



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Wackenhut Services, Inc.

**File:** B-276012.2

**Date:** September 1, 1998

Richard J. Webber, Esq., Alison J. Micheli, Esq., and David A. Vogel, Esq., Arent Fox Kintner Plotkin & Kahn, for the protester.

Joseph J. Petrillo, Esq., Karen D. Powell, Esq., and William E. Connor, Esq., Petrillo & Powell, for Coastal International Security, Inc., an intervenor.

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Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## **DIGEST**

1. Agency was not required to consider depth of offerors' relevant past experience--i.e., the number of similar past contracts--in evaluating quality of past performance where solicitation did not provide for evaluation on this basis.
2. Agency properly attributed to offeror the experience of its teaming partner where teaming partner was to perform [Deleted] of the contract effort.
3. Agency properly awarded to a higher-rated, higher-priced offeror where solicitation provided for award on a best value basis, and agency reasonably determined that technical superiority of proposal outweighed its marginally higher price.

## **DECISION**

Wackenhut Services, Inc. protests the award of a contract to Coastal International Security, Inc. under request for proposals (RFP) No. GS11P-96-MPC-0510, issued by the General Services Administration (GSA) for security guard services at the Ronald Reagan and International Trade Center Building in Washington, DC. The protester takes issue with the agency's evaluation of proposals.

We deny the protest.

The RFP provided for award on a best value basis, with the combined weight of technical factors of greater importance than price. Technical proposals were to be

evaluated on the basis of three factors: past performance (worth 60 percent of an offeror's technical score), management and plan of operation (worth 20 percent), and quality control (also worth 20 percent). Price proposals were to be based on prescribed quantities of hours for three labor categories (productive staff-hours, supervisory staff-hours, and contract manager); offerors were to furnish fixed hourly rates, fully loaded, for each category. The solicitation advised offerors that award might be made on the basis of initial offers without discussions, and that each initial offer should therefore contain the offeror's best terms from a price and technical perspective.

With regard to the past performance evaluation factor, section M.3.B.1 of the RFP, as modified by Amendment IV, provided as follows:

Past Performance. This is the most important factor. Under this factor, the Government will consider the offeror's past experience within the last **five (5) years** executing similar work, as well as the quality of the offeror's past performance considering timeliness and technical success. In accordance with Section L, Paragraph 11.A,<sup>1</sup> each offer must demonstrate performance of at least **two (2)** contracts of a similar size and nature within the past **five (5)** years. Services are considered similar if the functions, responsibilities, and control exercised by the contractor were essentially the same as

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<sup>1</sup>Section L, paragraph 11 described the information to be included in technical proposals. Subparagraph A (Experience and Past Performance) provided:

The Government will contact individuals and firms for which you have performed services to evaluate your experience and past performance record. **Offerors shall submit an Exhibit 14 (. . .) for ALL current contracts and ALL contracts performed within the past five (5) years to demonstrate that they have successfully performed contracts for similar services.**

**A minimum of two (2) contracts listed must be similar in nature and size to the required services in this solicitation, and performed within the past five (5) years, in order for the offer to be considered minimally acceptable. Any offer containing less than two (2) contracts similar in size and nature will be considered technically unacceptable.**

required by the solicitation. A contract is comparable in size if the required manhours are equivalent to or greater than 50% of the productive hours required by this solicitation. **This is a minimum requirement. Failure to meet this requirement will render the offer technically unacceptable.** If the contractor meets this requirement, the Government will evaluate the information to determine the quality of the offeror's past performance.

Thirteen offerors, including Wackenhut, Coastal, and Areawide Services, Ltd., submitted proposals by the February 14, 1997 closing date for receipt of proposals. In September 1997, Wackenhut purchased all assets of Areawide, and Areawide was merged into Wackenhut; thus, Wackenhut became Areawide's successor in interest with regard to its proposal. See J. I. Case Co., B-239178, Aug. 6, 1990, 90-2 CPD ¶ 108 at 3. GSA proceeded with evaluation of both the Wackenhut and the Wackenhut-Areawide proposals.<sup>2</sup>

Coastal received a score of 9 (of a possible 10) under each technical evaluation factor, for an overall score of 9, which was the highest technical score awarded; its price of \$41,652,939.09 was fifth low. Coastal identified eight security guard contracts performed by it and its teaming partner, Akal Security, Inc., over the past 5 years; five of the eight met the RFP's definition for similarity. Wackenhut received

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<sup>2</sup>As a preliminary matter, the agency asks that we dismiss Wackenhut's protest against the evaluation of the Wackenhut-Areawide proposal on the ground that this proposal would be ineligible for award if the competition were reopened. GSA argues, in this regard, that the RFP permitted each offeror to submit only one technical proposal--"[f]or purposes of this solicitation, only one technical proposal shall be submitted by each offeror", RFP ¶ 10.D, at IV-L-4--and that now that Areawide has merged into Wackenhut, the proposal constitutes an improper second proposal by that firm.

We decline to dismiss the protest against the evaluation of the Wackenhut-Areawide proposal because it is not clear to us that the proposal would be ineligible for award if the competition were reopened. First, the language cited limits each offeror to the submission of a single technical proposal, but does not expressly address the situation here--i.e., where one offeror merges into another after the submission of technical proposals. Second, to the extent that any such restriction may have applied, the agency in effect waived it by proceeding with evaluation of both proposals. Finally, even assuming that in the event the competition were reopened, the agency could compel Wackenhut to withdraw one of the proposals--so that it would have only one proposal under consideration for award--we have no way of knowing which proposal Wackenhut would choose to withdraw.

a score of 8 under each evaluation factor; its overall technical score of 8 was tied for third high, while its price of \$41,094,665.50 was third low. Wackenhut identified 14 previously or currently-performed security services contracts, 4 of which met the RFP's definition of "similar". Areawide's proposal received a score of 7 under the past performance evaluation factor, a score of 7.5 under the management and plan of operation factor, and a score of 9 under the quality control factor, for an overall score of 7.5, which was sixth high; its price of \$40,202,056.93 was lowest. Areawide identified 18 security services contracts in its proposal, 3 of which were similar in size and scope to the effort solicited here.

The source selection evaluation board (SSEB) found that Coastal's combination of technical merit and price represented the best value to the government and recommended award to that firm without discussions. The source selection authority concurred in the recommendation, and on May 15, 1998 GSA awarded a contract to Coastal. Wackenhut received a debriefing on May 28 and protested to our Office on June 1.

Wackenhut argues that it was unreasonable for the agency not to consider the depth of an offeror's relevant past experience (by which the protester means the number of large, complex security guard service contracts performed by the offeror within the past 5 years) when evaluating the quality of its past performance. The protester contends that the purpose of evaluating past performance is to assess the probability of successful performance of the effort now solicited, and that such an assessment cannot be made without considering the number and nature of previously performed contracts. In the alternative, Wackenhut argues that the agency's evaluation of past performance was unreasonable because the evaluators considered offerors' performance on contracts not meeting the RFP's definition for similarity as to size.

The RFP here did not provide for a comparative evaluation based on the number of contracts performed by the offerors; rather, it provided that the agency would evaluate the past performance of those offerors who demonstrated that they had performed at least two contracts of a similar size and nature within the past 5 years. In effect, the RFP reflects the agency's judgment that performance of two similar contracts during the past 5 years was necessary to demonstrate that an offeror had the capability to perform the requirements here, but that there was no particular benefit to having performed more than two. Having made that judgment, it clearly was proper for the agency not to consider the number, per se, of prior contracts beyond the stated minimum of two, in the past performance evaluation. This does not mean that an agency may never consider the number of prior contracts in evaluating experience and past performance; it does mean, however, that, given the terms of the RFP, the agency was not required to do so here.

Regarding the protester's second argument, we think that it was unclear from the face of the solicitation whether only contracts similar in size and nature to the

effort here were to be considered in the evaluation of an offeror's past performance. On the one hand, the most logical interpretation of the section M paragraph describing the evaluation of past performance is that only contracts similar in size and nature will be considered. In this regard, the paragraph sets forth the requirement for performance of at least two contracts of a similar size and nature within the past 5 years and describes what is meant by similar size and nature; it then provides that if the offeror meets this requirement, "the Government will evaluate the information to determine the quality of the offeror's past performance." RFP § M.3.B.1, as modified by Amendment IV (emphasis added). In our view, the most logical interpretation of this sentence is that the information that will be evaluated is the information demonstrating compliance with the requirement for two or more similar contracts. On the other hand, however, we think that the most logical interpretation of section L, paragraph 11.A, which advises offerors that the government will contact entities for which they have performed services to evaluate their past performance record and instructs them to identify all of their current and recently performed contracts, is that the government will consider past performance information pertaining to non-similar contracts as well.

To the extent the sentence was ambiguous, the ambiguity was patent, however, and an offeror who chooses to compete under a patently ambiguous solicitation does so at its own peril, and cannot later complain when the agency proceeds in a way inconsistent with one of the possible interpretations. Federal Computer Int'l Corp., B-276885, July 29, 1997, 97-2 CPD ¶ 35 at 3. Moreover, we fail to see how the protester was prejudiced by the agency decision to consider references for contracts smaller in size than the effort here in evaluating past performance. See Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 5 (competitive prejudice is an essential element of a viable protest). The record shows that Coastal/Akal received scores of 9 or 10 for the four contracts similar in size for which the evaluators were able to contact a reference<sup>3</sup> and scores of 8, 9, and 10 for the three smaller contracts that were rated, Agency Report, exhibits 15-18; thus, it is evident from the record that, if anything, Coastal would have received a higher score under the past performance evaluation factor if the references for the smaller contracts had not been considered. Wackenhut's scores for smaller-scale contracts, on the other hand, were, on the average, higher than its scores for contracts comparable in size to the effort here (and Areawide's scores were roughly equivalent), Agency Report, exhibits 20-23, 25-28; thus, it does not appear that either offeror would have received a higher score under the past performance factor if the smaller scale contracts had not been considered.

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<sup>3</sup>Specifically, the references on three of the contracts gave scores of 9, "high 9 or 10," and 10; for the fourth contract, the evaluators spoke to two references, who gave scores of 9 and "9 or 10."

Wackenhut further argues that the evaluators improperly credited Coastal with the experience of its teaming partner, Akal Security, Inc., without establishing that Akal would be involved in management of the contract.

In determining whether one company's performance should be attributed to another, an agency must consider the nature and extent of the relationship between the two companies--in particular, whether the workforce, management, facilities, or other resources of one may affect contract performance by the other.

ST Aerospace Engines Pte., Ltd., B-275725, Mar. 19, 1997, 97-1 CPD ¶ 161 at 3. In this regard, while it would be inappropriate to consider a company's performance record where that record does not bear on the likelihood of successful performance by the offeror, it would be appropriate to consider a company's performance record where it will be involved in the contract effort or where it shares management with the offeror. Id. at 3-5. Thus, an agency may properly attribute to an offeror the performance of firms that are members of the offeror's proposed team where the team members are to be involved in the contract effort. NAHB Research Ctr., Inc., B-278876.2, May 4, 1998, 98-1 CPD ¶ 150 at 4-5.

Here, according to an agreement between Coastal and Akal, a copy of which was furnished as part of Coastal's proposal, Akal is to perform [Deleted] of the total contract price with its own employees. Thus, it is clear that Akal's workforce will be substantially involved in the contract effort despite the fact that overall management responsibilities will remain with Coastal. Given the extent of Akal's involvement in contract performance, we see nothing inappropriate in GSA having attributed Akal's past performance to Coastal.

Wackenhut also argues that the agency has not adequately justified its determination that Coastal's higher-priced, higher-rated proposal represents the best value to the government. The protester contends that the SSA did not find that the superior technical merit of Coastal's proposal justified its higher price, but instead relied simply on the fact that the percentage difference in technical scores between the Coastal proposal and the lower-priced ones was greater than the percentage difference in prices. Wackenhut also argues that the agency relied on an unstated evaluation factor--*i.e.*, how well-prepared and tailored to the requirements of the solicitation the proposal was--in selecting Coastal's proposal for award.

Where, as here, an RFP provides that technical considerations will be more important than price in the award process, source selection officials have broad discretion in determining the manner in which they will make use of the technical and price evaluation results in arriving at a source selection decision. Red River Serv. Corp.; Mark Dunning Indus., Inc., B-253671.2 et al., Apr. 22, 1994, 94-1 CPD ¶ 385 at 6. An agency may award to a higher-rated, higher-priced offeror where the decision is consistent with the evaluation scheme set forth in the solicitation and the agency reasonably determines that the technical superiority of the higher-priced

offer outweighs the price difference. Advanced Management, Inc., B-251273.2, Apr. 2, 1993, 93-1 CPD ¶ 288 at 6.

Here, although the source selection decision did not explicitly state that the superior technical merit of Coastal's proposal justified its higher price, it is clear from the document, which was prepared by the SSEB and approved by the SSA, that this is precisely what the agency officials had concluded. In this regard, the report noted that Coastal's overall technical score was significantly higher than the scores of the three technically-acceptable, lower-priced offerors, whereas its price was less than 3.5 percent higher than the lowest-priced offeror's. Moreover, it is apparent from the record, which enumerates numerous strengths in Coastal's proposal, that the evaluators had a reasonable basis for viewing the proposal as technically superior.<sup>4</sup> The evaluators noted, for example, that Coastal had received the highest overall past performance ratings from its customers, all of whom had expressed a high degree of satisfaction with its quality of service. In addition, the proposal offered significant value-added features, such as the provision of an administrative assistant to the contract manager at no additional cost to the government; a requirement that all supervisors possess a Special Police Officer license, which, according to the agency, is considerably more difficult to obtain than the required GSA supervisory certification and which ensures that the supervisors are highly qualified for their duties; and a drug-testing program for all job applicants. SSEB report, at 11-14, 33-34.

Regarding the protester's second complaint, we see nothing objectionable in the evaluators' reference to how well prepared and tailored to the requirements of the solicitation Coastal's proposal was. Consideration of how well a proposal addresses the requirements of a solicitation is inherent to any technical evaluation.

Finally, Wackenhut raised a number of additional arguments in its initial protest that it did not pursue after submission of the agency report. For example, the protester alleged that GSA had deviated from the evaluation scheme set forth in the RFP by failing to evaluate offerors' past experience. It also argued that the agency's evaluation of past performance was arbitrary in that the agency made no effort to interpret the information furnished by contract references or to take into account the number of references responding, but instead simply averaged the scores furnished by the references contacted. Wackenhut conjectured, in the latter regard, that Coastal's rating may have been based on references from a small number of agencies that were not "tough graders," while its own rating was based on a broader sampling. The protester also complained that the record did not support the scores

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<sup>4</sup>In this regard, we think that this case is distinguishable from SDA Inc., B-248528.2, Apr. 14, 1993, 93-1 CPD ¶ 320, cited by the protester, in which we found that a cost/technical tradeoff grounded solely on point scores was unreasonable where the point scores themselves did not have a reasonable basis.

assigned its proposal under the second and third evaluation factors, and that GSA had failed to give Wackenhut the opportunity to respond to negative comments made by contract references concerning Areawide's performance.

The agency denied the first allegation in its report, noting that it had evaluated offerors' past experience to determine whether they met the minimum requirement of having performed two contracts of a similar size and nature within the past 5 years, which was the only evaluation of experience provided for in the RFP. The agency also denied that the evaluators had blindly adopted the scores given by the references; rather, GSA explained, the evaluators had conducted interviews with the references using a standardized questionnaire to confirm the substance and basis for the ratings, and had adjusted the point scores furnished by the references where these scores were inconsistent with, or unsupported by, the factual assertions of the references.

GSA also noted that, contrary to the protester's conjecture, the evaluators did consider approximately the same number of references for each offeror (i.e., 8 for Coastal, 10 for Wackenhut, and 8 for Areawide); to the extent that there was minor variation in these numbers, the agency explained, it was attributable to the fact that the evaluators had contacted an additional reference (or references) if one of those originally contacted did not respond, and that in some cases, those who had initially not responded did in fact call back after additional references had been contacted.

Regarding Wackenhut's third argument, the agency demonstrated in its report that the record did support the scoring of Wackenhut's proposal under the second and third evaluation factors.

Finally, regarding the protester's allegation that the agency failed to furnish it with the opportunity to explain the negative comments made by certain of the Areawide references, GSA contends that it was not required to furnish such an opportunity because it did not conduct discussions. GSA also notes that the evaluators were aware that the negative rating furnished by one Areawide reference was attributable to that reference's dissatisfaction with the transfer of guards from its site to the Reagan building under an interim contract for the services solicited here--which is the information that Wackenhut says it would have explained had it been given the chance--and raised Areawide's past performance rating for that contract from a 3/4, which signifies a fair score, to a 7, which reflects a good score.



Wackenhut has not attempted to rebut the agency position with regard to any of these arguments in its comments; accordingly, we consider it to have abandoned the foregoing arguments. Arjay Elecs. Corp., B-243080, July 1, 1991, 91-2 CPD ¶ 3 at 1 n.1.

The protest is denied.

Comptroller General  
of the United States