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

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## Decision

**Matter of:** Torres International, LLC

**File:** B-404940

**Date:** May 31, 2011

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A. Jeff Ifrah, Esq., Ifrah PLLC, for the protester.  
Kathleen D. Martin, Esq., Department of State, for the agency.  
Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging contracting agency's negative responsibility determination of a joint venture is denied where that determination is reasonably based on fact that the joint venture did not have a top secret facility clearance mandated by the solicitation.

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### DECISION

Torres International, LLC (TI JV) of Arlington, Virginia, protests the Department of State's (DOS) determination that TI JV was not responsible to perform the services required under task order request for proposals (TORFP) No. 2011-008, issued by DOS for the provision of protective security services in Irbil, Iraq. Torres was found nonresponsible because it did not have a current top secret facility clearance as required by the solicitation.

We deny the protest.

### BACKGROUND

On September 29, 2010, DOS awarded multiple indefinite-delivery/indefinite-quantity (IDIQ) contracts in support of the Worldwide Protective Service (WPS) program. An IDIQ contract was awarded to TI JV, a joint venture consisting of Torres Advanced Enterprise Solutions, LLC (Torres AES), Sallyport Global (Sallyport), and Blue Hackle North America (BHNA). Agency Report (AR), Tab 2, Award Notification, at 1. Under the WPS program, all IDIQ contractors are required to hold top secret facility clearances. Contracting Officer's Statement at 1. According to the agency, all three of the TI JV members would each have to have a top secret facility clearance in order for TI JV to be issued a top secret facility clearance. Id.

The award notification advised TI JV that it was responsible for obtaining an interim top secret facility clearance within 60 days of the IDIQ contract award and a final clearance within 120 days of award. AR, Tab 2, Award Notification, at 1. TI JV was also advised that until a top secret facility clearance was issued, it could not perform any work under the IDIQ contract. Id.

On January 14, 2011, DOS issued a cure notice to TI JV concerning its failure to obtain the required facility clearance. AR, Tab 3, Cure Notice, at 1. TI JV was specifically advised that, as a matter of responsibility, it was ineligible for award of any task orders until it received a final top secret facility clearance. Id.

On January 17, Torres AES responded and advised the agency that it was the majority and senior joint venture member of TI JV and that each of the joint venture members had completed all required steps to obtain clearances. AR, Tab 4, Response to Cure Notice, at 1. Torres AES indicated that it would “fully absorb” TI JV and immediately request that the Defense Security Service (DSS)<sup>1</sup> provide a top secret facility clearance to TI JV based on Torres AES’ existing facility clearance. Id. at 2. Torres AES further stated that Sallyport and BHNA would “remain on the sidelines” while awaiting their clearances and would “return to the [joint venture]” once their facility clearances were granted. Id.

On March 11, DOS advised TI JV of the following:

Torres International LLC, a joint venture was awarded the WPS [contract] based upon the strength of the three corporate members of the [joint venture]. In its apparent action to remove Sallyport and [BHNA] from the [joint venture] in order to remove barriers to obtaining a Top Secret Facility clearance in the name of the [joint venture], Torres [AES] has brought into question whether Torres [AES] can perform responsibly as the sole corporate member of the [joint venture].

AR, Tab 5, Contracting Officer Letter to TI JV, at 2. The agency further advised Torres AES that it did not approve of Torres AES assuming 100-percent member interest in TI JV, and therefore the agency continued to consider TI JV no longer to be a responsible party to perform task orders issued under the WPS contract. Id.

After further discussions with DOS, TI JV submitted a corrective action plan on March 23, indicating that it had not dissolved the joint venture; but rather, Torres AES, as the managing partner of the joint venture, approved the temporary withdrawal of the other two members until they acquired their individual facility

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<sup>1</sup> DSS is the organization that adjudicates all facility clearances for companies under the WPS multiple-award IDIQ contract. Contracting Officer’s Statement at 3 n.1.

clearances. AR, Tab 6, TI JV Corrective Action Plan, at 1. TI JV specifically stated that it understood that all three joint venture partners must possess clearances in order for the joint venture to obtain a top secret facility clearance and remain compliant with the WPS contract. Id.

On March 29, DOS requested additional supporting information and documentation from TI JV concerning its corrective action plan. AR, Tab 7, E-Mail from Contracting Officer to TI JV. On April 4, TI JV responded and submitted additional information to supplement its corrective action plan. AR, Tab 8, Supplemental Corrective Action Plan. The additional information specifically showed that Sallyport and BHNA did not have the appropriate facility clearances. Id. at 1-3.

While discussions concerning the facility clearances between TI JV and DOS were occurring, on January 25, the agency issued the subject TORFP for the provision of protective security services in Irbil, Iraq. The TORFP included two mandatory requirements. The first mandatory requirement was that offerors were required to submit evidence of current private security company licenses issued from both the Iraqi and Kurdistan Ministries of Interior. TORFP amend. 1, at 4. The second mandatory requirement was for offerors to provide evidence of their top secret facility clearances with their proposals. Id. at 5. In this regard, the TORFP stated that DOS would not evaluate proposals from offerors that lacked current top secret facility clearances. Id.

On February 17, TI JV filed a timely agency-level protest challenging as unduly restrictive the requirement that offerors possess a Kurdistan license.<sup>2</sup> On February 18, TI JV submitted a proposal in response to the TORFP and included evidence that it had a top secret facility clearance.<sup>3</sup>

On March 17, DOS denied the agency-level protest and again advised TI JV that it remained ineligible for award of the task order because it did not possess a top secret facility clearance. TI JV Protest, exh. B, at 3.

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<sup>2</sup> TI JV did not challenge the requirement for a top secret facility clearance.

<sup>3</sup> The contracting officer surmises that DSS issued a top secret facility clearance to TI JV based on correspondence from TI JV to DSS that indicated that TI JV had dissolved its relationship with Sallyport and BHNA and that Torres AES was now the sole owner of TI JV. Contracting Officer's Statement at 3. The protester admits that Torres AES received its top secret facility clearance after providing DSS documentation showing that Sallyport's and BHNA's rights in the joint venture had been terminated. Comments at 4.

On March 28, TI JV filed this protest with our Office, challenging both the denial of its agency-level protest and the determination that TI JV was ineligible for award because it did not possess a top secret facility clearance. Protest at 4-7.

## DISCUSSION

The protester contends that the agency's negative responsibility determination on the basis that TI JV lacked the required facility clearance was improper. The protester argues that it submitted evidence with its proposal that demonstrates that DSS had granted a top secret facility clearance to TI JV, the legal entity that holds the WPS IDIQ contract. Comments at 7.

The agency responds that it awarded an IDIQ contract to TI JV, which was comprised of three members--Sallyport, BHNA, and Torres AES. The agency maintains that the evidence provided by TI JV with its proposal showed that TI JV was granted a top secret security clearance based on DSS' understanding that TI JV was comprised solely of Torres AES without the other two members. It is the agency's position that it did not approve of Torres AES assuming a 100-percent interest in TI JV, and that all members of the joint venture that was issued the IDIQ contract must have the required top secret facility clearances. Contracting Officer's Statement at 1, 3-4, 7. The agency further states that as of April 4 (when TI JV supplemented its corrective action plan a week after filing the protest here), the protester acknowledged that neither Sallyport nor BHNA had the required top secret facility clearances. Id. at 7. Accordingly, the agency maintains that, as a matter of responsibility, TI JV is ineligible for the award of any task orders until it receives its top secret facility clearance. Id.

In making a negative responsibility determination, a contracting officer is vested with a wide degree of discretion and, of necessity, must rely upon his or her business judgment in exercising that discretion. See International Paint USA, Inc., B-240180, Oct 30, 1990 90-2 CPD ¶ 349 at 3. Although the determination must be factually supported and made in good faith, the ultimate decision appropriately is left to the agency, since it must bear the effects of any difficulties experienced in obtaining the required performance. For these reasons, we generally will not question a negative determination of responsibility unless the protester can demonstrate bad faith on the part of the agency or a lack of any reasonable basis for the determination. Colonial Press Int'l, Inc., B-403632, Oct. 18, 2010, 2010 CPD ¶ 247 at 2. Our review is based on the information available to the contracting officer at the time the determination was made. Acquest Dev. LLC, B-287439, June 6, 2001, 2001 CPD ¶ 101 at 3.

Here, we find that the contracting officer's negative determination of TI JV's responsibility was reasonable. While TI JV submitted with its proposal a letter from DSS granting a top secret facility security clearance, TI JV recognizes that the clearance was based on a restructuring of the joint venture that in essence eliminated two of the joint venture members. Comments at 7. The protester

nevertheless argues that there is nothing in the WPS IDIQ contract or the current solicitation that requires joint venture members to maintain particular ownership percentages. Id. The protester further argues that the contracting officer's negative responsibility determination ignored evidence that TI JV, as the wholly owned subsidiary of Torres AES, can and will meet its financial and performance obligations under the contract. Id. at 8.

However, the contemporaneous record shows that TI JV did not just change the ownership percentages of its joint venture members; it eliminated two of the three joint venture members. AR, Tab 4, Response to Cure Notice, at 2. As the agency makes clear, it awarded the IDIQ contract to a joint venture that consisted of three firms; it did not award the contract to an entity that consisted only of Torres AES. The record shows that DOS specifically advised the protester that it did not approve of Torres AES assuming 100-percent member interest in TI JV. Moreover, the record further shows, and the protester acknowledges, that two of the joint venture members did not have top secret facility clearances 120 days after award of the IDIQ contract and still did not have top secret facility clearance as of April 4, when the protester supplemented its corrective action plan with the agency after filing this protest. AR, Tab 8, Supplemental Corrective Action Plan, at 1-2. Based on this record, we find reasonable the contracting officer's judgment that TI JV, as that entity was structured when it received the IDIQ contract, did not possess a top secret facility clearance. Since TI JV did not have the appropriate clearance required by the solicitation, the contracting officer reasonably determined that TI JV was ineligible for award of this task order.<sup>4</sup>

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>4</sup> Because we found, above, that TI JV was ineligible for award on other grounds, we need not reach the issue of whether the requirement for a Kurdistan private security company license is unduly restrictive of competition.