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Comptroller General
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Decision

Matter of: Wackenhut International, Inc.

File: B-286193

Date: December 11, 2000

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Dennis J. Gallagher, Esq., Department of State, for the agency.
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DIGEST

Protest of evaluation of proposals and source selection is sustained where agency failed to evaluate proposals in accordance with solicitation provision calling for a comprehensive review of offerors' compensation plans.

DECISION

Wackenhut International, Inc. protests the award of a contract to U.S. Defense Systems, Inc. (USDS) under request for proposals (RFP) No. SOTH200-99-R-0001, issued by the Department of State for guard services at the American Embassy in Bangkok, Thailand.[1] Wackenhut, the incumbent contractor of the guard services, protests the agency's failure to evaluate the offerors' proposed compensation plans in accordance with the RFP.

We sustain the protest.

The RFP, issued September 27, 1999, contemplated the award of a time-and-materials contract, with fixed prices for vehicles and equipment, for a base year and

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[1] The security guard services are to be provided at the American Embassy in Bangkok, as well as the following U.S. government installations in Thailand: American Consulate General, Chiang Mai; International Broadcasting Bureau, Ban Dung, Udornthani; and the offices and residences of U.S. government employees in Udornthani and Songkhla. CBDNet Notice, July 7, 1999; RFP exh. A.

4 option years, to the technically acceptable offeror with the lowest evaluated price. RFP §§ F.4.1, L ¶ 52.216-1, M.1.2. Section M of the RFP set out the following evaluation criteria to be used in determining the acceptability of the offerors' technical proposals: management plan (i.e., for timely, professional, and quality contract performance, including anticipated incentive and payment terms); experience and past performance; and preliminary transition plan. RFP §§ L.1.3.3, M.2. Section M, incorporating instructions provided in section L, advised offerors that, in order for a proposal to be considered technically acceptable, it "must provide the information requested in Section L and conform to the requirements of the solicitation as described in [the statement of work] . . . and the technical aspects of the remainder of the solicitation." Id. Price proposals were to be evaluated based on the total price to the government, including options and the application of a 10-percent price preference for U.S. firms. RFP §§ M.3, M.4.

Offerors were to provide, in the price schedules at section B of the RFP, their proposed prices in terms of fixed hourly rates based on the estimated number of labor hours for an extended "ceiling price" per stated labor category; certain fixed prices for vehicles and equipment were also required. RFP § B.3. The stated labor categories included the following: guard; guard/driver; detector operator; senior guard; surveillance detection (SD) specialist; SD supervisor; and supervisor. RFP § C.1.2.1-1.2.4. Most of the estimated labor hours for the contract were for the guard and senior guard positions.[2]

Each offeror was required to provide a total compensation plan for performance of the contract, since, according to the RFP, recompetition might result in lower compensation paid to employees, which could be "detrimental" to a firm's ability to obtain the quality of services needed for adequate contract performance. RFP § L.1.3.4(2)(a). The solicitation included the following provision as to the required review of each offeror's compensation plan:

> The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. . . . The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to

[2] The guard/driver position refers to a small number of labor hours required under the contract for the mobile patrol of four to five buildings in residential locations in Chiang Mai, where the guard/driver is a guard in a mobile patrol unit. RFP §§ B.3.1-B.4.4.2, C.1.5.7, and exh. A.

> obtain and keep suitably qualified personnel to meet mission objectives. . . . Additionally, proposals envisioning compensation levels lower than the current contractor for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent service employees. Offerors are cautioned that lowered compensation for essentially the same work may indicate lack of sound management judgment and lack of understanding of the requirement. . . . Failure to comply with these provisions may constitute sufficient cause to justify rejection of the proposal.

RFP § L.1.3.4(2)(a)-(d) (emphasis added).

Eight proposals were received by the December 6 closing time and were evaluated; five of the proposals were excluded from the competitive range (four were determined technically unacceptable and one was determined to have offered too high a price). Contracting Officer's Statement at 6, 8. By letters of February 14, 2000, written discussion questions were sent to the remaining firms--Wackenhut, USDS, and [deleted].[3] Id. at 8-9. [deleted] Technical proposal concerns were raised with USDS in discussions, and both USDS and Wackenhut were invited to revise their "offered price to be more favorable to the Government." Discussions Letters to USDS and Wackenhut (Feb. 14, 2000).

Each of the three final revised proposals was considered technically acceptable.[4] A 10-percent price preference for U.S. firms was applied to USDS's and Wackenhut's proposals for evaluation purposes. The USDS final proposal (at an evaluated price of 167,858,600 Bahts) offered the lowest evaluated price, the [deleted] final proposal (at [deleted] Bahts) offered the second lowest evaluated price, and Wackenhut's final proposal (at [deleted] Bahts) was third lowest.[5] Price Negotiation Memorandum at 3.

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[3] These discussion letters amended earlier discussion letters of February 8 to delete a previously reported concern later found to be inapplicable to the current procurement.

[4] The technical evaluation panel had some initial concerns as to the technical acceptability of the USDS proposal, however, after consultations with agency counsel and the contracting officer, the evaluators found the USDS proposal technically acceptable. Contracting Officer's Statement at 10-12.

[5] Monetary figures expressed in Bahts, the currency in Thailand, were converted to U.S. dollars for this procurement at an exchange rate of 38.151 Bahts to a dollar. Price Negotiation Memorandum at 5. At that rate, the USDS proposal's evaluated price converts to approximately $4,399,848, the [deleted] proposal converts to approximately $[deleted], and Wackenhut's proposal converts to approximately $[deleted].

On August 11, a contract was awarded to USDS as the firm offering the lowest-priced technically acceptable proposal. On August 24, Wackenhut received a debriefing from the agency. This protest followed.

Wackenhut alleges that USDS's and [deleted] compensation plan rates, many of which are lower than the current wages paid by Wackenhut to its employees under the incumbent contract for the same services, were not properly reviewed by the agency. Wackenhut contends that there was no evaluation of the offerors' lower proposed rates, in terms of their effect on recruiting and retaining personnel, and maintaining uninterrupted high-quality performance of the guard services, as required under § L.1.3.4(2) of the RFP. Wackenhut essentially contends that had the proposals been evaluated properly, it would have been in line for award because the lower compensation rates in the USDS and [deleted] proposals would have led the agency to conclude that their proposals were unacceptable.[6]

The agency concedes that under the RFP's compensation plan provision, it is "the incumbent's current compensation practices . . . that [are] envisioned as serving as the baseline for evaluation of the compensation plans. . . ." Supplemental Report at 3. The agency contends, however, that the provision is to be read in conjunction with other solicitation terms, including certain of the offeror questions and accompanying agency answers (Q&A) (namely, Nos. 16 and 13) of amendment No. 2 to the RFP, whereby, the agency contends, offerors were put on notice that the agency did not have the current wage information necessary to conduct the required comparison.[7] Id. at 3-5. Rather, the agency contends, the only minimum standard

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[6] In its supplemental report, the agency contends that Wackenhut is not an interested party to protest the award to USDS because [deleted], not Wackenhut, would be in line for award if the protest were sustained. As discussed in this decision, our review of the record confirms the protester's challenge that the agency failed to evaluate any of the proposals consistent with the terms of the compensation plan provision. Therefore, it remains unclear which offeror would be in line for award after a proper evaluation of the proposals is conducted. Under the circumstances, we cannot conclude that Wackenhut is not an interested party in this case.

[7] Question and Answer No. 16 provided as follows:

> Question: What are the current billing rates for all labor categories, i.e., guard, senior guard, guard/driver, etc? What billing rates do you envision for the SD Specialists/Supervisors, etc.?
>
> Answer: An extract of Section B, Services and Prices, of the Modification No. 39 to the current . . . contract, issued October 1999, is enclosed. The question appears to request the internal rates that the contractor pays to its employees. This is part of the current

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applicable to compensation rates was minimum wage amounts required under Thai law.[8] Id.

The contracting officer further states that she did not contemplate, and did not perform, a comprehensive review of the compensation plans; she expressly confirms that no comparison of the plans' rates to the current wages was made for any offeror. Contracting Officer's Statement at 7. The contracting officer explains that at the time of proposal evaluation, the agency could not compare compensation plans to current wages because it did not have current wage information--the agency states that it was only shortly before award when the agency learned, as a result of an unrelated contract administration matter, of the incumbent guard's current wage rates. Contracting Officer's Response to Question for the Record (Oct. 26, 2000). The compensation plans were not reviewed by the technical evaluators; rather, the contracting officer reviewed the offerors' compensation rates in a "cursory" fashion, comparing those rates to the minimum wage standards set under Thai law to determine if the rates "reflected a realistic understanding of the work."[9] Contracting Officer's Statement at 7; Supplemental Contracting Officer's Statement at 2. The contracting officer contends that her cursory review of the rates in terms of how they compared to Thai minimum wage standards was sufficient in light of the

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> contractor's management policy and it is up to the offeror to develop its own wage scale.

[8] Question and Answer No. 13 provided as follows:

> Question: Is there any mandated U.S. standards for wages and salaries?
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> Answer: No. Thai law applies Minimum Wage Rate for Bangkok is Baht 162.00 per day (8 working hours/day); Chiang Mai is Baht 140.00; Udorn is Baht 130.00; and Songkla is Baht 130.00.

[9] Wackenhut points out that USDS failed to provide a rate for its guard category in its compensation plan. The protester challenges the agency's assumption that USDS intended its stated compensation plan rate for its guard/driver category to also apply to its guards. Comments at 10-11. We see no reason to question the reasonableness of the agency's decision to use the firm's guard/driver rate as its guard rate for evaluation purposes. Our review of the record confirms that the two categories are similar in terms of job description (except for the use of the vehicle for patrols), and that the agency reasonably recognized that the USDS proposal provided similar compensation rates for all other labor categories that shared similar rates for contract pricing purposes in schedule B of the RFP (and USDS had priced its guard and guard/driver categories similarly in schedule B).

depressed economic climate in Thailand, where workers--even highly educated professionals--generally earn relatively low wages in a "buyer's market." Supplemental Contracting Officer's Statement at 3.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's evaluation was reasonable and in accord with the solicitation's stated evaluation criteria. MCR Fed., Inc., B-280969, Dec. 14, 1998, 99-1 CPD ¶ 8 at 5; All Star Maintenance, Inc., B-271119, June 17, 1996, 96-1 CPD ¶ 278 at 3. Contracting officials do not have the discretion to announce in the solicitation that they will use one evaluation plan, and then follow another. Once offerors are informed of the criteria against which the proposals will be evaluated, the agency must adhere to those criteria in evaluating proposals and making its award decision, or inform all offerors of any significant changes made in the evaluation scheme. Dewberry & Davis, B-247116, May 5, 1992, 92-1 CPD ¶ 421 at 5.

Our review of the record shows that the agency failed to evaluate the proposals as required under the terms of the RFP. As stated above, the RFP provided for review of each offeror's compensation plan for an evaluation of the offeror's understanding of, and proposed approach to meeting, the RFP requirements. RFP § L.1.3.4(2). That section L requirement recognized that recompetition resulting in lower wages for the guards--whose services are considered vital to the agency, as they relate to the safety of personnel and property--could have a detrimental effect on contract performance. Id.; RFP § I.1.2 ¶ 52.237-3. The RFP specifically provided that the compensation structure was to indicate that the offeror could "obtain and keep suitably qualified personnel" and that "compensation levels lower than the current contractor for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent service employees." RFP § L.1.3.4.(2)(b). Section M.2 makes clear that the information required by section L was to be considered in the evaluation of each proposal's technical acceptability. Despite its concession that the RFP language clearly contemplated a review of the compensation plans compared to current wages, the agency admits that no such review was ever attempted; the record confirms the protester's challenge that no such evaluation was ever performed. See Supplemental Report at 3.

We do not find the arguments raised by the agency in defense of its actions persuasive as they do not provide a basis upon which to excuse the agency's failure to evaluate the proposals in accordance with the RFP's stated terms. For instance, we do not agree with the agency that offerors were reasonably put on notice that the agency did not intend to compare compensation plan rates to current wages based upon the information offerors were provided in the cited Q&As (Nos. 13 and 16) included in amendment No. 2 to the RFP. In this regard, although Q&A No. 13 provided that Thai minimum wage standards were applicable to the procurement, that provision in no way established, as the agency contends, that current wages

would no longer be used for comparative evaluation of the compensation plans. Consequently, we also do not find the agency's evaluation of the compensation plans by comparison to Thai minimum wage adequate here--comparison to the Thai minimum wage, which is significantly lower than current wages for the services, simply was not the standard required by the solicitation.

Similarly, although Q&A No. 16 mentioned that current wages were a matter of the contractor's management policy, we do not see how such a statement can reasonably be viewed, as the agency contends, as having put offerors on notice that the agency did not have any information about the incumbent's current wages. In fact, as Wackenhut points out, information about its current wages under its incumbent contract was included in its final revised proposal of February 24. Thus, the agency had in its possession the information necessary for a proper review of the proposals in accordance with the terms of the solicitation.[10]

As noted above, the RFP stated that an offeror's low compensation rates could constitute sufficient cause to justify rejection of the proposal. RFP § L.1.3.4(2)(a)-(d). A proper evaluation of the offerors' planned lower wages simply was not performed here, as required. It is possible that the lower labor rates included in the USDS and [deleted] proposals could have affected the agency's determination that the proposals were acceptable, thus potentially placing Wackenhut in line for award.[11] In light of the agency's failure to perform the evaluation of the offerors' planned compensation levels required by the RFP, and the reasonable possibility of prejudice to Wackenhut as a result, we sustain this aspect of the protest.

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[10] The agency provides no reason as to why it did not inquire of Wackenhut as to the firm's current wages for its guard personnel for purposes of conducting the review of compensation plans in accordance with section L.1.3.4 of the RFP. The agency, in fact, reports that it later obtained that information to resolve a contract administration matter unrelated to this procurement. Contracting Officer's Response to Question for the Record.

[11] In its supplemental report, the agency argues that Wackenhut has not been prejudiced by the agency's actions here, since, the agency contends, the other offerors' compensation rates were higher than current wages. In response to a question for the record issued by our Office, however, the agency concedes that, in fact, some of USDS's rates are at least [deleted] percent lower than current wages. Our review of the [deleted] compensation plan's rates confirms that that firm's planned rates for certain labor categories in some locations are also lower than current wages for the same services. Thus, we do not find persuasive the agency's argument that the protester has suffered no possible prejudice from the agency's failure to evaluate the compensation plans in accordance with the RFP's compensation plan provision.

Wackenhut also protests that the agency failed to conduct adequate discussions with the firm. Wackenhut contends that the agency was obliged to tell it that "its price was too high," that its "proposed hourly rates were too high," and that its proposal "reflected a misconception about the Embassy's guard compensation expectations."[12] Protest at 6. The agency responds that it did not consider Wackenhut's price too high or its compensation rates excessive in any way. Agency Report at 23; Supplemental Report at 10-11. The agency also maintains that there was nothing to suggest any misconception on Wackenhut's part, as Wackenhut now contends should have been apparent to the agency, since the solicitation in no way required compensation rates of any specific amount other than the minimum wage rate under Thai law. In any event, the agency points out that it invited the firm to revise its price to make it more favorable to the agency, although there was no requirement for the agency to discuss Wackenhut's otherwise acceptable price during discussions.

In negotiated procurements, contracting agencies generally must conduct discussions with all offerors whose proposals are within the competitive range. Federal Acquisition Regulation (FAR) § 15.306(d)(1). While the FAR requires the contracting officer to indicate or discuss all aspects of the proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award, the rule remains that agencies are not obligated to

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[12] Although Wackenhut alleges that it was misled into increasing its compensation rates from its current rates based on earlier communications with contracting personnel, which Wackenhut believes established a requirement of some sort to propose wages above current wages for the same services, there was no requirement in the RFP for higher wages, and there is no evidence that the protester was misled by the agency in any way in the preparation of its own compensation plan. Further, we see no reason to believe that the slight increase in the protester's proposed rates compared to the current rates, even if the current rates were used as a basis for evaluation as required, should have put the agency on notice of any "misconception" on Wackenhut's part about any compensation rate terms of the RFP.

afford all-encompassing discussions. See Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 8-9. With respect to an offeror's price, FAR § 15.306(e)(3) provides that "the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion." As we have previously recognized, however, this language merely gives the contracting officer discretion to inform the offeror that its cost/price is too high--it does not require that the contracting officer do so. Hydraulics Int'l, Inc., B-284684, B-284684.2, May 24, 2000, 2000 CPD ¶ 149 at 19.

The record here shows that the agency did not consider Wackenhut's compensation plan unreasonable or its rates excessive in any way. Agency Report at 23. In these circumstances, we cannot find anything improper with the agency's failure to raise this aspect of Wackenhut's proposal submission with the protester during discussions.[13]

We recommend that the agency conduct and document an adequate review of the competitive range offerors' compensation plans consistent with the terms of the solicitation. If the agency finds that USDS's compensation plan rates are lower than the incumbent's rates for the same work to such an extent that the agency has reasonable concerns as to the effect of those rates on, for example, the ability to recruit and retain personnel and maintain uninterrupted high-quality performance of the contract, such that the firm's proposal is found to be unacceptable, we recommend that USDS's contract be terminated for the convenience of the government and that award be made to the offeror next in line for award.[14] We also recommend that the protester be reimbursed the reasonable cost of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1)(2000). The

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[13] We note that, although Wackenhut infers that it would have lowered its compensation plan rates if the matter had been discussed with the firm, our review of the record shows that Wackenhut did, in fact, lower its compensation rates on its own in its final revised proposal, indicating that the firm, on its own, identified those rates as an area of its proposal that it could revise, if it chose to, to make its overall proposal more attractive to the agency. Wackenhut Revised Business Management Proposal, Salary Breakdown (Feb. 24, 2000).

[14] We recognize that during the course of the protest the agency has stated that it did not intend to include or apply the compensation plan provision at issue here. Supplemental Contracting Officer's Statement at 4. Accordingly, if the agency now decides to delete the provision by amendment to the RFP, we recommend that revised proposals be requested and evaluated. If a firm other than USDS is found to be in line for award after such evaluation, we recommend that USDS's contract be terminated for the convenience of the government and award made to that firm.

protester should submit its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
Acting General Counsel