



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: U.S. Defense Systems, Inc.

File: B-251544; B-251938; B-251940

Date: March 30, 1993

Thomas D. Boyatt for the protester.
Richard D. Lieberman, Esq., Feith & Zell, P.C. for
International Service Associates, Inc., an interested party.
Dennis J. Gallagher, Esq., Department of State, for the
agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of
the General Counsel, OAO, participated in the preparation of
the decision.

DIGEST

1. Protests that selection criteria in solicitations for overseas embassy guard services which provide 35 points for technical factors and 65 points for price violates statutory requirement that the Department of State (DOS) establish procedures to ensure that appropriate measures are taken so that United States persons are not disadvantaged during the solicitation and bid evaluation process due to their distance from the post is denied since the statutory provision does not require DOS to establish a particular source selection formula to ensure that United States firms are not disadvantaged.
2. Protests that changing the evaluation criteria in solicitations for overseas security guard services from 60 points for technical and 40 points for low price, as it was in prior solicitation, to 35 points for technical and 65 points for low price, disadvantages United States firms and violates statutory requirement that Department of State provide an evaluation preference for price competitive United States firms bidding on overseas guard service contracts is denied where solicitations contain a five point preference for United States firms.

DECISION

U.S. Defense Systems, Inc. (USDS) protests the terms of request for proposals (RFP) Nos. SIL-X0008, S-MZ-500-93-R-0002, and 352101-93-01, issued by the Department of State (DOS) for guard services at Foreign Service buildings in Dhahran, Saudi Arabia, Maputo, Mozambique, and Brazzaville, Congo, respectively.

We deny the protests.

The solicitations contemplate the award of firm, fixed-price contracts for a base year and option years, based upon estimated levels of effort for standard and emergency guard services. The solicitations provide that award will be made to the offeror whose proposal affords the best value to the government, as determined by the sum of total scores awarded the technical and price factors plus five points to be added to the total score for offerors qualified as United States firms. Technical factors are worth 35 points and price is worth 65 points. The technical evaluation scheme states the factors and subfactors, listed in descending order of importance, as follows:

- (1) technical approach
 - (a) management plan
 - (b) knowledge and familiarity
- (2) technical personnel
 - (a) key personnel
 - (b) other personnel
- (3) experience and past performance

The solicitations provide that the lowest priced proposal will receive the maximum 65 points and the remaining proposals will receive a relative percentage of 65 points based upon the following formula:

$$\text{Price score} = \frac{\text{Lowest offeror's Price} \times 65}{\text{Offeror's price}}$$

The protester contends that under prior solicitations for overseas guard services, DOS used an evaluation formula of 60 points for technical and 40 points for price on the basis that this formula gave preference to United States firms because United States firms generally submitted technically superior proposals. The protester argues that DOS, by changing the evaluation formula from 60 points for technical proficiency and 40 points for low price to an evaluation formula providing 35 points for technical proficiency and

65 points for low price, has established an award methodology which disadvantages United States firms in violation of 22 U.S.C. § 4864(c)(2) (Supp. III 1991) and gives preference to local firms contrary to 22 U.S.C. § 4864(c)(3).

The statute at issue, 22 U.S.C. § 4864, contains specific findings by Congress with respect to DOS' policy concerning the advertising of security guard contracts at Foreign Service buildings. Congress found that because some foreign missions chose only to advertise locally, many United States security firms that provide local guard services abroad have been unaware that contracts were available and have been disadvantaged as a result. Congress concluded that United States security firms would be interested in bidding on more local guard contracts abroad if they knew of the opportunities. The stated objective of the statute is to improve the "efficiency of the local guard programs abroad administered by the Bureau of Diplomatic Security" of DOS and to "ensure maximum competition for local guard contracts abroad concerning Foreign Service buildings." In order to meet this objective, 22 U.S.C. § 4864(c), provides that with respect to local guard contracts for Foreign Service buildings which exceed \$250,000, the Secretary of State shall:

"(1) establish procedures to ensure that all solicitations for such contracts are adequately advertised in the Commerce Business Daily;

(2) establish procedures to ensure that appropriate measures are taken by diplomatic and consular post management to assure that United States persons and qualified United States joint venture persons are not disadvantaged during the solicitation and bid evaluation process due to their distance from post; and

(3) give preference to United States persons and qualified United States joint venture persons where such persons are price competitive to the non-United States persons bidding on the contract, are properly licensed by the host government, and are otherwise qualified to carry out all the terms of the contract."

USDS argues that by reducing points awarded for technical expertise, DOS ensures that United States firms are disadvantaged during the evaluation process in violation of Section (c)(2) and receive no preference as required by Section (c)(3) in the overall evaluation process, since the

reduction in available technical points effectively reduces the effect of the five point nationality preference contained in the solicitations.

While the protester argues that by placing a greater emphasis on price than on technical, United States firms, which are technically superior to local firms, are disadvantaged, we do not believe that this is the type of disadvantage section (c) (2) seeks to eliminate. Section (c) (2) requires DOS to take measures to ensure that United States persons are not disadvantaged during the "solicitation and bid evaluation process due to their distance from the post." The provision specifically addresses disadvantages American offerors may have during the solicitation and evaluation process because of their distance from the Foreign Service buildings located abroad. See U.S. Defense Sys., Inc., B-246719, Mar. 18, 1992, 92-1 CPD ¶ 291. We find no basis in the Section (c) (2) language and the legislative history of the statute to support the protester's view that this section requires the use of a particular evaluation formula to address pricing disadvantages that American firms may have compared to local foreign firms. Id.; H.R. Rep. No. 343, 101st Cong., 2nd Sess. 4, reprinted in 1991 U.S. Code Cong. & Admin. News at 57.

Section (c) (3) of the statute requires DOS to give preference to United States persons that are, among other things, price competitive. Here, the solicitations contain a five point preference for qualified United States firms to be added to the offeror's total evaluated score, as contemplated by section (c) (3).¹ The protester argues that this five point preference will not provide an adequate advantage to United States firms since DOS has reduced the weight assigned the technical evaluation factor on which United States firms usually score higher than foreign firms. The protester points out that DOS concedes that United States firms frequently rank technically higher "in their technical expertise" compared to foreign firms. However, there is nothing in the record to support the protester's claim that the five point preference is not meaningful and will necessarily be offset by the five point reduction in the weight given technical factors. This five point preference for United States firms on overseas security

¹In U.S. Defense Sys., Inc., supra, USDS complained that the solicitation provided no preference as required by section (c) (3). DOS responded that it intended to amend the RFP to include a five point preference for price competitive American contractors. USDS agreed that this would satisfy section (c) (3), and we therefore considered this protest issue to be academic.

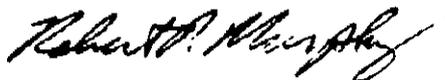
guard solicitations and the revised award methodology is relatively new (these three solicitations appear to be the first with this precise evaluation formula), so DOS has not had an opportunity to evaluate the practical effectiveness of the preference. We note also that the statute requires that a preference be given to "price competitive" United States persons, which supports DOS' view that the preference was intended only to aid United States firms offering a competitive price and thus emphasis on price in the evaluation of proposals is consistent with the statute.

More generally, agency acquisition officials have broad discretion in selecting evaluation factors that should apply to an acquisition, and the relative importance of these factors. Federal Acquisition Regulation (FAR) § 15.605(b). The determination of the agency's minimum needs and the best method of accommodating them are primarily within the agency's discretion and, therefore, we will not question such a determination unless the record clearly shows that it was without a reasonable basis. RMS Indus., B-247233; B-247234, May 1, 1992, 92-1 CPD ¶ 412. The agency reports that price is "the determining and driving factor" in solicitations for overseas guard services because of the limited availability of funds and the fact that this type of procurement is not very technical in nature. The agency states that, in seeking guards to protect United States employees and property, the technical criteria were developed to ensure that the offerors understand the requirements and have the expertise and experience necessary to perform. Once an offeror establishes its technical competency, price becomes the agency's greatest concern. DOS believes its award methodology is consistent with its needs.

Here, in accordance with the FAR, the solicitations clearly state the evaluation factors that the agency will consider in making the source selection and the relative importance of these factors. We think the evaluation factors which emphasize a firm's technical expertise are consistent with the agency's objective of ensuring that offerors possess the understanding and expertise required for the work. The decision to weigh price more than technical factors is consistent with DOS' goal of obtaining the necessary technical competence at the lowest cost. Accordingly, we have no basis to object to the evaluation factors and

relative weights that the agency has established for overseas security guard services contracts. Id.

The protests are denied.


for James F. Hinchman
General Counsel