



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Securiguard/Group 4 Joint Venture

File: B-280429; B-280429.2; B-280429.3

Date: September 30, 1998

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DIGEST

Protest that agency improperly downgraded joint venture's past performance evaluation based on reported allegations of corruption during past contract performance by one joint venture partner is denied where agency raised its concern about the allegations during discussions and the protester's response substantially corroborated the agency's concern by conceding the existence of "irregularities" and acknowledging that the protester was conducting an ongoing investigation, and the response failed to provide adequate explanation of past actions, give specific assurance of how any recurrence would be prevented, or otherwise resolve agency's legitimate concerns.

DECISION

Securiguard/Group 4 Joint Venture (S/G4)¹ protests the Department of State's award of a contract to Securis under request for proposals (RFP) No. S-BE200-97-R-0036, for guard services for the American Embassy in Brussels, Belgium. S/G4 primarily alleges that the agency misevaluated the protester's past performance.

We deny the protest.

The RFP, issued on July 18, 1997, contemplated the award of a 1-year guard services contract with four 1-year options. Section L of the solicitation instructed offerors to submit their offers in five volumes, which were to include executed standard forms, price proposal, technical proposal, business management proposal,

¹The protesting firm is a joint venture consisting of three companies: Securiguard, Inc., and Group 4, Inc., both U. S. corporations, and Group 4 Securitas-IMS S.A., a Belgian firm.

and a statement regarding the offeror's eligibility for preference as a U.S. entity. For the technical proposal, the RFP required offerors to include a management plan and a description of past performance and experience. Under the past performance requirement, offerors were to list all contracts and subcontracts that the firm (or each partner in a joint venture) had performed over the past 3 years for the same or similar work. The RFP provided a detailed list of the information that should be included for each contract and subcontract, and stated the type of information that might be discussed with references provided in the proposal. In addition, section L.1.3.3(b)(1) of the RFP advised that:

in the Government's evaluation of past performance, it may use past performance information obtained from sources other than those identified by the Offeror. However, if any information obtained is considered unfavorable, an Offeror will have an opportunity to address this information as a part of its Best and Final Offer (BAFO), if BAFOs are requested.

In Section M, the RFP advised offerors that technical proposals would be scored on a 60-point scale, and set forth the relative weight to be assigned to each of the factors and subfactors, as follows:

A. Management Plan	30 points
1. Organization and Management	10
2. Inspection System	5
3. Key Personnel	10
4. Training Program	5
B. Experience and Past Performance	20 points
1. Past Performance and Experience	15
2. Experience in use and maintenance of property	5
C. Preliminary Transition Plan	10 points

In section M.3, the RFP provided the applicable formula for calculating price scores, based on a 40-point scale. Each proposal's technical score would be added to its price score to calculate overall score. An additional 5 points would be added to the scores of firms that were determined eligible to receive a preference as a U.S. person or qualified U.S. joint venture, as established by statute, 22 U.S.C.A. § 4864(c)(7) (West Supp. 1998), and explained in the RFP, and the proposal receiving the highest total point score would be considered to represent the best value to the government.

The Department of State received six offers by the closing date for receipt of initial proposals, including S/G4's and Securis's. A technical evaluation panel (TEP)

reviewed and scored the initial proposals. The TEP awarded S/G4's technical proposal 46 points, assigning a score that was at or within 1 point of the maximum attainable score for each of the subfactors except past performance and experience; under this subfactor, S/G4 received only 5 of the available 15 points. The TEP recognized that the protester demonstrated recent experience in successfully managing guard contracts of similar nature, but noted no strength, and indicated the following weakness:

Reference checks revealed public information indicating possible unscrupulous business practices. (See attached newspaper clips dated August 1997). Until this matter is resolved, it raises the question of whether the U.S. Government can afford to be associated with this company.

Guard Contract Technical Evaluation Sheet, Narrative Supporting Assigned Scores, Dec. 2, 1997, S/G4 at 2.

The August 1997 newspaper articles attached to the TEP's evaluation referred to a security contract for more than 60 buildings in the European Union in Brussels, which Group 4 Securitas began performing in November 1992, and which was to be completed in November 1997. The article referred to "large-scale corruption," both in obtaining the contract and in its performance, alleging, for instance, that a "large number of persons . . . were paid a salary by [Group 4] Securitas, without providing any services." Agency Report at 20. The article also alleged that "the managing director of [Group 4], the person primarily responsible for the contract and for the related corruption . . . was removed from the Belgian subsidiary only at the end of 1995, i.e. two years after the discovery of the fact, and reassigned to the international department of the group." Agency report at 22.

The TEP awarded Securis's technical proposal 59 points. Securis's price was [deleted] Belgian Francs (BF), earning it a price score of [deleted] points, while S/G4's price was [deleted] BF, resulting in a score of [deleted] points.² Thus, Securis's combined technical and price score for its initial proposal was [deleted] points and S/G4's combined score, after the addition of 5 U.S. joint venture preference points, was [deleted] points.

The contracting officer determined that the competitive range should include the initial offers submitted by S/G4, Securis, and one other slightly lower-rated firm. Discussion letters were sent to the competitive range offerors, requesting written responses and best and final offers (BAFO) by May 8, 1998. The contracting

²Under the exchange rate provided in the agency report, 36.69 BF to \$1, the proposed prices are in the range of \$6 to \$7 million.

officer's letter to the protester noted one weakness in S/G4's proposal concerning its relief guards, and then specified the following agency concern:

Also, in 1997 various articles in the local press revealed fraudulent practices by some of your company's executive officers concerning a contract with the European Union. We would like to know what was the outcome in this case and what measures were taken to prevent this from reoccurring and how your company will comply with the contract and maintain applicable standards of conduct.

Contracting Officer's April 22, 1998 letter to S/G4.

The contracting officer's letter to Securis included only questions regarding the firm's price proposal. Contracting Officer's April 22, 1998 letter to Securis.

All three competitive range offerors submitted responses to the discussion questions. In its response, S/G4 provided additional information regarding its relief guards and responded to the agency's main concern with the following "European Commission statement":

1. The allegations made against former executive officers of our company in various articles in the local press in 1997 related to the acquisition of the European Commission (EC) guarding contract in 1992 and the implementation of this contract in its early stages.
2. These allegations have been thoroughly investigated by us as well as our parent company, Group 4 Securitas (International) B.V. The investigation has not yet been fully completed. It seems, however, that in respect of the contract in question certain irregularities involving our company may indeed have taken place, whilst other allegations in the press have proven to be incorrect.
3. Since this episode, new management has been put in place in our company: the officer, who had management responsibility for our company at the time, has since left the Group. Since 1994, we have introduced new procurement and contract compliance procedures in our company. Our company also obtained ISO 9000 accreditation.
4. It is our policy to continuously strive to improve the quality of our services and performance. We are confident that under the present circumstances and modus operandi of our company, there cannot be a recurrence of any historic bad practice.

S/G4 Response to Discussion Questions, Enclosure C.

The protester also increased its price to [deleted] BF (approximately \$[deleted]). S/G4 BAFO at 11. Securis submitted its BAFO, reducing its price to 278,628,853 BF (approximately \$7.02 million). Price Negotiation Memorandum at 1. The TEP reviewed the BAFO submissions and determined a consensus evaluation score for each of them.³ Based on the additional information S/G4 had provided regarding its guards, the TEP increased its technical score in this area by 1 point. The TEP did not change S/G4's technical score for past performance, noting no strengths in this area in its evaluation report, and noting the following weakness:

Reference checks revealed publicly known questionable business practices reported in Belgium news media. Allegations concerning certain irregularities involving Group 4 are alleged to have taken place.

Guard Contract Technical Evaluation Sheet, Narrative Supporting Assigned Scores, May 22, 1998, S/G4 at 2.

In a memorandum documenting the negotiations and source selection decision, the contracting officer similarly stated:

Best and Final addressed the question of the relief guards in relation to organization and management. However, allegations concerning certain irregularities involving Group 4 Securitas are alleged to have ... taken place and remain a point of concern for Post.

Price Negotiation Memorandum at 1-2.

S/G4's BAFO received 47 technical points and 38.65 price points, and after the addition of 5 points for the U.S. person preference, the total score was 90.65 points. Securis's BAFO received 59 technical points and 37.08 price points, resulting in a total score of 96.08 points. Price Negotiation Memorandum, Attachment B at 1. The third offeror's total score was the lowest.

The contracting officer selected Securis for award, based on the firm's highest total point score. Price Negotiation Memorandum at 2. After receiving notice of the award to Securis, S/G4 requested and received a debriefing, and this protest followed.

³Although the protester has questioned whether the technical evaluation of its BAFO was conducted by the full TEP, because only one member signed the evaluation sheet included in the agency report, all four members signed an affidavit submitted to us in a supplemental agency report attesting to the fact that the evaluation was a consensus effort, and that the member who signed the evaluation report did so as a representative of the entire panel.

S/G4 primarily challenges the agency's evaluation of its proposal under the past performance evaluation factor, alleging that the firm's low score in this area reflected an arbitrary and unfair evaluation that was not properly documented.

In reviewing the allegations concerning the propriety of a technical evaluation, we do not independently evaluate proposals or substitute our judgment for that of the agency evaluators, but rather review the evaluation to ensure that it was reasonable and consistent with the terms of the solicitation and applicable law and regulations. Proteus Corp.; United Int'l Eng'g, Inc., B-270094, B-270094.2, Feb. 8, 1996, 96-1 CPD ¶ 165 at 4. A protester's mere disagreement with the agency's evaluation does not render it unreasonable. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454 at 5.

Here, the RFP stated that the agency could use past performance information obtained from sources other than those identified by the offeror when it evaluated each offeror's past performance. The agency report summarizes the allegations that the TEP considered in its evaluation of S/G4's past performance as follows:

- 1) Group 4 obtained the European Union security guard services contract in 1992 by corrupt means;
- 2) additional corruption problems occurred during contract performance, including the payrolling of persons who performed no work on the contract;
- 3) the practices were sanctioned by senior Group 4 managers; and
- 4) Group 4 acted slowly and ineffectively in response to the problems, reassigning the principal culprit rather than dismissing him.

Agency Report at 34.

S/G4 raises a number of specific objections to the past performance evaluation: that the allegations were "stale"; that the agency failed to give evaluation credit for many other, successfully completed contracts listed in the protester's proposal; that the agency evaluated the competing proposals in an inconsistent manner; that the agency failed to consider steps S/G4 has taken to prevent recurrence of the alleged problems; and that the allegations only concerned one member of the 3-firm joint venture (Group 4 Securitas), whose role S/G4 characterizes as "providing administrative resources only and support in meeting Belgian licensing and labor requirements." Protest Comments of August 14, 1998, at 4. In essence, S/G4 argues that the evaluation was unreasonable because the agency gave the allegations of corruption too much significance: so much significance that they could not be mitigated by the passage of time, could not be outweighed by good performance under other contracts, could not be treated like other types of performance

problems, and could not be corrected by the offeror's generalized assurances that they would not recur. We do not find these arguments persuasive.

We recognize an agency's interest in ensuring the highest level of reliability and effectiveness in guard services contracts, see generally Integrity Int'l Sec. Servs., Inc., B-276012, May 1, 1997, 97-1 CPD ¶ 157 at 2-3, and find the agency's reasoning here unobjectionable. In particular, the record does not support S/G4's assertions; indeed, S/G4's explanation letter in its BAFO substantially corroborates the agency's concerns. For example, while the protester characterizes the allegations as "stale," it stated in its BAFO response that the company's investigation had not yet been completed. While it argues in its protest comments that "S/G4 made an appropriate and adequate response . . . which should have completely allayed the Embassy's concerns," Protest Supplement of July 21, 1998, at 10, its BAFO response in fact conceded that "certain irregularities" had taken place and provided only generalized and conclusory statements regarding corrective steps that had been taken. Although S/G4 stated that "the officer who had management responsibility for our company at the time has since left the Group," S/G4 Response to Discussion Questions, Attachment C, it has not mentioned any action taken against other employees or managers who actually participated in the admitted "irregularities," nor does it address the fact that the managing officer was apparently permitted to transfer within the organization, and was not dismissed. Regarding the limited role of Group 4 Securitas, this firm is described in S/G4's proposal as "the Operating Team Member," which has "full authority and support of Securiguard Inc. and the Group 4 companies for implementation and management of the security services provided under this contract." S/G4 Proposal, Executive Summary at 2.

In sum, S/G4 did not refute the allegations with a detailed factual account of its past, present or future actions. On the contrary, the protester conceded both that its own investigation of the matter was still not complete--without disclosing any specifics regarding the results of the investigation thus far, or why it was taking so long--and that "certain irregularities involving our company may indeed have taken place," without any indication of what those "irregularities" involved. Further, although the agency expressly asked for information regarding "what measures were taken to prevent this from recurring and how your company will comply with the contract and maintain applicable standards of conduct," the protester's reply essentially provided only conclusory statements, vaguely referring to "new procurement and contract compliance procedures" that were introduced in 1994, without specifying what those procedures were, and generalized assurances about the firm's policies and its confidence that there will be no recurrence of bad practices. In these circumstances, S/G4's explanation essentially confirms its problematical past performance, and the Department of State reasonably concluded that S/G4 had not provided any meaningful refutation of the allegations concerning its past performance, and that those unresolved charges of corruption in the past cast sufficiently serious doubt about S/G4's past performance to warrant a low ranking in this area. While S/G4 also complains that it was not credited for

successful past performance that it listed in its proposal, in fact, the record discloses that the TEP did recognize and credit S/G4 for "demonstrat[ing] recent experience in successfully managing guard contracts of similar nature." Guard Contract Technical Evaluation Sheet, Narrative Supporting Assigned Scores, May 22, 1998, S/G4 at 2.

S/G4 also argues that the evaluation and source selection were inadequately documented, and that gaps in the record "make it impossible to understand the basis for award." Protest Supplement of July 21, 1998, at 15. On the other hand, the protester asserts that "[i]t is clear from the record that the major reason why Securis emerged as the awardee instead of S/G4 was because the firm received a score of 15 for past performance and S/G4 only received a score of 5." *Id.*, at 16.

To the extent S/G4 is arguing that the TEP failed to provide any contemporaneous documentation of the basis for the score it assigned S/G4's past performance when it reviewed S/G4's response to the discussion questions, we agree that the evaluation record could have been more complete. An agency must document its evaluation and source selection documents in sufficient detail to show that they are not arbitrary. See *U.S. Defense Sys., Inc.*, B-245563, Jan. 17, 1992, 92-1 CPD ¶ 89 at 3. Here, we conclude that the agency has met that standard. There is sufficient information in this record to demonstrate that the protester's BAFO responses were in fact considered; the fact that S/G4's score did not increase after it responded to discussion questions reflects that the inadequate additional information provided in those responses did not persuade the evaluators that an increase in S/G4's score for past performance was warranted. In addition to the consensus evaluation report prepared by the TEP after discussions, the contracting officer prepared a memorandum documenting the negotiations, commenting on S/G4's discussion responses as follows:

Best and Final addressed the question of the relief guards in relation to organization and management. However, allegations concerning certain irregularities involving Group 4 Securitas are alleged to have ... taken place and remain a point of concern for Post.

Price Negotiation Memorandum at 1-2.

In light of our determination, above, that the agency's conclusions regarding S/G4's past performance were reasonable and supported by the record, we are not persuaded that the lack of a fuller, contemporaneous record of the TEP's analysis on this point calls into question these conclusions.⁴

⁴We note, however, that the practices described in the agency report--maintaining only minimal documentation and routinely destroying individual evaluations after
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To the extent S/G4 is arguing that the source selection decision was inadequately documented, S/G4 misconstrues the basis for award, as established in the RFP. Section M of the RFP provides a specific formula to arrive at the overall proposal score "[t]o determine which proposal represents the best value according to technical and price factors." Under this formula, the technical score (calculated on a 60-point scale) and the price score (calculated on a 40-point scale) were added together, along with 5 points to reflect a preference for U.S. entities, where applicable. Here, Securis' BAFO received an overall proposal score of 96.08 points, while S/G4's final score was 90.65 points. The protester argues that the agency was required to perform a cost/technical tradeoff analysis to determine whether Securis's technical superiority was worth the associated cost premium. This argument is misplaced. The cost/technical tradeoff formula stated in the RFP already accounted for both technical merit and cost. Our Office has specifically recognized the permissibility of using such a formula in selecting an offeror. General Offshore Corp.--Riedel Co., a Joint Venture, B-271144.2, B-271144.3, July 2, 1996, 96-2 CPD ¶ 42 at 7-8; Tulane Univ., B-259912, Apr. 21, 1995, 95-1 CPD ¶ 210 at 4. Because Securis's BAFO earned the highest combined cost/technical score under the specified formula, the agency was not required to perform any further cost/technical tradeoff analysis to justify the selection decision. *Id.* To the extent S/G4 is objecting to the use of the formula to determine the best value, its objection is untimely raised, since the formula was specified in the RFP; protests based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of initial proposals must be filed prior to that closing time. 4 C.F.R. § 21.2(a)(1) (1998).

S/G4 has raised a number of other objections relating to the propriety of the evaluation of its proposal in connection with certain other evaluation factors. However, these alleged improprieties could result in no competitive prejudice to S/G4 under the evaluation, in light of our determination, above, that the agency's evaluation and rating of past performance were reasonable. Under the BAFO evaluation, the protester received scores under each of the remaining evaluation factors that were at or only 1 point short of the maximum score. Even if S/G4 had received the maximum number of points available under each of the remaining evaluation factors, its overall score would remain lower than Securis's score.⁵ Since

⁴(...continued)

consensus is reached--intended to streamline the process and minimize the administrative burdens on post personnel--might not be adequate in a different fact situation, for example, where the basis for the consensus scores was not immediately apparent without additional information.

⁵If S/G4 received a perfect score under each of the remaining technical evaluation factors, it would have 30 points for Management Plan, 10 points for Experience and
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competitive prejudice is an essential element of a viable protest, see Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992 92-1 CPD ¶ 379 at 5, we will not consider these objections to the evaluation.

The protest is denied.

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⁵(...continued)

Past Performance, and 10 points for Preliminary Transition Plan, resulting in a technical score of 50 points (on a 60-point scale). Added to its 38.65 price points and its 5 U.S. preference points, its overall total score would have been 93.65 points, which would remain lower than Securis's overall score of 96.08 points.