

Schatz
148677



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

Decision

Matter of: Hill's Capitol Security, Incorporated
File: B-250983
Date: March 2, 1993

Mitchell Paul, Esq., for the protester.
James L. Weiner, Esq., and Justin P. Patterson, Esq.,
Department of the Interior, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Downscoring of protester's proposal for offering a drug testing plan based on reasonable suspicion rather than no cause (*i.e.*, random testing) was unobjectionable; agency reasonably determined that this plan did not ensure the efficiency of the testing to the same degree as the random testing proposed by the awardee.

DECISION

Hill's Capitol Security, Incorporated protests the award of a contract to Pinkerton Security & Investigations under request for proposals (RFP) No. 14-01-0001-93-R-03, issued by the Department of the Interior (DOI) for security services at the Main and South DOI buildings in Washington, D.C. Pinkerton is the incumbent contractor for these services. The protester primarily disputes the agency's evaluation of its technical proposal.

We deny the protest.

The RFP, as amended, solicited proposals for a firm, fixed-price contract for a base year and 4 option years. Offerors were required to submit separate technical and cost proposals. Evaluation of the technical proposals would be based on the following five factors, in descending order of importance: technical plan (60 points); management plan (15 points); training (10 points); staffing (10 points); qualification of the firm (5 points). The technical plan factor consisted of four subfactors, all of equal importance, including: (1) plan for the design and implementation of a drug testing program, and (2) plan for the development of an incentive pay plan for personnel. Cost proposals were to be evaluated through the use of a

cost analysis in order to determine the accuracy and completeness of the offerors' estimated costs, as well as the total cost to the government. The RFP advised that technical considerations were more important than cost, and that award would be made to the offeror whose proposal contains the combination of technical and cost criteria that offers the best overall value to the government.

Eleven offerors submitted proposals by the July 22, 1992, initial closing date. The technical evaluation panel (TEP) initially determined that the proposals of five firms, including Hill's and Pinkerton, were in the competitive range; these firms were then requested to submit responses to clarification requests. The TEP evaluated the revised Hill's and Pinkerton proposals as follows:

	<u>Hill's</u>	<u>Pinkerton</u>	<u>Total Points</u>
Drug Testing	11.8	15	15
Incentive Pay	10.6	13.8	15
Watch Clock	15	15	15
Radio	14.4	14.8	15
Management Plan	15	13.6	15
Training	7.4	8	10
Staffing	9.3	10	10
Qualifications	5	5	5
Total	<u>88.5</u>	<u>95.2</u>	<u>100</u>

The contracting officer then conducted verbal price discussions with the offerors and requested their best and final offers (BAFO). Pinkerton's total price was \$4,334,762, while Hill's was \$4,509,082. The contracting officer determined that Pinkerton's proposed price was reasonable and realistic. Taking into consideration Pinkerton's low price and high technical score, the contracting officer awarded the contract to Pinkerton on the basis that its proposal offered the best overall value to the government. Following a debriefing by the agency, Hill's filed this protest.

TECHNICAL EVALUATION

Drug Testing Plan

The protester maintains that DOI's evaluation of its proposal under the drug testing plan subfactor of the technical plan factor was improper. Specifically, Hill's maintains that the downgrading of its offer because it proposed reasonable suspicion drug testing rather than random or no-cause testing was unreasonable and inconsistent with the solicitation's statement of work, which specifically provided that "the government may require spot check drug urinalysis on contract employees based on

reasonable grounds to suspect the employee is using drugs at the work site."

We will examine a technical evaluation to ensure that it is reasonable and consistent with the evaluation criteria. Pemco Aeroplex Inc., B-239672.5, Apr. 12, 1991, 91-1 CPD ¶ 367. The determination of the merits of proposals is primarily a matter of administrative discretion which we will not disturb unless it is shown to be arbitrary. A protester's disagreement with the agency's judgment is itself not sufficient to establish that the agency acted arbitrarily. Realty Executives, B-237537, Feb. 26, 1990, 90-1 CPD ¶ 288.

We find that the agency's evaluation of Hill's proposal under the drug testing subfactor, where Hill's received 11.8 of 15 points, was reasonable. DOI considered Hill's plan to conduct only "reasonable suspicion" drug testing weak compared to random testing (as proposed by Finkerton), since advance notice of the testing could enable an employee to pass the test by temporarily ceasing to use drugs prior to the test date, thereby circumventing the purpose of the test and undermining the test results. This is a logical conclusion, and was certainly consistent with the evaluation scheme, which merely called on offerors to provide "a plan for designing and implementing (a) drug testing program," with no restrictions on the type of testing used. Although Hill's is correct that paragraph 7 of the statement of work provided that the government may require drug testing based on reasonable grounds, there was nothing in that paragraph or elsewhere in the RFP that precluded offerors from proposing more stringent random testing under the drug plan subfactor. Indeed, the agency essentially put Hill's on notice of its preference for random testing during the initial proposal clarification process, asking Hill's whether it had "a strategy for doing random drug tests?" (Hill's merely replied that it had proposed reasonable suspicion drug testing, without addressing random testing.)

BIAS

Hill's maintains that the agency was biased in favor of Pinkerton, as evidenced by its waiver after award to Pinkerton of preperformance requirements for a performance bond, security clearances, drug testing, and training for all proposed personnel. The protester maintains that Pinkerton unfairly benefited from cost savings associated with the delay in imposing these contract requirements. This argument is without merit. First, the requirements were not part of the evaluation and had no effect on Pinkerton's entitlement to the award. Moreover, there is no evidence or indication that Pinkerton was aware prior to award that these requirements would be waived, such that it

was able to reduce its price in some manner. There must be very strong proof that an agency has a specific intent to injure a protester before we may find bias. Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. The protester must produce credible evidence showing that the bias translated into agency action which unfairly affected the protester's competitive position. Facilities Eng'g & Maintenance Corp., B-233974, Mar. 14, 1989, 89-1 CPD ¶ 270. Hill's clearly has not met this standard.¹

The protest is denied.



fr James F. Hinchman
General Counsel

¹Hill's also argues that the agency improperly failed to consider information in its proposal under the training factor and the incentive pay plan subfactor. However, even if we found that Hill's should have received all available points in these two areas, its proposal score would only be essentially technically equal to Pinkerton's (95.5 points compared to 95.2 points). Since Pinkerton's price was lower than Hill's by \$174,320, Pinkerton would remain entitled to the award. We thus will not consider these arguments. See Brown Assocs. Mgmt. Servs., Inc.--Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299.