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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: Overseas Lease Group, Inc.

File: B-402111

Date: January 19, 2010

James S. Phillips, Esq., and Brian C. Caney, Esq., Centre Law Group, LLC, for the protester.

Eric J. Marcotte, Esq., and Scott A. Schipma, Esq., for ANHAM FZCO, LLC, an intervenor.

Maj. Carla T. Peters, Department of the Army, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contract modification requiring lease and maintenance for “unarmored” vehicles was within scope of contract calling for lease and maintenance of both “non-tactical” and “up-armored” vehicles; while protester argues that “non-tactical” vehicles can be armored, solicitation’s differentiating between “non-tactical” and “up-armored” vehicles was sufficient to put protester on notice that term “non-tactical” was intended to refer to unarmored vehicles.

DECISION

Overseas Lease Group, Inc. (OLG), of Fort Lauderdale, Florida, protests the Department of the Army’s issuance of modification No. P00003 to contract No. W91B4M-09-D-4001 (No. 4001) to ANHAM FZCO, LLC, of Dubai, United Arab Emirates. OLG contends that the modification is beyond the scope of the contract and thus amounted to an improper sole-source award to ANHAM.

We deny the protest.

Request for proposals (RFP) No. W91B4M-09-R-4007 (RFP 4007), issued on December 23, 2008, contemplated a single award task-order indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base year, with two 1-year options. RFP at 14. The performance work statement (PWS) described the scope of the contract as follows:

This requirement is for non-personal services to provide vehicle leases for Government Non-tactical and Up-Armored Vehicles in Afghanistan. . . . The contractor will be responsible for scheduled routine maintenance and unscheduled maintenance of the vehicles if contracted for by the customer.

RFP at 77. The RFP included contract line items (CLIN) requesting offerors to submit, among other things, unit and extended prices for a maximum of 150 leased vehicles for the base year and each option year. RFP at 4-9. The CLINs did not specify vehicle types; rather, the solicitation included a Vehicle Lease Price List (VLPL) at Table 1, which listed five different makes and models of armored vehicles. RFP at 11. However, the solicitation also advised offerors that the VLPL would change, stating in the PWS that: “The contractor shall only deliver vehicles selected from the [VLPL]. The [VLPL] will be incorporated into the contract and may change in accordance with the available market. . . .” RFP at 77. On May 28, the agency made award to ANHAM. The contract includes the RFP provisions quoted above.

On July 27, the Army issued no-cost modification P00003 (at issue here) to ANHAM’s contract, which, among other things, added Table 1-B, Unarmored Vehicles, listing four unarmored vehicles. Agency Report (AR), Tab 13, Modification P00003, at 23 24.

OLG contends that ANHAM’s contract was limited to armored vehicles, and that adding unarmored vehicles under the modification exceeded the scope of the contract and therefore constituted an improper sole-source award. The Army asserts that the RFP in fact included unarmored vehicles, stating that in “military parlance, a non-tactical vehicle (NTV) connotes a commercially available vehicle that is not armored Soft-skinned, unarmored and non-tactical vehicles are adjectives used interchangeably to denote commercial vehicles without any form of armor.” AR at 2 n.1.¹

As a general rule, our Office will not consider protests against contract modifications, since they involve matters of contract administration and are beyond the scope of our bid protest function. 4 C.F.R. § 21.5(a) (2009); DOR Biodefense, Inc.; Emergent BioSolutions, B-296358.3, B-296358.4, Jan. 31, 2006, 2006 CPD ¶ 35 at 6; Engineering & Prof’l Servs., Inc., B-289331, Jan. 28, 2002, 2002 CPD ¶ 24 at 4. An exception to this general rule is where, as here, a protester alleges that a

¹ The agency notes that Army regulations describe an NTV as a motor vehicle or trailer of commercial design used for providing administrative, direct mission, or operational transportation support of military functions, and explains that all Department of Defense sedans, station wagons, carryalls, vans and buses are considered NTV. Army Regulation 58-1, Management, Acquisition and Use of Motor Vehicles, Aug. 10, 2004, at 54.

modification is beyond the scope of the original contract, since, absent a valid sole-source justification, the work covered by the modification would be subject to the statutory requirement for competition. Engineering & Prof'l Servs., Inc., supra, at 4; Atlantic Coast Contracting, Inc., B-288969.2, June 21, 2002, 2002 CPD ¶ 104 at 4.

In determining whether a modification triggers the competition requirements in the Competition In Contracting Act of 1984, 10 U.S.C. § 2304(a)(1)(A), we look to whether there is a material difference between the modified contract and the contract that was originally awarded. Engineering & Prof'l Servs, Inc., supra, at 4. Evidence of a material difference between the modification and the original contract is found by examining changes in the type of work, performance period, and costs between the contract as awarded and as modified. Atlantic Coast Contracting, Inc., supra, at 4. Here, the record is clear that the purpose and nature of the original contract were not changed by the modification.

The determinative consideration here is, simply, whether the requirement as described in the RFP (and resulting contract) included unarmored vehicles. While the RFP does not refer to “unarmored” vehicles, *per se*, in describing the requirement, we think it nevertheless was sufficiently clear that unarmored vehicles were encompassed by the RFP. In this regard, in describing the requirement, as noted, the RFP differentiated between “non-tactical vehicles” (NTV) and “up-armored” vehicles.” It is undisputed in the record that an NTV may be either armored or unarmored. However, since the RFP here specifically called for both NTV and “up-armored” vehicles, we think it should have been clear to the protester that the term NTV was intended to refer to unarmored NTV. If the protester were correct that NTV referred only to NTV with armor, there would have been no logical reason for the RFP to refer to NTV at all, since up-armored vehicles reasonably would have included armored NTVs. Moreover, the RFP nowhere defined NTV as armored vehicles and, while OLG contends that the Army’s definition of NTV is “flat-out wrong,” Protester Comments at 2, it has provided no definitive evidence refuting the agency’s assertion that the term NTV generally is used to refer to unarmored vehicles.

OLG maintains that the fact that the RFP and contract specified “five specific configurations of ‘hard’ (armored) vehicles,” and no unarmored vehicles, shows that the contract was not meant to include the ordering or delivery of unarmored vehicles. Protest at 3. However, the agency made clear from the outset that the VLPL was not all-inclusive, and could be modified in the future. In this regard, as noted above, the RFP advised offerors that “The [VLPL] will be incorporated into the contract and may change in accordance with the available market. . . .” RFP at 77. Consistent with this language, amendment 5 to the RFP, issued January 9, 2009, included answers to questions, including the following:

Q4: I am curious if only one brand of transport would be acceptable?, such as the specified Ford Truck and Van units?

A4: The list of vehicles in the solicitation is representative of what we have been using and will continue to be diversified.

RFP amend. 5, at 3. In response to another question regarding the vehicles, the agency advised that the “list of vehicles will be amended, if required, after award of the contract. Please quote on the list as provided.” Id. In view of the cited RFP language, as clarified by the amendment, the listing of only armored vehicles in the RFP did not preclude the purchase of unarmored vehicles under the contract.²

The protest is denied.

Lynn H. Gibson
Acting General Counsel

² The Army explains that the five armored vehicles included on the VLPL in the solicitation were provided as a representative example of the types of armored vehicles that were currently required, and that unarmored vehicles were not listed because they are not in high demand in a war zone. AR at 7.