



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** General Security Services Corporation

**File:** B-280388; B-280388.2

**Date:** September 25, 1998

Robert A. Boonin, Esq., Butzel Long; and James A. Hughes, Esq., Robert S. Brams, Christy G. Slade, Esq., and William E. Slade, Esq., Patton Boggs, for the protester. Gerald L. Elston, Esq., and Charles E. Coburn, Esq., U.S. Marshals Service, Department of Justice, for the agency.

Valinda J. Astoria, Esq., Edgar Garcia, Esq., Joan K. Fiorino, Esq., and Donald E. Barnhill, Esq., for Akal, Inc., an intervenor.

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

## **DIGEST**

1. Protest challenging areas of technical evaluation of protester's proposal is denied where protester either failed to rebut agency's explanation of why downgrading was appropriate, or failed to show that downgrading based on omission of information from proposal was unreasonable.
2. Protest against adequacy of documentation for revised scoring of protester's proposal is denied where, although individual evaluator scoring sheets contain little or no explanation for scoring changes, basis for downgrading proposal is documented elsewhere in record and establishes reasonableness of downgrading.
3. Protest that awardee's final proposed price should have been found unacceptable because it improperly failed to add fringe benefit rate to holiday pay, is denied where there was no requirement for payment of fringe benefit rate for holiday pay.

## **DECISION**

General Security Services Corporation (GSSC) protests the evaluation of offers, and the award of a contract to Akal, Inc., under request for proposals (RFP) No. MS-CSC-97-R-0005, issued by the United States Marshals Service (USMS), Department of Justice, for court security services in the fifth federal circuit.

We deny the protest.

The RFP, as issued on March 17, 1997 and as amended, contemplated the award of a fixed-price indefinite-quantity, indefinite-delivery contract for a base year, with four 1-year options. It requested offerors to provide individual court security officer (CSO) services, as well as managerial and supervisory personnel, and any materials, supplies, and equipment required in the performance of the contract. The solicitation provided for award to the offeror whose proposal, conforming to the terms of the RFP, was determined to be the most advantageous to the government, cost/price and technical factors considered. The solicitation listed in descending order of importance the following technical evaluation factors--corporate management, past related performance, and qualifications of key personnel. Offerors were to propose prices for five categories of services<sup>1</sup> and submit a wage compensation plan indicating employee wages and fringe benefits over the life of the contract. The technical factors were assigned 60 percent of the evaluation weight, and total price 40 percent.

Twelve offers were received and evaluated by a nine-member technical evaluation board (TEB) during the week of June 20, 1997. At the request of the contracting officer, four members of the TEB reconvened during the week of July 26, 1997 to review the original TEB analysis. The reconvened TEB concurred with the original evaluation scores and generated additional documentation to support the original assigned scores. Six proposals were determined to be in the competitive range, including the awardee's and protester's. After two rounds of discussions, three rounds of best and final offers (BAFO), and further evaluation, Akal's lowest-evaluated-price offer--at \$60,683,060.82--was rated the highest with a total score of 95.50 points (55.5 technical and 40.0 price). GSSC's fourth-low offer--at \$64,511,132.11--was rated third overall with a total score of 86.43 points (48.8 technical and 37.63 price).<sup>2</sup> Award was made to Akal on March 30, based on a determination that no other offer presented technical advantages that warranted paying a premium above Akal's low price.

GSSC raises numerous arguments challenging the evaluation and other aspects of the award process. We have reviewed the record and find these arguments to be without merit. We discuss several of the most significant arguments below.

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<sup>1</sup>These categories are (1) CSO services between 6:00 a.m. and 6:00 p.m., Sunday through Saturday; (2) CSO services between 6:00 p.m. and 6:00 a.m. Sunday through Saturday; (3) CSO services on any of the 10 recognized federal holidays; (4) start-up services for new CSOs and yearly contractor expenditures for uniforms, weapons, proficiency testing, and medical examinations; and (5) overtime services.

<sup>2</sup>The prices given here are those calculated by the agency which, as will be discussed, differed from those offered.

## EVALUATION OF GSSC'S PROPOSAL

GSSC challenges the evaluated deficiencies of its proposal under the management and past performance factors.

In reviewing a protest against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. We find that this aspect of the technical evaluation was proper.

### Management

Under this factor, the RFP instructed offerors to address 11 listed elements, including the following:

Offeror shall detail its procedure on how it will correct personnel problems, i.e., misuse of weapons, intra personnel skills, etc. Explain how suspension and removal will be implemented. Include the length of time for each suspension and how many times an employee will be suspended before removed. Provide examples of what type of incidents on the job and/or off duty would warrant suspension and/or removal of a CSO.

RFP Amendment (Amend.) No. A002 § L-2(d)(1)(vi) at L-5 (Emphasis added.).

GSSC's proposal was downgraded for failure to "detail the length of time for each suspension of an employee for misconduct, or the number of suspensions before the dismissal of an employee." Letter of Debriefing, June 12, 1998, at 3; Final TEB Report, November 25, 1997, at 1.

The protester argues that downgrading for failure to detail the length of time for each suspension was unreasonable. According to the protester, its proposal, as initially submitted, clearly met the requirement by stating the following: "[i]f an employee is to be suspended, the amount of suspension will be based on the severity of the violation and may range from one day to two weeks without pay." GSSC Initial Proposal at 33.

The agency responds that, even if GSSC's proposal can be construed as specifying the length of time for each suspension (in fact, the agency apparently expected offerors to provide specific examples), it still did not indicate how many times an employee would be suspended prior to removal, as required by the RFP; the agency asserts that this by itself warranted the downgrading in this area. GSSC did not address the agency's response in its comments on the agency report. Under these

circumstances, we consider the protester to have abandoned the issue. Mitchell Constr. Co., Inc., B-245884, B-245884.2, Jan. 17, 1992, 92-1 CPD ¶ 92 at 2; see also, Hampton Roads Leasing, Inc.--Recon., B-244887.2, Apr. 1, 1992, 92-1 CPD ¶ 330 at 3-4.<sup>3</sup>

### Past Related Performance

Under past related performance, the RFP instructed offerors to "identify all current and past federal, state, local or private contracts performed during the last ten years for the types of services called for in this solicitation." RFP Amend. No. A002 § L-2 (d)(2), at L-6. In this area, as relevant to the protest, the RFP instructed offerors to "assess [their] performance under contracts listed . . . [to i]nclude[] the . . . offeror's experience in start-up, replacement of or addition of personnel, any problems in performance and any observations on how to avoid those problems in the future." Id., at L-7. GSSC's proposal was downgraded in this area for "not provid[ing] a detailed assessment of its past performance" for its listed contracts. Letter of Debriefing, June 12, 1998, at 2.

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<sup>3</sup>In any case, the downgrading for failure to detail the length of time of each suspension was reasonable. Essentially, the protester is arguing that the RFP requirement for the length of time for each suspension could be satisfied with the firm's general statement of its intended range of suspensions--1 to 2 weeks. However, this interpretation of the requirement was clearly at odds with the agency's, as exhibited by the written technical discussion questions submitted to the protester. Those questions cited the failure to "detail the length of time for each suspension and the number of suspensions allowed before dismissal." Discussion Questions No. 6, September 2, 1997, at 2. This question put the protester on notice that the general statement it initially submitted had been evaluated as insufficient to meet the requirement and, therefore, that more specific information, such as the length of time of suspension for specific examples of misconduct, was necessary. The protester did not provide more specific information, stating only that "[o]ur disciplinary procedures purposefully avoids the '3 strikes you're out' concept of discipline[; w]e take a disciplinary approach that reviews each infraction by a CSO on an individual basis while also weighing the disciplinary and work history of the person." GSSC Pricing and Technical Proposal Response at 18 and 19. It is an offeror's responsibility to submit an adequately written proposal in order to establish that what it proposes will meet the government's needs. Herndon Science and Software, Inc., B-245505, Jan. 9, 1992, 92-1 CPD ¶ 46 at 4. Here, the protester did not satisfy the request for more specific information, and thus took the risk of an unfavorable evaluation.

The protester challenges the downgrading of its proposal, contending that it "provided at least 34 pages [i.e., pages 47-81] of detailed information about its past performance," which "met all of the requirements." Comments (B-280388), at 10. The agency responds that, although GSSC's first BAFO contained some general statements about the firm's performance under its listed contracts--such as that the firm's past performance had been exemplary and that contract start-up had always been accomplished with minimal burdens on GSSC's clients--the firm did not provide any details about its experience with start-up and problems encountered in the performance of the firm's listed contracts, or make any observations about how to avoid problems in the future. Additionally, the agency asserts, GSSC's proposal provided no assessment of the firm's replacement or addition of personnel.

GSSC neither rebuts the specific deficient areas cited by the agency, where required information was omitted from its proposal, nor disputes that the deficiencies are material. Instead, the protester relies on (1) its past performance history which, it contends, the agency "already knew . . . because [the firm] performed the same services for USMS in every other judicial circuit and in some of those circuits for over ten years," and (2) its Price and Technical Proposal Response (post-discussions) which, it contends, "provided additional detailed information about GSSC's past performance including the high scores and accolades that USMS gave GSSC for its performance on past contracts" (in the form of a poll of its USMS customers conducted at an unspecified time in the past). Id.

The protester's arguments are without merit. GSSC's reliance on its past performance, without regard to the specific information required by the RFP, is misplaced. A procuring agency's technical evaluation is dependent upon the information furnished in the offeror's proposal. Computerized Project Management Plus, B-247063, Apr. 28, 1992, 92-1 CPD 401 ¶ at 3. An agency is not required to overlook a flawed proposal on the basis of the offeror's prior performance; on the contrary, all offerors are expected to demonstrate their capabilities and submit required information in their proposals. See McAllister & Assocs., Inc., B-277029.3, Feb. 18, 1998, 98-1 CPD ¶ 85 at 4, 6. Our review confirms the agency's finding that GSSC's proposal omitted the required information. Since GSSC has not shown that the evaluated deficiencies are unfounded based on the information contained in its proposal, there is no basis to object to this aspect of the evaluation.

## GENERAL EVALUATION DEFICIENCIES

### Inconsistent Evaluator Scoring

GSSC argues that the evaluation of its initial proposal under the corporate management factor--which required that offerors "propose 100 [percent] staffing for the CSO positions . . ."--was unreasonable due to inconsistent scoring among evaluators, which was not explained or documented. RFP Amend. No. A003 § L-2(d)(1)(xi), at L-6. Specifically, the protester complains that two original TEB

members assigned its proposal three points, the maximum possible score, while, without explanation from the original or reconvened TEB, two others assigned it zero points.

This argument is without merit. First, disparate scoring among evaluators by itself does not suffice to establish an improper evaluation. Unisys Corp., B-232634, Jan. 25, 1989, 89-1 CPD ¶ 75 at 6. Moreover, any disparity in the scoring of GSSC's initial proposal had no effect on the final evaluation, since the record shows that the deficiency noted in the initial evaluation subsequently was eliminated, and GSSC's proposal apparently received a perfect score in this area. Preliminary TEB Report-Reconvened TEB, at 21 (undated, but conducted during week of July 26, 1997).<sup>4</sup>

#### Documentation for Revised Scoring

The protester argues that there is a lack of documentation in the evaluation record for scoring changes in its proposal under the assessment of past performance subfactor and, in particular, that the record fails to include separate evaluation forms to explain the changed scoring, as required by internal agency instructions, entitled "Instructions for Technical Evaluation Factors." In support of its position, the protester cites one evaluator's score sheet in this area which shows "what appears to be a scoring change from 4 points to 0 points on a subfactor worth 5 points." Comments (B-280388.2), at 10.

Alleged deficiencies in the application of an agency evaluation plan do not provide a basis for questioning the validity of the award selection; these plans are internal agency instructions and as such do not give outside parties any rights. Management Plus, Inc., B-265852, Dec. 29, 1995, 95-2 CPD ¶ 290 at 2 n.2. Consequently, the fact that the agency may not have followed its internal evaluation instructions is not a valid basis for protest.

Nevertheless, agency evaluation judgments must be documented in sufficient detail to allow review of the merits of a protest, to show that they are not arbitrary, and to show that they are in accord with the evaluation criteria listed in the RFP. Southwest Marine, Inc.; Am. Sys. Eng'g Corp., B-265865, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. While it is not clear from the record why GSSC's proposal

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<sup>4</sup>The record indicates that GSSC's technical score was increased by 4 points, to a total of 48.8 points, based on, as relevant here, the following TEB observation: "GSSC did state that it would provide 100% staffing on day one of the contract which had been a key omission in its original proposal netting it 0 points [in this area] in its original proposal." Final TEB Report, November 25, 1997, at 1. The protester does not challenge this indication in the record that the original scoring deficiency was corrected.

score in this area initially was higher, the record does support the lower final score. As discussed to some extent above, the initial evaluation record described the deficiency in this area as, "[t]he offeror did not provide any assessment of its performance under contracts listed." Preliminary TEB Report-Reconvened TEB, at 21. The discussion questions subsequently posed to the protester included, as relevant, the statement that the "[o]fferor did not provide an assessment of its past performance under previous contracts." Request for BAFOs and Discussion Questions, September 2, 1997, at 2, Question No. 11. Then, in the final evaluation record, the deficiency is described as follows:

Rather than conducting a rigorous assessment of its past performance under previous contracts GSSC provided only a limited assessment which relies largely on a poll it said it conducted at some unspecified time in the past [; t]here are no indications that this is a scientific poll[; r]esponses to this type of non-scientific survey are of limited use[;] GSSC does provide a limited assessment that is distinguished largely by its limitations and lack of specificity, insight or rigor.

Final TEB Report, November 25, 1998, at 1. Thus, the documentation in the record is sufficient to indicate precisely why the agency ultimately downgraded GSSC's proposal substantially in this area. The protester provides no basis to question the agency's conclusion.<sup>5</sup>

#### Weighting of Technical Subfactors

GSSC argues that the evaluation was improper based on the unequal weighting of undisclosed technical subfactors. The protester contends that, because the solicitation listed the subfactors without indicating the relative weights to be applied to them, offerors were entitled to assume that they would be considered of equal, or approximately equal, importance, which did not occur in the actual evaluation. As an example, the protester cites the first two past performance subfactors--identification of past similar contracts and assessment of past performance--which were weighted 5 points each, in contrast to the remaining two subfactors--turnover-related information and other past performance information offerors wish to provide--which were weighted 5 points combined.

The protester is correct that, where the relative weights of subfactors are not disclosed in the RFP, the subfactors are understood to be of equal importance to each other. North-East Imaging, Inc., B-256281, June 1, 1994, 94-1 CPD ¶ 332 at 2. However, competitive prejudice is an essential element of every viable protest.

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<sup>5</sup>We have no basis to consider the protester's further complaint that other scoring was revised without adequate documentation, since the protester has not identified any specific areas in this regard.

Geonex Corp., B-274390.2, June 13, 1997, 97-1 CPD ¶ 225 at 4. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d. 1577, 1581 (Fed. Cir. 1996).

GSSC has not asserted that it suffered competitive prejudice as a result of the agency's unequal weighting of the subfactors and, given the informational nature of the subfactors--i.e., concerning past performance matters--it is not apparent how different weights would have affected the manner in which GSSC prepared its proposal; that is, there is no reason to believe that GSSC would have provided any more or different information had it been aware of the actual weights of the subfactors. Moreover, the 1.25-point difference between the actual evaluation weighting (5 points) and the equal weighting assumed by the protester (3.75 points), in the assessment of past performance, the area of downgrading of its proposal, is so minimal, that this consideration alone renders the potential for prejudice virtually nonexistent.

#### Calculation of Total Technical Scores

GSSC complains that its initial technical score was improperly calculated. According to the protester, while the TEB report indicates that the firm's proposal received a technical score of 44.8 points, the actual average of the individual scores from the initial nine-member TEB was 45 points. The protester complains that, based on this erroneous calculation, its initial proposal was rated only conditionally acceptable, when it should have been rated as acceptable. Protest (B-280388.2), at 5. GSSC also maintains that a similar error may have left Akal's proposal score too low by a fractional amount. The agency acknowledges the error in GSSC's score, but maintains that it had no bearing on the overall and final rank of the firm's proposal, because after the firm was included in the competitive range and participated in several rounds of discussions, the firm's technical score was correctly revised by the TEB to account for this error. Contracting Officer's Statement of Fact (B-280388.2), at 3.

It is not apparent from the record whether the error in GSSC's score was carried through to the final evaluation, and whether a similar error affected Akal's proposal. However, we fail to see how rounding GSSC's score up to 49 and Akal's up to 56 could have affected the award decision, and GSSC does not assert that it would have. Consequently, this argument presents no basis to question the award.

## PRICE EVALUATION

### Compliance with Wage Rate Requirements

GSSC argues that Akal's final price failed to comply with mandatory RFP wage rate requirements regarding the payment of fringe benefits. The RFP made the Service Contract Act of 1965 (SCA) applicable here, so that the successful offeror would be obligated to pay employees in accordance with wage rate determinations (WRD) issued by the Department of Labor (DOL). RFP Amend. No. A006, § L-4 at L-10. The applicable WRDs incorporated by the RFP required offerors to (1) pay minimum prevailing wage rates in the locality where the services were performed, and (2) establish a minimum fringe benefit package consisting of specified periods of time for holidays and vacation and specified health/welfare and uniform allowances. RFP § J, Attachment 1, as amended.

In evaluating wage rates, the contracting officer specifically determined that "[i]n all cases Akal . . . proposed wage rate[s] above the wage determinations, and equal to each of the wage rates as provided under Amendment A-006," and that "[t]his [wa]s considered to be acceptable." Cost/Price Analysis, at 1.

GSSC argues that Akal's final price proposal did not comply with the WRDs, notwithstanding the contracting officer's determination to the contrary, because Akal generally failed to add a fringe benefit rate to holiday pay. The protester concludes that Akal's proposal should have been rejected for failure to comply with a mandatory RFP requirement.

We have reviewed the RFP and wage determination and, as the agency states, find no requirement that a fringe benefit rate be added to holiday pay. GSSC has neither rebutted the agency's assertion in this regard, nor cited the area of the RFP, wage WRD, or applicable regulations where such a requirement is established. We conclude that this argument is without merit.<sup>6</sup>

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<sup>6</sup>Among other changes, amendment No. A006 required offerors to maintain the incumbent contractor's unburdened wage rates. RFP Amend. No. A006 § M-9, at M-5, and § J1(b). The protester contends that issuance of this amendment and reopening discussions improperly afforded Akal an opportunity to raise its wage rates to the level of the incumbent contractor's unburdened wage rates, so as to make its proposal minimally acceptable. This argument is without merit. There was nothing improper in the agency's decision to require offerors to meet the incumbent's wage rates, and there certainly was nothing improper in reopening discussions to provide offerors an opportunity to meet the requirement.

## Adjustments to Akal's Proposal

GSSC asserts that, although its own and Akal's offered final prices were approximately equal (\$62,243,593 and \$62,114,638, respectively), the agency improperly created an approximate \$4 million advantage for Akal by adjusting GSSC's price upward by \$2,267,540, for a total of \$64,511,133, and adjusting Akal's price downward by \$1,431,577, for a total of \$60,683,061.

As an initial matter, we note that GSSC's protest regarding the adjustment of its own proposed price is untimely. Under our Regulations, protests such as this must be filed with our Office no later than 10 days after the protest basis was or should have been known. 4 C.F.R. § 21.2(a)(2) (1998). GSSC challenged the evaluation of its proposed price for the first time on July 27, 1998, more than 3 months after GSSC received the notice of award letter from USMS (on April 2, 1998), which listed the total evaluated price of GSSC's proposal. We thus will consider GSSC's argument only with regard to the adjustment of Akal's proposal; we find this argument to be without merit.

The agency reports that the difference between Akal's proposed and evaluated total prices is attributable to calculation errors in both the contracting officer's price analysis and Akal's final price proposal. The agency has explained these errors in detail, which we will not repeat here. Contracting Officer's Statement (B-280388.2), at 6-7. After correcting these errors, Akal's final evaluated price was \$61,652,300. Thus, even assuming that GSSC is correct that its final proposed price of \$62,243,593 should not have been adjusted upward, the agency maintains that GSSC would not have received award because its proposed price still was higher than Akal's correct evaluated price. *Id.*, at 8. GSSC has not rebutted the agency's explanation of the errors and the recalculation of Akal's price. This argument thus provides no basis to question the award.<sup>7</sup>

The protest is denied.

Comptroller General of  
the United States

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<sup>7</sup>GSSC further argues that "Akal's technical score should have reflected the negative impact on stability and turnover rate implied by slashed wages and benefits that were unreasonably low" (on category 4 services--start-up, uniforms, weapons, and testing). Request for Additional Documents (B-280388.2), August 24, 1998, at 3. This argument is without merit. First, the RFP provided that no cost information would be considered in the technical evaluation. RFP Amend. No. A002 § L-2(b), at L-1. In any case, in the face of the agency's finding that Akal's wages were acceptable, there is no basis for finding that Akal's wage rates were unreasonably low such that reducing Akal's technical score would have been warranted.

