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**Comptroller General
of the United States**

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

Decision

Matter of: American Guard Services, Inc.

File: B-294359

Date: November 1, 2004

Sherif Assal for the protester.

G. Thomas Carter, Esq., Department of Homeland Security, for the agency.

Katherine I. Riback, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest complaining that the protester's past performance should have received higher than an acceptable rating and that the awardee's acceptable past performance rating was unreasonable is denied where the solicitation only provided for a pass/fail evaluation of past performance and the record supports the agency's judgment that both firms had acceptable past performance.

DECISION

American Guard Services, Inc. (AGS) protests the award of a blanket purchase agreement (BPA) by the Department of Homeland Security to Securitas Security Guard Services, Inc., under that firm's Federal Supply Schedule (FSS) contract, pursuant to request for quotations (RFQ) No. HS-FPS-04-XPC-0014 for guard services in federal buildings in Alaska. AGS challenges the evaluation of its and the awardee's past performance.

We deny the protest.

The RFQ, issued on April 20, 2004, provided for the award of a BPA for a two-month base period and four option years. A detailed statement of work was provided that described the services to be provided, and the solicitation identified estimated total labor hours for regular armed guard services and supervisory services. Vendors were required to provide fixed-hourly-labor rates based upon these estimates.¹

¹ The RFQ required that the vendors' quoted fixed-hourly-rates include all direct and indirect costs and profit. RFQ at 8.

The solicitation provided for the evaluation of quotations under two evaluation factors, price and past performance, and stated that evaluation of past performance would be a “subjective assessment,” in which each firm’s past performance would receive either a “pass” or “fail” rating. RFQ at 114. Award was to be made to the vendor submitting the overall lowest priced quote, which had an acceptable past performance evaluation.

The agency received eight quotations, including the quotes of Securitas and AGS. The quotations of all eight offerors received “pass” ratings under the past performance evaluation. Securitas submitted the lowest overall priced quotation, and the agency made award to that firm. AGS, which submitted the second lowest priced quote, filed this protest.

The protester objects to the “pass” past performance rating that its quotation received. The protester states that it received a contract for this requirement, when it was previously competed as a small business set-aside.² The protester argues that its incumbent performance, which it states was rated very highly, should have warranted a higher past performance rating than that received by Securitas.³

This protest objection provides us with no basis to question the agency’s evaluation of AGS’s past performance. An agency may not announce in the solicitation that they will use one evaluation plan and then follow another; once offerors are informed of the criteria against which their proposals will be evaluated and the source selection decision made, the agency must adhere to those criteria or inform all offerors of significant changes. See DynCorp, B-245289, B-245289.2, Dec. 23, 1991, 91-2 CPD ¶ 575 at 5. Here, AGS’s quotation received the highest possible rating under the solicitation’s stated evaluation scheme, which provided that past performance would only be rated on a pass/fail basis.

² AGS complains that the use of FSS procedures contradicts the “President’s Stated Goals of providing support for the Nations Small Business.” Supplemental Comments at 2. To the extent that AGS is complaining that the solicitation should have been set aside for small businesses, this is a protest of an apparent alleged solicitation impropriety, which should have been protested prior to the closing time for receipt of quotations, and is therefore untimely. 4 C.F.R. § 21.2(a)(1) (2004).

³ AGS suggests that this evaluation rating may have been motivated by animus on the part of the contracting officer. Protest at 4. AGS’s quotation received the highest possible past performance rating under the stated evaluation scheme, and therefore we fail to see any possible animus on the part of the contracting officer could have affected its evaluation. In any event, our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Kolaka No’ eau, Inc., B-291818, Apr. 2, 2003, 2003 CPD ¶ 67 at 8.

AGS also complains that the agency's "pass" rating of Securitas's past performance was unreasonable. In this regard, the protester notes that one of the awardee's referenced contracts was relatively new (Securitas has been performing approximately four months) and that for another contract the responding reference indicated that Securitas had billing problems and questioned the quality of that firm's staff, on that contract. AGS also alleges that Securitas had performance problems on a contract to provide security services at the United States Priority Mail Processing center in Kearny, New Jersey.

Where an agency's evaluation is challenged, our Office will not reevaluate quotations but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated criteria. Simms Indus., Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶ 206 at 2. Mere disagreement with the agency's evaluation does not demonstrate that the agency's judgment is unreasonable. UNICCO Govt. Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

We find from our review of the record that the agency had a reasonable basis on which to conclude that the awardee's past performance was acceptable. Although it is true that one contract reference questioned Securitas's billing system and staff quality, this reference nevertheless rated the firm's overall performance as "average" and assigned an average numerical rating of 7.9 on a 10 point scale, where the rating sheet indicated that 10 was the highest quality score and 5 was acceptable. Agency Report, Tab N, Securitas Past Performance Evaluation, at 5-7. The awardee's other two contract references rated the firm's past performance as "excellent" and assigned average numerical scores of 9.8 and 9.3. With respect to Securitas's performance of the postal service contract in New Jersey, which was not considered in the agency's past performance evaluation, the agency has provided a letter from the United States Postal Service plant manager, who indicates that Securitas has acceptable performance. Agency Report, Tab J, Letter from United States Postal Service. Although AGS disagrees with the agency's judgment that Securitas's quote was entitled to an acceptable, "pass" rating based upon these references, its disagreement with the agency's judgment does not demonstrate that the evaluation was unreasonable. UNICCO Govt. Servs., Inc., *supra*, at 7.

AGS also complains that Securitas is a Swedish-owned firm and should not be allowed to perform security services in federal buildings, generally stating that the Department of Energy (DOE) restricts the award of security contracts to foreign-owned firms. We find this protest ground to also be meritless. Not only does the RFQ not restrict competition for the BPA to domestic firms, but the protester has not directed us to any law or regulation that would require that this contract not be let to a foreign-owned firm. Although AGS has generally directed us to DOE's regulations in part 48 of the Code of Federal Regulations (CFR), we note that DOE's regulations provide for the disclosure of foreign ownership prior to the award of a contract

requiring the contractor to have a facility clearance.⁴ See, e.g., 48 CFR §§ 904-7003, 952.204-73. The RFQ here, however, indicates that the contractor was not required to have either a facility clearance or security clearances for personnel. See RFQ, Exh. 9, at 108.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ The protester also cites to Executive Order 12829, which was issued on January 6, 1993, as restricting the award of a security services contracts to foreign-owned firms. This order establishes a National Industrial Security Program to safeguard government classified information that is released to contractors, licensees, and grantees of the United States Government. As noted above, the RFQ indicated that the contractor did not need either a facility clearance or security clearances for personnel, which indicates that the contractor will not have access to classified material.