



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: United Mondialpol International S.r.l.; Department of State--
Reconsideration

File: B-251398.3; B-251398.4

Date: May 21, 1996

Robert E. Deso, Esq., Deso, Thomas, Spevack, Weitzman & Rost, P.C., for United Mondialpol International, S.r.l., and Kathleen D. Martin, Esq., for the Department of State, the parties requesting reconsideration.

Richard J. Webber, Esq., Arent Fox Kintner Plotkin & Kahn, for Wackenhut International, Inc./Istituto di Vigilanza Citta' di Roma S.r.l. (Metronotte), a Joint Venture, an interested party.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request for reconsideration is denied where based on arguments that could have been raised during the initial protest.
2. Request for reconsideration based on argument that General Accounting Office improperly substituted its judgment for that of the procuring agency is denied; conclusion that the agency misapplied United States preference statute constituted an interpretation of the statute, not a substitution of judgment.

DECISION

United Mondialpol International, S.r.l. (UMI),¹ and the Department of State request reconsideration of our decision, Wackenhut Int'l, Inc./Istituto di Vigilanza Citta' di Roma S.r.l. (Metronotte)--a joint venture, B-251398.2, Jan. 26, 1996, 96-1 CPD ¶ 25. In that decision, we sustained Wackenhut/Istituto's protest that the agency improperly awarded UMI a contract under solicitation No. 11/92 for security guard services at the U.S. Embassy in Rome.

We deny the request.

¹United Mondialpol International S.r.l. is an Italian corporation that is owned by United International Investigative Services, Inc. (UIIS), an American corporation, and Mondialpol Roma S.p.a., an Italian corporation.

The contract was awarded to UMI based on its proposal's high total point score of 104.93. Wackenhut/Instituto's proposal received a total point score of 104.42. The scores of both offerors included 5 points for a preference given United States offerors; section 136 of the Foreign Relations Authorization Act of 1991 and 1992, as amended, 22 U.S.C. § 4864(c)(7) (1994), authorizes the 5-point preference for United States persons and qualified joint venture persons when competing for the award of overseas security guard services contracts.

We found that UMI was not eligible for the preference as a United States person because the statute defines a United States person as one incorporated under the laws of the United States, and UMI was incorporated under Italian law. UMI was not eligible for the preference as a joint venture because, as indicated, the record showed it was an Italian corporation, not a joint venture. In any case, we concluded, even if UMI somehow could be considered a joint venture (comprised of UIIS and Mondialpol Roma, the companies which owned the shares of UMI), it nevertheless was not a joint venture eligible for the preference, since neither UIIS nor Mondialpol Roma was jointly and severally liable for performance of the contract, as required by the "Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person" included in the solicitation. (We also noted that, under Italian Law, the Liability of Shareholders—such as UIIS and Mondialpol Roma—in an S.r.l. corporation is limited to their investment in the corporation, and that the offer was not signed on behalf of UIIS or Mondialpol Roma.) Since eliminating the 5-point preference for UMI left Wackenhut/Instituto the high-scored offeror, and the award was based on the scores, we sustained the protest and recommended termination of UMI's contract and award to Wackenhut/Instituto.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must either show that our prior decision contains errors of fact or law, or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1995). Neither repetition of arguments made during our consideration of the original protest nor mere disagreement with our decision meets this standard. Nor will we reconsider a decision based on information or arguments that could have been, but were not, presented during the initial protest. Pilkington Aerospace, Inc.—Recon., B-259173.2, May 15, 1995, 95-1 CPD ¶ 242.

UMI

UMI argues that it should have been considered a United States person eligible for the preference because the chief executive officer of UIIS, a United States corporation, is also the managing director of UMI, and because UIIS is the entity actually performing the contract. UMI also maintains that it should have been deemed eligible for the preference as a joint venture, asserting that an entity can be

both a joint venture and a corporation. Finally, UMI argues that Wackenhut/Instituto is not responsible because it will be unable to obtain a necessary license under Italian law.

These arguments could have been, but were not, raised during the initial protest. Accordingly, they do not provide a basis for reconsideration. See Pilkington Aerospace, Inc.-Recon., *supra*. UMI maintains that it did not have the opportunity to raise these arguments concerning its eligibility for the preference because this issue was not raised in Wackenhut/Instituto's initial protest. However, while UMI is correct that the issue was not raised in the initial protest, it was timely raised in Wackenhut/Instituto's November 14 comments in response to the agency's protest report, and therefore was properly before our Office. See Ford Contracting Co.-Recon., B-248007.3; B-248007.4, Feb. 2, 1993, 93-1 CPD ¶ 90. If UMI wished to reply to these issues, UMI should have requested leave to do so. *Id.* Furthermore, to the extent UMI did not receive any of the documents that were filed during the initial protest, it was UMI's responsibility to assure that it received all documents to which it was entitled. In that way, UMI would have been fully aware of the issues involved in the protest and able to rebut the protester's position during the original protest proceedings. EC Corp.-Recon., B-242415.7, Oct. 1, 1991, 91-2 CPD ¶ 273. We conclude that UMI has not provided a valid basis for reconsidering our decision.

STATE DEPARTMENT

The State Department argues on reconsideration that UMI was entitled to the preference because the solicitation stated that the preference would be afforded to offerors who submitted information in response to the "Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person" provision, and UMI submitted that information (*i.e.*, it intended to comply with all local law requirements, had the ability to obtain required licenses and permits, and was owned at least 51 percent by a United States person). The agency maintains that our decision inappropriately substitutes our judgment for its own regarding UMI's eligibility.

Determination of eligibility for the preference is not a matter of discretion left to the agency's judgment; rather, the statute sets forth objective criteria that must be applied to determine each offeror's eligibility. Thus, in concluding that UMI was not entitled to the preference, we did not question the reasonableness of the agency's judgment, but found that the agency had improperly applied the statutory criteria. In its reconsideration request, the agency does not argue that UMI, as an Italian corporation, in fact meets the statutory definition of a United States person, and does not disagree with our conclusion that neither UIIS nor Mondialpol Roma (the alleged joint venturers) signed the offer or otherwise are jointly and severally liable under the contract, both of which are specific prerequisites to qualifying as a United

States joint venture eligible for the preference under the statute. The agency's arguments thus provide no basis for reconsidering our decision.

The agency asserts that Wackenhut/Instituto may not be eligible for the preference because the firm may be unable to obtain a license necessary under Italian law to perform the contract; the agency asserts that it cannot award the contract to Wackenhut/Instituto, as recommended in our decision, without making this determination. Our decision did not address whether Wackenhut/Instituto is eligible for the 5-point preference because no party raised it as an issue in the protest. With respect to our recommendation, we expressly stated that the contract should be awarded to Wackenhut/Instituto if that offeror is otherwise eligible for award.

The request for reconsideration is denied.

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of the United States