



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Inter-Con Security Services, Inc.

File: B-270828

Date: April 3, 1996

Patricia A. Meagher, Esq., and Neil H. O'Donnell, Esq., Rogers, Joseph, O'Donnell & Quinn, for the protester.

Richard J. Webber, Esq., Arent Fox Kintner Plotkin & Kahn, for Wackenhut International, Inc., an intervenor.

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

Marie Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of contract award on basis of initial proposals without discussions is denied where agency concluded that acceptance of low offer would result in lowest overall cost to the government and solicitation advised offerors of possibility of award without discussions; record does not support protester's position that change in exchange rate occurring after submission of initial proposals, but before award, indicated that discussions would be advantageous to the government.

DECISION

Inter-Con Security Services, Inc. protests award, based on initial offers, of a time-and-materials contract to Wackenhut International, Inc., under solicitation No. SOJM370-93-R-0002, issued by the Department of State (DOS) for security guard services at the United States Embassy in Kingston, Jamaica. Inter-Con, the incumbent contractor, argues that discussions should have been held because of changes in economic conditions which occurred during the 3-month delay in awarding the contract.

We deny the protest.

The RFP contemplated award of a fixed-price contract for a base 9-month period, with four 1-year options. The solicitation provided for award on a best value basis pursuant to a 60/40 technical/price formula, with an additional 5 points for a "United States person" preference. The maximum 40 points available in the price evaluation were to be assigned to the lowest-priced proposal, and all other proposals were to

receive proportionately fewer points based on a comparison with the low price. Prices were to be stated in U.S. dollars. The RFP incorporated Federal Acquisition Regulation (FAR) § 52.215-16(c) (FAC 90-29), which provides that award may be made on the basis of initial offers, without discussions, and advises that initial offers should contain the offerors' best terms from a cost or price and technical standpoint.

Five proposals were received by the August 25, 1995, closing date. Wackenhut's proposal received the highest total score of 92 points, comprised of 47 technical points (second highest technical score), 40 price points (lowest total price of (\$11,528,272), and 5 preference points. Inter-Con received the next highest total score of [deleted] points, comprised of [deleted] technical points ([deleted]), [deleted] price points ([deleted]), and 5 preference points. After determining that Wackenhut's price was fair and reasonable and that there were no significant technical or price deficiencies requiring discussions, the contracting officer made a written determination to award to the firm without discussions.

On December 13, before award was made (*i.e.*, before Wackenhut signed the contract it had received on December 12), Inter-Con submitted a letter to the contracting agency (and a revised price schedule) stating that it was prepared to reduce its price by 18 percent, to [deleted], based on an approximately 28-percent devaluation of the Jamaican currency since submission of initial proposals. Inter-Con urged the agency to request best and final offers (BAFO). However, the contracting officer determined that discussions were not in the government's interest, and proceeded with award to Wackenhut on December 19, without discussions.

Inter-Con argues that, based on its indication that it could offer a reduced price, and the potential for receiving lower prices from other offerors due to the currency devaluation, discussions were in the government's interest and should have been conducted. Additionally, the protester contends that, given the opportunity to submit a BAFO, its technical score would have been increased, since the evaluated weaknesses in its proposal were minor and easily correctable. Inter-Con concludes that it would have been in line for award.

Under FAR § 15.610(a)(3) (FAC 90-29), as it applies to this procurement, a contracting agency may award a contract without discussions if the solicitation advises offerors of that possibility, no discussions are in fact held, and the competition or prior cost experience clearly demonstrates that acceptance of the

initial proposal will result in the lowest overall cost to the government.¹ See Energy and Env'tl. Research Corp., B-261422; B-261422.2, Aug. 23, 1995, 95-2 CPD ¶ 81. In this latter regard, discussions need not be opened unless a potentially significant proposed price reduction indicates that discussions would be highly advantageous to the government. Glar-Ban, B-225709, Apr. 14, 1987, 87-1 CPD ¶ 406. In making this determination, an agency properly may balance the likelihood that opening discussions will result in a price lower than that of the initial low proposal against the government's interest in the timely acquisition of its requirements. Planning Research Corp., B-237201; B-237201.3, Jan. 30, 1990, 90-1 CPD ¶ 131; Microcom Corp., B-225140.2, Mar. 18, 1987, 87-1 CPD ¶ 301.

Here, the agency properly declined to open discussions. DOS states that the devaluation of the Jamaican dollar was actually 19 percent at the time Inter-Con submitted its revised offer, not 28 percent; Inter-Con has not rebutted the agency's assertion in this regard. DOS states that this devaluation was not deemed sufficient to result in lower prices, since legislation was enacted raising the Jamaican minimum wage by more than 30 percent on average, effective December 4, 1995. DOS determined that this increase in wages "completely eliminates any exchange rate wage and benefit gains" that otherwise might be expected as a result of the currency devaluation.² The agency further determined that, because Inter-Con's reduced price ([deleted]) was still more than [deleted] million higher than Wackenhut's (\$11,528,272), there was no reason to believe that a similar significant reduction could be expected from Wackenhut. It was for these reasons that the agency determined that discussions would not have a significant effect on prices, and that the potential benefit from discussions thus did not offset the agency's interest in promptly meeting its needs.

On its face, the agency's balancing test was reasonable; the significantly higher wages mandated by law properly were weighed against the possibility that the devaluation would lead offerors to lower their prices significantly in a BAFO. However, Inter-Con also challenges the agency's assumption that the minimum wage increase would have a 30-percent impact on revised prices, noting that under its current bridge contract for the requirement, the agency has allowed reimbursement on only the dollar value of the minimum wage increase rather than an increase of

¹The FAR has since been amended to permit award without discussions when the solicitation notifies all offerors that the government intends to evaluate proposals and make award without discussions, unless the contracting officer determines that discussions are necessary. See FAR § 15.610(a)(3) (FAC 90-31).

²The agency states that, rather than resulting from the devaluation, "it is much more likely that Inter-Con was able to offer a lower price because its first offer was far higher than necessary."

the percentage rise in the minimum wage (the 30-percent increase was determined in Jamaican dollars, and the total then was converted to U.S. dollars). According to the protester, in calculating its late revised price, this method of calculating the minimum wage increase raised its first year labor costs for the various labor categories from [deleted] percent to [deleted] percent, or only [deleted] percent on average.

Even if Inter-Con is correct that wages (in U.S. dollars) would not increase by the full 30 percent, this makes no difference on the record here. This is because it is not apparent, and Inter-Con has not shown, why a [deleted] percent increase in wages would not be sufficient to justify DOS's determination. A [deleted] percent wage increase is significant, and since the contract here is for guard services, where wage costs comprise a significant part of the total cost, we think the agency reasonably could assume that such a significant increase in wages would lead to a correspondingly significant increase in proposal prices. Nothing in the record establishes that the devaluation would have had a stronger downward effect on prices than the upward effect of the wage increases. There thus is no basis for taking issue with the agency's determination that there was little likelihood of obtaining significant price reductions through discussions, even using the [deleted] percent wage increase figure urged by Inter-Con; this is particularly the case given that, even with its price reduction, Inter-Con's price was substantially higher than Wackenhut's. Under these circumstances, the agency was not precluded from proceeding with award to Wackenhut based on its initial proposal.³

The protest is denied.

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³Inter-Con contends that its late price reduction would result in [deleted] price points and a total score of [deleted] points (versus Wackenhut's 92 points). This is essentially a restatement of the argument that Inter-Con's potentially lower price required the agency to hold discussions. Given our conclusion that the agency reasonably determined there was little likelihood of receiving a lower price than Wackenhut's, the fact that Inter-Con's total score may have increased above Wackenhut's had discussions been held did not compel the agency to hold discussions.