



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Wackenhut International, Inc./Istituto di Vigianza Citta'
di Roma S.r.l (Mettronotte)--a joint venture

File: B-251398.2

Date: January 26, 1996

Richard J. Webber, Esq., and Tenley A. Carp., Esq., Arent Fox, for the protester.
William J. Guidice, for United Mondialpol International S.r.l., a subsidiary of United
International Investigative Services, an interested party.
Kathleen D. Martin, Esq., Department of State, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Firm that submitted a proposal in response to solicitation to provide security services for United States Embassy in Italy was ineligible for award of 5-point preference reserved for United States persons or qualified joint venture persons, under section 136 of the Foreign Relations Authorization Act for Fiscal Years 1991 and 1992, where the firm is incorporated in Italy, the Italian and American owners of the corporation are not jointly and severally liable for contract performance.

DECISION

Wackenhut International Inc./Istituto di Vigianza Citta' di Roma S.r.l. (Mettronotte)-a joint venture protests the award of a contract to United Mondialpol International S.r.l. (UMI) under solicitation No. 11/92, issued by the U.S. Embassy, Rome, Italy, for security guard services. The protester asserts that the award to UMI was improper because UMI improperly was determined eligible for a 5-point evaluation preference reserved for United States persons and qualified joint venture persons.

We sustain the protest.

The solicitation provided that technical factors were worth 60 points, price was worth 40 points, and that 5 points were to be awarded to firms that qualified as United States offerors. During the course of the procurement, the agency issued 13 amendments, held three rounds of discussions, and requested and received 3 best and final offers (BAFO). Following the final evaluation, UMI's BAFO with 104.93 points and Wackenhut/Istituto's with 104.42 points were the highest-rated proposals. Both offerors' proposals were awarded the 5-point United States offeror preference. The agency awarded the contract to UMI based on its high score.

Wackenhut/Instituto protests that UMI does not qualify as a United States person or qualified joint venture person and that, consequently, the agency improperly awarded UMI the 5-point preference. Since UMI's total score was only .51 points higher, Wackenhut/Instituto maintains that without the 5 points awarded UMI's proposal Wackenhut/Instituto's proposal would be the highest rated and in line for award.

The preference in question is awarded pursuant to section 136 of the Foreign Relations Authorization Act for Fiscal Years 1991 and 1992, as amended, 22 U.S.C. § 4864(c)(7) (1994), which provides that the State Department should

"give preference to United States persons and qualified United States joint venture persons where such persons are price competitive to the non-United States persons bidding on the contract, are properly licensed by the host government, and are otherwise qualified to carry out all terms of the contract."

A United States person is defined as a person which, among other things, is incorporated or legally organized under the laws of the United States. 22 U.S.C. § 4864(d)(1)(A). A qualified joint venture person is defined as a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture. 22 U.S.C. § 4864(d)(2).

Under the solicitation, offerors wishing to qualify for the 5-point preference for United States persons or joint venture persons were required to submit, with their proposal, a "Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person." The statement of qualifications form defines a joint venture as:

"a formal or de facto association of two or more persons or entities to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill, and knowledge. To be acceptable, all members of a joint venture must be jointly and severally liable for full performance and resolution of matters arising out of the contract."

United International Investigative Services, Inc. (UIIS), a U.S. corporation, and Mondialpol Roma S.p.a., an Italian corporation, formed a joint venture with the name United Mondialpol International, Ltd. and, as a joint venture, submitted an offer executed by William J. Guidice, Managing Director of the joint venture, in response to the solicitation by the February 28, 1994, due date for initial proposals. Between the time this initial proposal was submitted and the time the first BAFO was submitted in September 1994, UIIS and Mondialpol had joined to form an

Italian corporation with the name United Mondialpol International S.r.l.¹ The Application for Registration with the Civil Court of Rome shows that the Deed of Incorporation was drawn up on April 18, 1994, and approved by the Court of Rome on June 3, 1994. Documents submitted with the protest show that UIIS contributed 51 percent of the funds, and Mondialpol 49 percent, to start the corporation.

The September 1994 BAFO was not submitted in the name of the joint venture United Mondialpol International, Ltd.; it was submitted in the name of the newly formed Italian corporation UMI, which was identified as a subsidiary of UIIS, and was signed by Mr. Guidice as managing director of UMI. Subsequent BAFOs were also submitted in the name of UMI, which was awarded the contract based on its high point score, which included the 5-point preference.

UMI is incorporated in Italy, under Italian law. Therefore, it does not qualify as a United States person under 22 U.S.C. § 4864(d)(1)(A) and is not entitled to the 5-point preference. Nor can UMI be considered a qualified joint venture person inasmuch as UMI is not a joint venture of UIIS and Mondialpol, but is an Italian S.r.l. corporation, in which UIIS and Mondialpol are the shareholders.

It appears that the agency accepted UMI's representation that UMI was also a joint venture of UIIS and Mondialpol to determine that firm was entitled to the 5-point preference. However, even assuming that an Italian S.r.l. corporation can also be considered a joint venture, UMI was not a qualified joint venture person under the definition provided in the solicitation. In this regard, under the joint venture person definition, to be a qualified joint venture, both joint venturers must have joint and several liability for full performance and resolution of all matters arising out of the contract. Since both UIIS' and Mondialpol's liability therefore is limited to their respective investments in UMI, neither firm satisfies the joint and several liability requirement to be considered a qualified joint venture. Further, there is no indication in the UMI BAFOs that UIIS and Mondialpol are jointly and severally liable. The BAFO was signed by Mr. Guidice as managing director of UMI, which the BAFO indicated was a subsidiary of UIIS. While Mr. Guidice is also the president and sole shareholder of UIIS, he did not sign the offer on behalf of UIIS. Further, none of the BAFOs was signed on behalf of Mondialpol.

Since UMI does not meet the definition of a United States person or a United States qualified joint venture person, it should not have been awarded the 5-point preference. Because UMI's score without the preference is 99.93 points, lower than

¹Under Italian law, an Italian corporation with S.r.l. status limits the liability of its shareholders to the amount they have invested in the company. See Martindale-Hubbell International Law Digest, 1995, Italy Law Digest at page 4.

Wackenhut/Instituto's score of 104.42, and the agency based the award on the point scores, Wackenhut/Instituto was the proper awardee.

We recommend that the agency terminate UMI's contract for the convenience of the government, and make award to Wackenhut/Instituto for the remaining portion of the contract, presuming that the protester is otherwise qualified. We also find that Wackenhut/Instituto is entitled to recover its protest costs, including reasonable attorneys' fees. Wackenhut/Instituto should submit its claim for these costs directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.6(f)(1) (1995).

The protest is sustained.

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