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Decision

Matter of: Wackenhut International, Inc.

File: B-286193.2

Date: May 18, 2001

Richard J. Webber, Esq., and Matthew S. Perlman, Esq., Arent Fox Kintner Plotkin & Kahn, for the protester.

Hugh O'Neill, Esq., for U.S. Defense Systems, Inc./Armor Group, an intervenor.

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

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of evaluation of offerors' compensation plans is denied where evaluation was reasonable and consistent with solicitation terms.

DECISION

Wackenhut International, Inc. protests the award of a contract to U.S. Defense Systems, Inc./Armor Group (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. Wackenhut challenges the adequacy of the agency's evaluation of the offerors' compensation plans performed in response to our decision of December 11, 2000, in which we sustained Wackenhut's earlier protest of the agency's failure to properly review the plans prior to award.¹

We deny the protest.

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

¹ In that decision, we concluded that the agency failed to perform any review of the plans comparative to wages paid under the incumbent contract, as required by the RFP. Accordingly, we sustained the protest and recommended that the agency conduct an adequate evaluation of the plans consistent with the RFP. Wackenhut Int'l, Inc., B-286193, Dec. 11, 2000, 2001 CPD ¶ 8 at 7-9.

4 option years, to the technically acceptable offeror with the lowest evaluated price. RFP §§ F.4.1, L ¶ 52.216-1, M.1.2. Offerors were to propose prices for the guard services in terms of fixed hourly rates for an estimated number of labor hours for stated labor categories, including guard; guard/driver; senior guard; surveillance detection (SD) specialist; SD supervisor; and supervisor. RFP §§ B.3, C.1.2.1-1.2.4.

Each offeror was to include in its business management proposal a compensation plan of anticipated employee wage rates and benefits. The agency was to review each plan to assess the offeror's understanding of the performance requirements and its ability to provide uninterrupted high-quality work. The RFP did not, however, provide guidance as to the degree of detail required for the offeror's plan or instruct the agency as to any particular method or scope of review. Rather, the RFP generally recognized the possibility that a follow-on procurement of services with lower compensation levels than previously paid for the work could indicate a lack of understanding of performance requirements or hinder the contractor's ability to obtain the quality of services needed for adequate contract performance. Accordingly, the RFP advised each offeror that the compensation plan would

be considered in terms of its impact upon recruiting and retention . . . [so that] compensation levels proposed . . . should indicate the capability . . . to obtain and keep suitably qualified personnel. . . . 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).

Each of the three final revised proposals was considered technically acceptable. The USDS final proposal (at an evaluated price of 167,858,600 bahts or approximately \$4,399,848) offered the lowest evaluated price; Wackenhut's final proposal (at 175,689,101 bahts or approximately \$4,605,098) was the highest priced.² Price Negotiation Memorandum at 3. On August 11, 2000, a contract was awarded under

² 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, which was the exchange rate on the date final proposal revisions were submitted. Price Negotiation Memorandum at 5.

the RFP to USDS.³ Following a debriefing, Wackenhut, the incumbent contractor of the services, filed a protest with our Office challenging, among other things, the adequacy of the agency's evaluation of the offerors' compensation plans. Having found that the agency failed to compare the offerors' plan rates with wage rates paid under Wackenhut's incumbent contract, as required by the RFP to assess the ability of the offeror to obtain competent personnel for successful performance, we sustained the protest and recommended that the agency conduct an adequate review of the compensation plans.

By letter of February 12, 2001, the agency advised that it had adopted our corrective recommendation, completed a review of the compensation plans, and confirmed its award to USDS as the lowest-priced, acceptable offeror. The agency stated that most of the starting wage rates listed in the USDS compensation plan are only slightly lower than rates Wackenhut has most recently paid its guards under its incumbent contract, and that USDS demonstrated its understanding of the requirements and an ability to obtain suitable personnel, especially in light of a local labor surplus and depressed economy. This protest, challenging the adequacy of the agency's review of the compensation plans, followed.

The agency reports that, in response to our Office's recommendation to assess the offerors' compensation plans to determine if lower than current rates would inhibit successful contract performance, current wage rate information was requested from the incumbent contractor, Wackenhut, and a market survey of local entities involved with guard service contracts was conducted. The agency contacted at least 11 local entities--these included other embassies, large businesses contracting with local guard service providers, and local guard services companies. Compensation Plan Analysis at 6-9. Most of the guard service customers contacted did not have knowledge of specific wages paid, since the determination of wages to be paid and the payment of those wages were responsibilities of the guard service contractor; each confirmed, however, that payments and benefits were at least in accordance with minimum amounts set by Thai labor law. Id. The only source of directly relevant wage information, a local guard services provider, reported that it pays its guards and senior guards in ranges that include some of the challenged rates provided in the USDS proposal's starting pay scales. Id. at 8-9. Based on its survey and knowledge of local market conditions gained through administration of numerous other contracts using local personnel, the agency expected wages for the guard services to equal or slightly exceed the local minimum wage set by Thai labor law.

³ The agency reports that there has been no suspension of performance of the August 11 contract, and that USDS continues to perform the guard services successfully.

The USDS compensation plan's starting pay scales for the guard, senior guard, and guard supervisor labor categories (constituting the vast majority of the total labor hours under the contract) were found to be only [deleted] below the rates paid under the protester's incumbent contract. *Id.* at 4. The stated starting USDS rate for the guard category, however, was 4 percent below the Thai minimum wage applicable to the contract. Since the USDS compensation plan included information about the firm's successful performance of similar contracts and a management policy of meeting or exceeding all local labor laws, including minimum wages, the USDS plan was also evaluated by the agency at the minimum wage applicable to the contract. The Thai minimum wage rate for guards is only 2 percent lower than the guard wages paid under the incumbent contract. Due to the slight difference in the USDS plan rates and the incumbent contractor's wages, and market research which showed USDS's rates to be in line with local rates paid for similar guard services, the agency found no reason to question the contract or the firm's ability to obtain qualified personnel for the labor categories—especially given the labor surplus conditions in Thailand, where highly educated individuals are available for employment at relatively low rates.

In its evaluation report, the agency gave separate and detailed consideration to the fact that USDS's starting rates for its SD specialists and SD supervisors were only [deleted] of the wage rates paid by the incumbent contractor for the SD positions. While the USDS SD rates parallel the USDS senior guard and guard supervisor rates in that they provide additional compensation for supervisory responsibilities, the agency noted that USDS did not provide higher wages for SD personnel, who need to have slightly higher English language proficiency than the senior and supervisory guard positions. After a detailed consideration of the matter, described below, the agency ultimately determined that USDS's SD rates did not warrant rejection of the proposal.

In reviewing the SD specialist and SD supervisor rate differentials, the agency first recognized that the higher SD rates paid under Wackenhut's prior contract appeared to be of limited comparative value, because the SD work performed under that contract had been negotiated noncompetitively with Wackenhut and had been added to the contract for emergency security enhancements in response to international embassy bombing incidents. Contracting Officer's Reconsideration of Award, Feb. 9, 2001, at 2. Although it was noted that USDS did not provide a rate differential between labor categories (e.g., senior guard and SD specialist) requiring slightly different language proficiency requirements, the agency concluded that this compensation structure alone did not show a failure to understand requirements or a lack of ability to perform. Rather, the agency found that the USDS technical proposal fully demonstrated the firm's familiarity with the SD positions' language and training requirements, as well as the firm's successful performance of numerous other international guard service contracts entailing the provision of qualified personnel. *Id.* Moreover, the agency reasoned that since USDS had emphasized in its proposal (in bold type) that its plan's summarized rates were only starting pay

scales, it was reasonable to expect USDS to provide increased rates if deemed necessary and warranted to recruit qualified personnel. Id. Since the SD labor hours constitute only 14 percent of the total contract hours, the agency determined that, even if USDS were faced with the need to pay rates higher than the starting rates cited in its plan, it could readily absorb the additional cost to do so, without the need for a contract price adjustment. Id. Lastly, the agency considered that the area's labor surplus suggests an availability of personnel at wages lower than would be sought by the incumbent contractor's personnel. The agency thus concluded that although the USDS rates were lower than had previously been paid in compensation for the services, they would not be detrimental to successful performance of the contract.

Wackenhut contends that the agency should have rejected the USDS proposal due to its lower wage rates. The protester primarily argues that the agency incorrectly applied the Thai minimum wage rate to the USDS guard category and thus improperly concluded that the awardee's rates were only 2 percent less than the incumbent's contract rates. Wackenhut instead contends that the agency must evaluate the USDS proposal at the firm's stated starting scale rate for guards, which is [deleted] lower than Wackenhut's incumbent contract rate for the guard category. Wackenhut argues that, since the differential in pay rates presents a noticeable reduction in wages, the agency should have found that USDS would be unable to retain Wackenhut's incumbent staff; consequently, Wackenhut contends that the USDS proposal should have been rejected.⁴

An agency's method for evaluating proposals is a matter within the agency's discretion, since the agency is responsible for defining its needs, and the best method for accommodating them. Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 5. Where an evaluation is challenged, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and with procurement statutes and regulations. AmClyde Eng'rd. Prods. Co., Inc., B-282271, B-282271.2, June 21, 1999,

⁴ In its protest, Wackenhut also states that it and USDS provided "melded" rates for each labor category (encompassing rates for each category of services at three locations where differing minimum wage amounts apply to performance of the services). Accordingly, Wackenhut suggests that a melded minimum wage rate (*i.e.*, similarly derived by considering the percentage of estimated hours per category and location, at the applicable minimum wage for each location) should have been used in the evaluation of the offerors' compensation plans. We see no reason to discuss this line of argument in detail, since the RFP did not provide for evaluation of melded rates. We note, however, that, as the protester concedes, the USDS melded rates clearly exceed the melded minimum wage rate suggested by Wackenhut as an appropriate measure for review of the offerors' compensation plans.

99-2 CPD ¶ 5 at 5. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Id.

We have reviewed Wackenhut's contentions and find that they provide no basis to question the adequacy of the agency's evaluation of the USDS proposal's compensation plan or the reasonableness of the award. As the agency points out, the contractor is bound by the terms of the solicitation to adhere to all local labor law minimum wage standards under any resulting contract and provide evidence of actual payment of wages with its invoice submissions. Since the USDS proposal's compensation plan discusses that firm's management policy and practice to meet or exceed all local minimum wage requirements, it was reasonable for the agency to evaluate the USDS plan at the minimum wage rate for guards, especially since USDS's starting pay scale for the guard category—which is only slightly lower than the minimum wage—can reasonably be viewed as offering a range of increasing rates to include the slightly higher minimum wage amount used in the evaluation. In any event, to the extent the protester argues that a more reasonable evaluation would compare the [deleted] differential between USDS's stated starting rate and the rate paid under the incumbent's contract, our review of the record, discussed further below, confirms the reasonableness of the agency's determination that the challenged rates, even at a [deleted] differential, do not require rejection of the USDS proposal.

Wackenhut essentially argues that a reduction in the wage rates paid to personnel under the incumbent contract will hinder USDS's ability to retain personnel from the incumbent contract. Wackenhut apparently interprets the compensation plan evaluation terms as creating a preference or requirement for the new contractor to retain the incumbent contractor's personnel. The clause does not do so. Instead, the compensation clause more generally requires consideration of the firm's ability to "obtain and keep" competent personnel (*i.e.*, the ability to recruit and then retain personnel once they are hired); there is no mention of retention of incumbent personnel.⁵ RFP § L.1.3.4(2)(b). The matter for review, therefore, is the ability of the firm to adequately staff the contract and maintain successful performance of the contract.

The greatest differential in rates is related to the SD positions. Our review of the record, however, shows that even if Wackenhut is correct in its assertion that its incumbent staff would not be interested in working for USDS at the lower rates, there are other factors in the record that support the agency's determination that USDS would be able to adequately staff the contract. The agency's analysis

⁵ The RFP requires only that the new contractor offer personnel from the incumbent contract a right of first refusal for employment for an available, similar position and, even then, the RFP does not offer incumbent personnel any wage protection. RFP § I.3.

reasonably considered, for example, that the awardee's proposal otherwise demonstrated an understanding of the requirements, including the language and training requirements for the SD positions; the SD rates previously paid by Wackenhut were not based on any competition, suggesting that the work may be able to be performed at a more competitive rate; and the USDS proposal contemplates increasing rates per labor category beyond the stated starting pay scale rates to allow the firm to offer higher rates to obtain suitable personnel. In light of the extensive experience of this contractor, its demonstrated understanding of the requirements and flexible compensation plan, the agency's comprehensive market survey, as well as the labor surplus and depressed economic conditions in Thailand, we see no basis to question the reasonableness of the agency's determination that the USDS proposal indicated the ability to obtain competent personnel at the scaled rates contemplated by the USDS proposal, as well as the ability to maintain program continuity consistent with the RFP's terms for evaluation of the offerors' compensation plans.⁶

The protest is denied.

Anthony H. Gamboa
General Counsel

⁶ The protester also challenges the agency's failure to perform a more detailed analysis of fringe benefits referenced in the offerors' compensation plans. The record shows that both Wackenhut and USDS proposed lower fringe benefits than those required by local labor laws, but because both firms' proposals indicated an intention to meet required local minimum labor benefits, both were evaluated as meeting those minimum benefits. Since both offerors benefited from the agency's actions, and, since competitive prejudice is an essential element of a viable protest, we will not consider the matter further. 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).