



## Decision

**Matter of:** URTruckBroker Corporation

**File:** B-416249.2

**Date:** June 21, 2018

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### DIGEST

Protest challenging agency's decision to clarify terms of solicitation as part of corrective action is denied where the solicitation was ambiguous regarding the basis for award since it included language indicating that award would be made using a best-value tradeoff source selection process, as well as language indicating that award would be made to the firm submitting the lowest-priced, technically acceptable quotation.

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### DECISION

URTruckBroker Corporation, of Texarkana, Texas, protests the agency's proposed corrective action following a prior protest filed by URTruckBroker challenging the award of a contract to Owl, Inc., under request for quotations (RFQ) No. 36C25818Q0009, issued by the Department of Veterans Affairs (VA) for the provision of linen transportation services. The protester contends that the agency's intention to terminate the awarded contract, amend the solicitation, and accept revised quotations--rather than simply reevaluate the submitted quotations under the original criteria--is an unreasonable response to its earlier protest challenging the agency's evaluation process.

We deny the protest.

### BACKGROUND

The RFQ, issued on January 18, 2018, contemplated the award of a fixed-price contract with a 7-month base period of performance, and three 1-year option periods for the provision of linen transportation services to the Northern Arizona Veterans Affairs

Health Care System in Prescott, Arizona, and the Southern Veterans Affairs Health Care System in Tucson, Arizona. RFQ at 5-8, 26.

The solicitation provided that award would be made on the basis of the agency's consideration of three factors: technical, past performance, and price. Id. at 69-70. The solicitation specified that the non-price factors (technical and past performance), "when combined, are approximately equal to Cost or Price." Id. at 68-69.

The solicitation also indicated that the VA would use the lowest-price, technically acceptable (LPTA) process to make its source selection decision. Id. at 69. In this regard, under the price factor, the RFQ established that "[a]ward will be made on the basis of the lowest evaluated price of the [quotation] meeting or exceeding the acceptability standards for non-cost factors/sub-factors," id. at 70, and, with respect to the past performance factor, the RFQ provided that the agency would evaluate quotations using ratings of "acceptable" and "unacceptable," id. at 69.

Quotations were due by February 2, after which the agency proceeded with its evaluations, including the evaluations of the quotations submitted by the protester and Owl, Inc. Contracting Officer's Statements (COS) ¶¶ 1-2. The agency found URTruckBroker to be technically unacceptable during the evaluation process and awarded the contract to Owl, Inc., on March 28. Id. ¶¶ 2, 4. On April 11, URTruckBroker filed a protest with our Office challenging, among other things, its unacceptable rating.

The protest prompted the VA to review the entire procurement process, during which the agency found that the solicitation contained an ambiguity concerning the basis for award because it included both LPTA and best-value tradeoff language. Memorandum of Law (MOL) at 3; COS ¶ 7. The agency was concerned that this ambiguity may have created some confusion whereby the vendors may not have had a common understanding of how the agency would make its award decision. MOL at 3. The agency also was concerned that its evaluators did not know which process to use as reflected by the inclusion of both LPTA and best-value tradeoff language in the source selection decision document. Id.

On April 20, the VA notified our Office of its intention to take corrective action, to include terminating the contract, amending the RFQ to clarify the evaluation criteria, extending the closing date, and accepting revised quotations from current vendors. AR, Tab 4, Agency Notice of Corrective Action, at 1. Because the agency's intended corrective action rendered URTruckBroker's protest academic, we dismissed the protest. URTruckBroker Corp., B-416249, Apr. 24, 2018 (unpublished decision).

On April 23, URTruckBroker filed the instant protest challenging the agency's corrective action.

## DISCUSSION

URTruckBroker argues that the original solicitation unambiguously indicated that the VA would use the LPTA process for award. Comments at 1; Response to Supp. Briefing at 1. Because the solicitation is clear, the protester contends that there is no basis for the agency to amend the solicitation and accept revised quotations. Id. Rather, according to the protester, the only appropriate corrective action is to reevaluate the quotations as submitted and make award using the LPTA process set forth in the solicitation. Protest at 1.

As an initial matter, notwithstanding the protester's assertions to the contrary, we find that the VA's solicitation does in fact contain an ambiguity with respect to the agency's intended basis for award. Where a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. Harper Constr. Co., Inc., B-415042, B-415042.2, Nov. 7, 2017, 2018 CPD ¶ 47 at 4. If the solicitation language is unambiguous, our inquiry ends. Id. However, where two or more reasonable interpretations of the solicitation are possible, an ambiguity exists. Id.

Generally, when using the best-value tradeoff source selection process, the Federal Acquisition Regulation (FAR) instructs agencies to identify all evaluation factors and significant subfactors that will affect contract award, their relative importance, and "whether [the non-cost factors], when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price." FAR §§ 15.101-1(b)(1), (2). Alternatively, where an agency uses the LPTA source selection process, the agency must specify that award will be made based on the lowest-evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. FAR § 15.101-2(b)(1).

Here, as noted above, the solicitation included language establishing that the non-cost factors, "when combined, are approximately equal to Cost or Price." RFQ at 68-69. This language is precisely the language contemplated by FAR section 15.101-1(b), which is to be used when making award using the best-value tradeoff process. Thus, by indicating that the agency would be weighing the three evaluation factors as part of the selection process, the solicitation appeared to indicate that the agency would be making award based on a tradeoff between the non-price factors and price.

The solicitation, however, also provided that the contract would be "awarded using the Lowest Price Technically Acceptable (LPTA) process." Id. at 69. Under the past performance factor, the solicitation included language establishing that the agency would evaluate quotations "utilizing overall narrative ratings of 'acceptable' or 'unacceptable.'" Id. Furthermore, with respect to the price factor, the solicitation provided that selection would be made "on the basis of the lowest evaluated price of the [quotation] meeting or exceeding the acceptability standards for non-cost factors/sub-factors." Id. at 70. Thus, the solicitation also included the LPTA language identified by FAR section 15.101-2(b)(1).

By including both best-value tradeoff language and LPTA language, the solicitation contained two reasonable interpretations of the agency's intended basis for award and was therefore ambiguous. See Dix Corp., B-293964, July 13, 2004, 2004 CPD ¶ 143 at 3 (finding ambiguity where the solicitation included the relative weights of the evaluation factors but also indicated that the contract would be awarded to the vendor rated satisfactory or better with the lowest price). When a solicitation's requirements or basis for evaluation are ambiguous, the appropriate corrective action under the circumstances is to clarify the solicitation and afford vendors the opportunity to submit revised quotations based on the clarified criteria. See, e.g., Harper Constr. Co., Inc., supra (recommending that the agency clarify ambiguity regarding requirements and accept revised proposals based on the clarified criterion).

Given the conflicting language, the VA's decision to amend the solicitation to clarify its intended basis for award fell squarely within its discretion to take corrective action to remedy the error in the procurement process. As we have explained, agencies have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Leidos, Inc., B-409214.4, Jan. 6, 2015, 2015 CPD ¶ 63 at 17. We generally will not object to the specific corrective action, so long as it reasonably remedies the solicitation defect that prompted it. Id. at 18. Agencies also have discretion to take corrective action at any time in the procurement process--even after award--so long as they have reasonable concerns that errors occurred. Jones Lang LaSalle Americas, Inc., B-406019.2, Feb. 14, 2012, 2012 CPD ¶ 98 at 4 (finding that the agency's post-award corrective action clarifying an ambiguous requirement in its solicitation was reasonable).<sup>1</sup>

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>1</sup> If the ambiguity at issue was patent, that is, clear from the face of the solicitation, a protest challenging the language at this juncture would be untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1); Dix Corp., supra. Nevertheless, agencies have discretion to correct a procurement irregularity, even if a protest of the issue would be untimely. Jones Lang LaSalle Americas, Inc., supra.