including BAH, revised their prices only for CLIN 0005. The Corps determined that JLL’s proposal offered the “best value” to the agency and awarded the contract to JLL on September 26.

After a debriefing, BAH protested to our Office, asserting (in addition to other arguments) that the agency improperly permitted JLL to submit a “wholesale revised pricing proposal” in response to amendment 0010 instead of the limited price adjustment to CLIN 0005 contemplated by the amendment. BAH Protest at 6-10.

By letter dated October 27, the Army advised our Office that it was taking corrective action. In this regard, while the agency did not concede that any of the allegations in BAH’s protest were valid, it nevertheless advised that it would reopen the competition to request final proposal revisions on price, reevaluate proposals, and make a new source selection decision. Agency Notification of Corrective Action, October 27, 2011, at 1. We then dismissed BAH’s protest as academic (B-406019, Nov. 8, 2011). This protest followed.

CHALLENGE TO CORRECTIVE ACTION

JLL asserts that the corrective action is unreasonable. Specifically, the protester argues that the language in Block 11 of amendment 0010 “clearly permitted” offerors, including BAH, to revise “their proposals in any manner they deemed fit,” and that BAH “was free to revise any aspect of its proposal.” Protest at 20. The protester contends that the language on page 2 of the amendment does not limit price revisions to only CLIN 0005; the protester relies on the allegedly permissive language in the question and answer forwarded by the agency which advised that the only change “should” be to the pricing of CLIN 0005, but did not clearly preclude revisions to other line items. Protester Comments at 5, 7. Moreover, JLL argues that to the extent the language in Block 11 and on page 2 of amendment 0010 was contradictory and inconsistent, it was a patent ambiguity, contradictory and inconsistent on its face. Therefore, according to the protester, BAH was required to either seek clarification of amendment 0010 or file its protest before submitting its response. Because BAH did not file its protest until after award, JLL argues that the protest was untimely. Protest at 34.

In response, the agency explains that when it issued amendment 0010, it intended for offerors to submit revised pricing for only CLIN 0005 and did not anticipate that offerors would submit revised pricing on all CLINs. AR at 5. While the agency was “surprised” by the general revisions submitted by JLL, it recognized that amendment 0010 was “possibly unintentionally ambiguous,” and accepted JLL’s revisions. Id.

Upon receipt of BAH’s protest, the agency determined that corrective action was warranted. According to the agency, amendment 0010 had a latent ambiguity, resulting in offerors interpreting the scope of the permitted changes to proposals differently. The agency now believes that its earlier acceptance of JLL’s overall price revisions had the effect of improperly treating JLL more favorably than the other offerors who submitted revised prices on only CLIN 0005. AR at 3, 5, 7; AR, CO Statement at 6-9.

DISCUSSION

As a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. Northrop Grumman Info. Tech., Inc., B-404263.6, Mar. 1, 2011, 2011 CPD ¶ 65 at 3; Greentre Transp. Co., Inc., B-403556.2, Dec. 7, 2010, 2010 CPD ¶ 293 at 2. The details of implementing the corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. KNAPP Logistics Automation, Inc.-Protest and Costs, B-404887.2, B-404887.3, July 27, 2011, 2011 CPD ¶ 141 at 3; Partnership for Response and Recovery, B-298443.4, Dec. 18, 2007, 2007 CPD ¶ 3 at 3.

In our view, the corrective action taken here is well within the broad discretion afforded to contracting agencies in these circumstances. A solicitation ambiguity exists where two or more reasonable interpretations of the terms of the solicitation are possible. Ashe Facility Servs., Inc., B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 10. Here, while JLL asserts that the agency's interpretation of amendment 0010 is unreasonable because the preprinted language in Block 11 of the amendment permitted firms to propose price revisions or other changes on all CLINs, we note that the specific direction in the amendment attachment--instructing offerors to "review their pricing for CLIN 0005 and to provide changes, if any, as associated with the above change to Paragraph 5.18.2"--and the agency's subsequent response to a question--directing that the "[o]nly change should be to pricing of CLIN 0005 as indicated in the amendment"--suggested a narrower interpretation of the extent of permissible changes. RFP, amend. 0010, at 2; AR, Tab 21, Questions and Answers, at 1.

Furthermore, it is clear from the record that JLL's interpretation was not shared by all offerors. Indeed, as noted above, it appears from the revised proposals that only two offerors interpreted the language of amendment 0010 as permitting broad price revisions; four offerors apparently interpreted the language directing offerors to review their pricing for, and to provide proposal revisions associated with, the changes to CLIN 0005 as inviting only price changes to CLIN 0005.

In sum, review of the language of the amendment, as well as the divergent responses to amendment 0010, supports the agency's position that there were two interpretations of the scope of the changes permitted by the amendment. Further, while JLL asserts that any ambiguity was a patent one such that BAH's post-award protest was untimely, we note that it is within an agency's discretion to take corrective action regardless of whether a protest was timely; all that is required is that the agency have reasonable concerns that errors in the procurement occurred. Optimum Mgmt. Sys., LLC, B-299322.3, May 23, 2007, 2007 CPD ¶ 106

at 5. Here, the record supports the agency determination that corrective action was warranted because offerors were not competing on a common basis insofar as the scope of the changes permitted by amendment 0010.

Finally, JLL contends that its competitive position has been irreparably compromised by the corrective action because its price has been disclosed and because the agency provided BAH with “JLL proprietary information during BAH’s debriefing,” including, for example, a detailed point-by-point discussion of JLL’s strengths and “insight into the premium the Agency was willing to pay for an offeror’s technical solution.” Protester Comments at 28.

The record indicates that JLL is in error as to the information disclosed regarding its proposal. In this regard, the contracting officer, in a signed declaration, states that while BAH was provided JLL’s adjectival ratings under each of the technical factors and was informed that the agency had identified 31 non-price strengths in JLL’s proposal, the agency did not identify JLL’s specific strengths or otherwise share any JLL proprietary information. AR, Tab 4, CO Statement, at 2. This statement is corroborated by two other procurement personnel who also attended BAH’s debriefing and submitted signed declarations. AR, Tabs 11, and 12. As for JLL’s concern that its price has been exposed, we have recognized that the possibility that a 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 had been properly disclosed, will be at a disadvantage in a reopened procurement. Partnership for Response and Recovery, *supra* at 4; PCA Aerospace, Inc., B-293042.3, Feb. 17, 2004, 2004 CPD ¶ 65 at 4.

The protest is denied.

Lynn H. Gibson
General Counsel