

Matter of: Integrity Private Security Services, Inc.
File: B-255172
Date: December 17, 1993

R.O. Rivera for the protester,
David S. Newman, Esq., Department of State, for the agency.
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Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest against award to other than the low-priced offeror is denied where that solicitation provided that award would be made to the offeror whose proposal was determined to be of the best value, based on price and other factors listed in the solicitation, and where agency reasonably evaluated proposal in accordance with these stated factors, and concluded that higher-priced, higher-rated proposal represented the best value to the government.

DECISION

Integrity Private Security Services, Inc. protests the award of a contract to Wackenhut International, Inc. under request for proposals (RFP) No. S-MZ500-93-R-0002, issued by the Department of State (DOS) for building security services to protect the United States Embassy and residences in Maputo, Mozambique. Integrity primarily argues that the agency improperly evaluated its technical proposal.

We deny the protest.

The solicitation, issued on October 15, 1992, contemplated award of a combination-type contract, wherein the standard services provided would be on a fixed-price basis, and the additional or emergency services provided would be on a time and materials basis. The contract resulting from this solicitation was to be for a period of 1 base year, with 2 option years. The RFP provided that award would be made to the offeror whose proposal was determined to be of the best value to the government, price and other factors considered. A maximum of 105 points could be granted to

each proposal; 65 points for the price evaluation, 35 points for the technical evaluation, and 5 points for the United States person preference, described below. To determine which proposal represented the best value, the price and technical scores would be added together, along with the United States person preference, where applicable, to arrive at the offeror's total proposal score.

Under the price evaluation, which was inclusive of options, the lowest-priced proposal would receive the maximum 65 points; the remaining proposals would receive a relative percentage of 65 points based upon a specified formula. The technical evaluation factors, all of equal weight, were as follows:

- A. Technical Approach
 - 1. Management Plan
 - 2. Knowledge and familiarity
- B. Technical Personnel
 - 1. Key personnel
 - 2. Other personnel
- C. Experience and Past Performance

The 5-point United States person preference was available to those firms that qualified, based upon information provided in their certifications. This provision, added pursuant to section 136 of the Foreign Relations Authorization Act for Fiscal Years 1990 and 1991, requires DOS to give preference to "United States persons" where such persons are price competitive to the non-United States persons bidding on guard services contracts exceeding \$250,000. 22 U.S.C. § 4864 (Supp. III 1991). "United States person" is defined as a person meeting seven specific criteria. 22 U.S.C. § 4864(d)(1).

Four offerors submitted proposals. Following the initial evaluation by the agency's technical evaluation panel (TEP), three proposals, among them Integrity's and Wackenhut's, were included in the competitive range. The agency asked these firms for additional information to be incorporated into best and final offers (BAFO) and submitted by June 7. On July 20, the agency reopened negotiations with respect to the issue of entitlement to the United States person preference and provided offerors the opportunity to submit amended BAFOs by July 26. As part of the final evaluation, the agency determined that Wackenhut was the only offeror

entitled to the United States person preference. The final overall scores were as follows:

	<u>Integrity</u>	<u>Wackenhut</u>
Technical Score	21.46	25.43 ²
Price Score	65.00	63.11 ¹
U.S. Person Preference	<u>0.00</u>	<u>5.00</u>
Total	86.46	93.542

Wackenhut, as the highest-scoring proposal, was awarded the contract on September 27. In a letter sent that same day, DOS notified unsuccessful offerors of the award, and Integrity asked for a justification of the selection. The September 28 letter sent in response to that request, listing the reasons Integrity was not selected for award, forms the basis of this protest.² Pursuant to Federal Acquisition Regulation (FAR) § 33.104(c), the head of the contracting activity authorized contract performance notwithstanding the protest to our Office.

Integrity primarily argues that the agency "arbitrarily and unjustifiably" downgraded its technical proposal. The protester points to the specific technical deficiencies listed in the agency's September 28 letter. We discuss each in turn below.

The evaluation of proposals is within the discretion of the procuring agency, since it is responsible for defining its needs and the best method for accommodating them, and must bear the burden resulting from a defective evaluation. U.S. Def. Sys., Inc., B-245563.2, Nov. 3, 1992, 92-2 CPD ¶ 317. In cases challenging an agency's technical evaluation, our Office will not independently weigh the merits of offers; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation factors. OPSYS, Inc., B-248260, Aug. 6, 1992, 92-2 CPD ¶ 83. A protester's mere disagreement with an agency's conclusions does not render them unreasonable. ESSCO Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

One of the weaknesses noted in Integrity's proposal, under both the non-key technical personnel and the management plan factors, was the firm's "unwarranted assumptions" regarding the abilities and training of the current guard force. The

¹Integrity's bid price, including options, was \$1,651,010, and Wackenhut's bid price was \$1,711,458.

²Integrity declined to submit comments on the agency report, and elected to have our Office decide the protest on the existing record. See Bid Protest Regulations, 4 C.F.R. § 33.3(j) (1993).

agency reports that most of the current guard force, from which Integrity stated it would draw the majority of its guard force, is illiterate. However, Integrity's proposal did not seem to take this fundamental lack of skills into consideration. The training methods it proposed to overcome deficiencies in the local labor pool included the use of written materials, and, aside from a reference to "remedial" training, there was no discussion of how to train largely illiterate personnel. In addition, while Integrity's BAFO assumed that the current guard force was familiar with bar coding and radio equipment, the agency reports that the current guard force does not now use this equipment. In response to this concern, Integrity's amended BAFO stated that if the current guard force was not familiar with this equipment, it would provide it with unspecified "basic training." In light of the fact that the safety of agency personnel depends, in part, upon the successful training of the guard force, we think that the agency's conclusions concerning these factors are reasonable.

Another weakness in Integrity's proposal, noted under the technical personnel factor, was that the proposed technical personnel had limited African experience. The record shows that Integrity's proposal named only one key technical person, its program manager. While this individual seemed to have sufficient security experience, that experience was limited to South Africa, where conditions are different from those in a developing African nation such as Mozambique. More important, none of the other named personnel had any experience in less developed Africa; Integrity's sole African contract, active for only 5 months, was in South Africa, and Integrity personnel had spent only 100 days there during the start-up period of that contract. Integrity's amended BAFO asserted that it would recruit appropriate candidates with African experience, but the TEP, with its knowledge of the Mozambican labor pool, was skeptical that Integrity would be able to meet its staffing objectives. Without specific candidates, the TEP could not assess the experience of the technical personnel. As a result, we think the agency's conclusions concerning this evaluation factor were reasonable.³

³For similar reasons, we think that the TEP's decision to downgrade Integrity's proposal because it did not provide adequate information regarding support staff was reasonable. While the firm's BAFO stated that it was in the process of recruiting support personnel, and provided a list of the job titles and/or descriptions for these personnel, no specific personnel were named. As a result, support staff personnel experience could not be evaluated.

Integrity protests the downgrading of its proposal, under the management plan factor, because it failed to show what priority the Maputo contract would be given in relation to other contracts. Integrity's proposal indicated that the Maputo contract would receive significant corporate effort during its initial stages, but the TEP was concerned that it did not discuss the priority that would be given the contract during the remainder of the performance period. In response to this concern, Integrity's amended BAFO merely stated that "attentiveness and responsiveness would not end with contract start-up." Because there was no specific discussion of the relative priority of the Maputo contract, the TEP could not be assured that Integrity would devote sufficient resources to the Maputo contract, especially in light of the fact that the firm was obligated to perform other recently-awarded contracts. Under the circumstances, we think the agency's conclusion in this regard was reasonable.

Integrity asserts that, as the low-priced offeror, it should have received award because the evaluation scheme indicated that price was accorded more weight than the technical evaluation. In a negotiated procurement, award may be made to a higher-rated, higher-priced offeror where the decision is consistent with the RFP's evaluation factors and the agency reasonably determines that the technical superiority of the higher cost offer outweighs the price difference. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. As discussed above, the agency had reasonable concerns about Integrity's lower-priced proposal because Integrity's project manager lacked needed experience and the proposal did not adequately address certain management issues. Wackenhut's proposal received a higher technical score because Wackenhut offered a project manager with the requisite experience, proposed a better management approach and showed substantial experience and resources in Africa. Here, while Integrity's proposal was given the maximum score for its low-priced offer, the agency reasonably concluded that Wackenhut's technical score was sufficiently superior to outweigh the advantage provided by Integrity's lower price, as evidenced by Wackenhut's higher total score. See Oklahoma Aerotronics, Inc.--Recon., B-237705.2, Mar. 28, 1990, 90-1 CPD ¶ 337.

Integrity finally asserts that the agency improperly determined that the firm was not entitled to receive the United States person preference. We need not reach this issue since, even if the determination was improper, Integrity suffered no prejudice, as the difference in the overall scores between the proposals of Wackenhut and Integrity exceeded the five points allowed by the preference. In any event, the record shows that Integrity was denied the preference because it did not meet three of

the seven criteria required to be a United States person. See 22 U.S.C. § 4864(d)(1). The firm does not contest the agency's findings as to two of those criteria. Accordingly, we see no basis to object to the agency's determination that Integrity was not entitled to the preference. See generally United Int'l Investigative Servs., B-253271, Aug. 26, 1993, 93-2 CPD ¶ 138.

The protest is denied.

James F. Hinchman
General Counsel