

C. Evans



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Wackenhut International, Inc.
File: B-241594
Date: February 14, 1991

Richard J. Webber, Esq., and Dean L. Grayson, Esq., Arent, Fox, Kintner, Plotkin & Kahn, for the protester. Paula J. Barton, Esq., Department of State, for the agency. Catherine M. Evans and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation was clear as to elements of operational approach, including vehicle requirements, agency properly reduced protester's technical proposal score based on deficiency in operational approach as evidenced by inadequate number of vehicles.
2. Where vehicle requirement was clearly stated in solicitation, agency was not required to remind protester of requirement in discussions; in any case, agency's request for more detailed explanation of operational approach adequately led protester into area of deficiency.
3. Protest of agency's alleged failure to apply evaluation preference to domestic contractor is denied where solicitation did not provide for evaluation preference; award based on evaluation preference not provided for in solicitation would have been improper.

DECISION

Wackenhut International, Inc. protests the award of a contract to Factory Guards Limited under request for proposals (RFP) No. S-247-FA-366, issued by the Department of State for guard services at United States Embassy locations in Nairobi and Mombasa, Kenya. Wackenhut alleges that the agency improperly applied the RFP evaluation criteria, failed to conduct meaningful discussions, and failed to accord Wackenhut preference as a domestic contractor.

We deny the protest.

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The RFP contemplated award of a firm-fixed-price contract for a base year and 4 option years, based on estimated levels of effort for standard and emergency services. The RFP provided that award would be made based on the best value to the government, as determined by the proposal's total scores on technical and price factors. The technical evaluation was worth 60 points and the price evaluation 40 points. The technical evaluation was to include four factors: contractor capabilities and experience; offeror's understanding of the scope of work--operational; offeror's understanding of the scope of work--administrative; and experience of key personnel. The price score was to be determined by awarding the maximum of 40 points to the lowest priced proposal, and computing the other price scores based on a comparison of each offeror's price to the low price.

Sixteen firms submitted proposals; 11 were determined to be in the competitive range. Following discussions and best and final offers (BAFO), Factory and Wackenhut were the top-ranked offerors, with the following scores:

<u>Offeror</u>	<u>Technical Score</u>	<u>Price Score</u>	<u>Total Score</u>
Factory	51.9	26.4	78.3
Wackenhut	47.7	28.0	75.7

Based on the combined technical/price scores, the contracting officer determined that Factory's proposal represented the best value to the government and awarded Factory a contract on September 13, 1990. Wackenhut learned of the award on September 28 and filed this protest on October 10.

At issue in the protest is the requirement of section C.1.5.6 of the RFP statement of work, entitled "Reaction Force," the relevant subsection of which provided as follows:

"C.1.5.6.1. In the event that any guard or occupant of a guarded facility or building requires assistance or reinforcements, the Contractor shall provide a Reaction Force which shall respond immediately. The minimum acceptable response time is five minutes. The force shall consist of at least three personnel In the event further assistance is required, then at least two similarly manned vehicles shall be immediately available, capable of arriving within five minutes of a call for their assistance. . . . In an extreme emergency the Reaction Force may remove one or two guards from any post to assist the reaction force. . . ."

In its BAFO request, the agency asked Wackenhut to "address in more detail the operational approach for the requirements of

paragraph C.1.5.6 of the solicitation." Wackenhut responded to the request by offering three detailed scenarios illustrating its proposed approach. However, the agency determined, and so advised Wackenhut in an award notification letter, that its "BAFO responses did not completely make us understand how you could meet the requirements of section C.1.5.6 for both Nairobi and Mombasa with the limited number of vehicles proposed, a fact which somewhat weakened your proposal."

Wackenhut contends that, since the evaluation criteria did not specifically include consideration of the number of vehicles proposed, the agency essentially applied unstated evaluation criteria in reducing the firm's score based on the perceived deficiency in the number of vehicles. Wackenhut also asserts that, since the agency regarded its lack of vehicles as a deficiency, the agency was required to raise the issue in discussions; Wackenhut argues that the agency's request for amplification of section C.1.5.6 did not give it sufficient notice so that it could respond to the agency's concern about the number of vehicles proposed. Alternatively, Wackenhut maintains that if the agency's real concern was its overall approach to the requirement, the agency should have clarified the requirement in discussions. In either case, Wackenhut concludes, the agency improperly failed to conduct meaningful discussions.

We will examine an evaluation only to insure that it was reasonable and consistent with the stated evaluation criteria; a protester's mere disagreement with the agency's judgment does not render that judgment unreasonable. Maytag Aircraft Corp., B-237068.3, Apr. 26, 1990, 90-1 CPD ¶ 430.

We find that the evaluation was proper. The record indicates that although the evaluators found Wackenhut's initial proposal technically superior overall, they were concerned that Wackenhut's approach to the reaction force requirement was inadequate because it did not comply with the requirement that at least three reaction force vehicles be available to respond to each incident, and did not appear to take into account characteristics of the local operating environment as required in the RFP. Although the RFP did not require six vehicles per se, as noted above, it did require that at least three vehicles be available to respond to each incident. Given that Nairobi and Mombasa are 300 miles apart, this reasonably indicated, we think, that at least six vehicles would be necessary to perform properly. Wackenhut does not argue otherwise, and does not explain why it nevertheless offered only four vehicles. Further, the record indicates that due to poor roads, traffic congestion, and the locations of embassy facilities, the contractor must have an adequate number of vehicles strategically positioned throughout Nairobi

and Mombasa in order to meet the required 5-minute response time (in fact, Factory offered 23 vehicles). Wackenhut did not address these concerns in either its initial proposal or its response to the agency's request for more detail concerning its approach to the requirement. We see nothing improper in the agency's conclusion that Wackenhut could not perform adequately with four vehicles, and that its shortage of vehicles indicated a lack of understanding of the reaction force requirement. As the RFP expressly provided for evaluation of the offeror's understanding of the scope of work, the agency properly reduced Wackenhut's technical score for failure to demonstrate a sufficient understanding of the reaction force requirement. See Reflectone Training Sys., Inc., B-240951, Dec. 10, 1990, 90-2 CPD ¶ 472.

We also find that the agency conducted adequate discussions with Wackenhut. As stated above, the RFP expressly required that the offeror provide three reaction force vehicles to respond to each incident in Nairobi and Mombasa. We do not think the agency was required to reiterate this clear requirement in further discussions in response to Wackenhut's proposal of a number of vehicles clearly inadequate to satisfy the requirement. Industrial Maintenance Servs., Inc.; Logistical Support, Inc., B-235717; B-235717.2, Oct. 6, 1989, 89-2 CPD ¶ 324. In any case, given the specific RFP requirement for reaction force vehicles and Wackenhut's proposal of an inadequate number of vehicles, the agency's request for more detail about the protester's reaction force approach was sufficient, we find, to alert Wackenhut to the agency's concerns. See Wyle Laboratories, B-239671, Sept. 19, 1990, 90-2 CPD ¶ 231.

Finally, Wackenhut alleges that the agency improperly failed to accord it an evaluation preference under section 136 of the 1990 Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, Pub. L. No. 101-246, 104 Stat. 15 (1990). This provision requires the State Department to give preference in awarding contracts for guard services abroad to United States offerors that are price competitive with nondomestic offerors and are otherwise qualified to perform. The agency maintains that it has given domestic contractors a preference through several actions, including synopsisizing the procurement in the Commerce Business Daily (CBD) and allocating greater weight to technical (rather than cost) factors in proposal evaluations, thereby favoring domestic firms' "generally superior technical expertise."

In the absence of solicitation language providing for the application of an evaluation preference, evaluation on the basis of a preference for a certain class of offeror would be improper. See Mycon Constr. Co., Inc., B-231544, June 14, 1988, 88-1 CPD ¶ 572. The RFP here did not provide for a

domestic offeror preference, so the agency was precluded from applying such a preference to Wackenhut's offer. To the extent that Wackenhut is arguing that the solicitation should have incorporated an evaluation preference for domestic contractors, the protest is untimely. Under our Bid Protest Regulations, protests of alleged solicitation defects must be filed not later than the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1990); see Concrete Tech., Inc., B-202407, Oct. 27, 1981, 81-2 CPD ¶ 347.

While we dismiss this aspect of the protest, the measures cited by the agency may not constitute a preference for United States contractors as required by statute. A CBD announcement may well result in increased competition by domestic firms, but taking steps to increase competition in this fashion is not the same as giving domestic firms a preference, or advantage, over foreign firms in the competition itself. In any case, the Act includes a requirement for advertising procurements in the CBD (section 136(c)(1)) separate from the preference requirement (section 136(c)(3)). Similarly, while according greater weight to technical factors in an evaluation may result in a particular domestic firm receiving a higher score than if the evaluation were weighted in favor of cost, this does not appear to be a preference aimed at domestic contractors; rather, it accords the same potential scoring advantage to any technically superior firm, whether or not domestic. Therefore, by letter of today, we are advising the agency of the possibility that it is not complying with the statute so that it may address the matter as appropriate. See DynCorp, B-240980.2, Oct. 17, 1990, 70 Comp. Gen. ____, 90-2 CPD ¶ 310.

The protest is denied.


for James F. Hinchman
General Counsel