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United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: Wackenhut International, Inc., Wackenhut Puerto Rico, Inc.,
Wackenhut Jordan, Ltd.– a Joint Venture

File: B-299022; B-299022.2

Date: January 23, 2007

David B. Dempsey, Esq., and David J. Craig, Esq., Holland & Knight LLP, for the protester.

Gerald H. Werfel, Esq., Pompan, Murray & Werfel, PLC, for U.S. Defense Systems, LLC, an intervenor.

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

Paula A. Williams, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected protester’s proposal as technically unacceptable for failing to comply with solicitation requirements regarding proposed management approach.

DECISION

Wackenhut International, Inc., Wackenhut Puerto Rico, Inc., Wackenhut Jordan, Ltd.–a Joint Venture (WII), protests the Department of State’s rejection of WII’s proposal responding to request for proposals (RFP) No. S-JO100-04-R-0001 for local guard services at the United States Embassy in Amman, Jordan. WII protests that the agency improperly rejected WII’s proposal as technically unacceptable.

We deny the protest.

The agency issued the RFP in May 2004, seeking proposals for guard services at the U.S. Embassy in Amman, Jordan. The RFP provided that the services are required in order to “protect life, maintain order, deter criminal attacks against employees, dependents and property and terrorist acts against all U.S. assets.”¹ RFP at 14.

¹ The agency states that “Embassy Amman faces security issues that are exceeded only by Embassy Kabul and Embassy Baghdad.” Agency Report (AR), Contracting Officer’s Statement, at 3.

Pursuant to the solicitation, the successful contractor will be required to provide all necessary personnel, vehicles, and equipment to perform the guard service requirements. The RFP provided that the source selection decision would be made on the basis of the lowest-priced, technically acceptable proposal, and contemplated award of a time-and-materials contract for a 1-year base period and four 1-year option periods.

With regard to technical acceptability, the RFP provided that proposals would be evaluated, on a pass/fail basis, against the following criteria: management plan, experience and past performance, preliminary transition plan, and compensation plan. RFP at 75. With regard to an offeror's proposed management plan, the RFP required, among other things, that: "The management plan will define how the offeror will ensure timely, professional and high quality performance." RFP at 65.

Six proposals, including WII's, were submitted by the specified closing date. In its proposal, responding to the solicitation requirement that it propose an acceptable management plan, WII stated that its employees would be expected to routinely work [DELETED] per week. AR exh. 21, WII's Initial Proposal, Vol. 3, at 23. In evaluating WII's proposal, the agency questioned this proposed approach on the basis that such a lengthy workweek was likely to negatively affect the quality of WII's contract performance. Thereafter, in conducting discussions with WII, the agency stated:

Your company has failed to address a significant number of areas required by the solicitation and has addressed other areas in a manner that is either unacceptable or unclear. These are the issues that require resolution.

Management Plan

* * * * *

The most critical aspect of a local guard contract is maintaining a highly motivated, happy and alert guard force. In doing this, a contractor could reasonably ensure that he could retain employees. This is achieved by providing a fair workweek and paying a fair salary. To this, your company's statements on page 23 of your proposal in reference to work hours are extremely disconcerting. In our opinion, the statement shows a workweek that is clearly excessive and that will only serve to exhaust and demoralize a guard force.

* * * * *

We believe a [DELETED] workweek is excessive. Please address this issue by either convincing us that our position is wrong by providing information detailing how a [DELETED] workweek with a weekly rest

of [DELETED] period will result in a fresh and highly alert guard force or by revising your staffing plan.

AR exh. 6, Discussion Letter to WII, at 1-3.²

In response to the agency's concern that WII's proposed workweek was "excessive," that it would "exhaust and demoralize a guard force," and was "extremely disconcerting" to the agency, WII declined to revise its proposal. Specifically, WII stated:

The staffing plan originally submitted of [DELETED] workweeks in [DELETED] complies with section H.5.3 of the solicitation as well as with Jordanian labor law. As a matter of fact, this schedule is customary for many security deployments in Jordan. Our experience in Jordan has demonstrated no problems related to lack of alertness or motivation when using this schedule.

AR exh. 22, WII's Revised Proposal, Vol. 3, at 7.³

Thereafter, the agency again evaluated WII's proposal, and concluded that WII had failed to correct various proposal deficiencies, including its reliance on a

² The agency's discussion questions to WII also identified other concerns regarding WII's proposal, including concerns regarding WII's past performance, as follows:

[W]e believe that your joint venture was the same entity that held the previous contract for these services. Our remaining record regarding your past performance was prepared by the COR [contracting officer's representative] at that time, after the conclusion of that contract. It lists many failings in terms of performance. These failings included failure to provide basic equipment for the guards, a poorly managed guard force with low morale, a very high turnover rate, poor appearance and attitude of your employees, and lack of interest from senior Wackenhut management in the contract performance. It appears that the problem was perceived to lie with the [DELETED] in the joint venture, more than [DELETED], though [DELETED] was cited as being nonresponsive to the needs of the Embassy.

AR exh. 6, Discussion Letter to WII, at 3.

³ WII's response also listed various [DELETED] benefits that it believes will motivate its employees. Id.

[DELETED] workweek. With regard to WII's proposed management approach, the agency's contemporaneous evaluation record states:

Wackenhut has again reinforced from its initial proposal its disconcerting statements regarding the basic working hours expected from the guard force.

* * * * *

Despite what numbers of hours Wackenhut states they can legally expect their guard force to work according to Jordanian labor law, the TEP has already indicated that a [DELETED] workweek is untenable. As initially stated by the TEP, this type of workweek is clearly excessive and will only serve to exhaust and demoralize a guard force. Also, despite what Wackenhut's own experience is, the experience of Embassy Amman's TEP has found that a workweek of this length is highly demoralizing, and therefore unsafe for the embassy in light of Jordan's high terrorist threat environment. Requiring a workweek of this length would be counter productive to ensuring the best possible security services for the embassy.

AR exh. 8, Evaluation of WII's Revised Proposal, at 2-3.

Accordingly, the agency concluded that WII's proposal was technically unacceptable and eliminated it from further consideration.⁴ This protest followed.

DISCUSSION

WII protests the agency's determination that its proposal was technically unacceptable, arguing that the agency improperly applied an unstated evaluation factor. More specifically, WII asserts that the solicitation contained "no specific restriction" regarding the permissible length of a proposed workweek⁵ and, therefore, that the agency was precluded from considering the length of WII's

⁴ In addition to WII's proposed management approach, the agency found that WII's proposal was unacceptable with regard to other evaluation factors, including past performance. In light of our conclusion that the agency reasonably rejected WII's proposal based on its unacceptable management plan, thus rendering its overall proposal unacceptable, we need not discuss the agency's additional bases for rejecting WII's proposal.

⁵ The solicitation precluded an offeror from proposing that guards would work more than 12 hours per day, but did not expressly limit the number of days per week that guards could be required to work. RFP at 21, 30.

proposed workweek in its evaluation. Protester's Comments, Nov. 27, 2006, at 3-12. We disagree.

When an agency evaluation is challenged, we will review the agency's actions to ensure that they are reasonable and consistent with the solicitation's stated evaluation factors, as well as with applicable procurement laws and regulations. Worldwide Language Res., Inc., B-297210 et al., Nov. 28, 2005, 2005 CPD ¶ 211 at 3; Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. An agency properly may take into account matters that are reasonably encompassed by a stated evaluation factor. See STEM Int'l, Inc., B-295471, Jan. 24, 2005, 2005 CPD ¶ 19 at 3; North Am. Military Housing, LLC, B-289604, Mar. 20, 2002, 2002 CPD ¶ 69 at 5.

Here, as noted above, the solicitation specifically required that, to be evaluated as technically acceptable, an offeror's proposed management plan must "ensure timely, professional and high quality performance." RFP at 65. Particularly in light of the requirements at issue here, the length of an offeror's proposed workweek is clearly encompassed within the stated requirement for high quality performance. Further, in conducting discussions with WII regarding this matter, the agency explicitly advised WII that the agency considered WII's proposed [DELETED] workweek to be "excessive," and that such a management approach would "exhaust and demoralize a guard force." Notwithstanding this explicit language indicating that the proposed workweek was unacceptable to the agency, WII neither provided a meaningful response to the agency's concerns, nor revised its proposed management approach.

Procuring agencies are generally in the best position to determine their actual requirements and the best method for meeting them. In reviewing protests challenging an agency's assessments with regard to a particular performance approach, our Office will not substitute our judgment for that of the agency; rather, we will review the record to determine whether the judgments are reasonable and consistent with the solicitation criteria. See, e.g., RMS Indus., B-247233, B-247234, May 1, 1992, 92-1 CPD ¶ 412.

Here, based on our review of the entire record, we find no basis to question the agency's determination that WII's proposed [DELETED] workweek was excessive, that it would exhaust and demoralize WII's guard force and, therefore, that it rendered WII's proposal unacceptable for failure to comply with the solicitation

requirement that an offeror's proposed management approach would "ensure timely, professional and high quality performance." Although WII continues to express disagreement in this regard, it has provided nothing to demonstrate that the agency's determination was unreasonable.

The protest is denied.⁶

Gary L. Kepplinger
General Counsel

⁶ In pursuing this protest, WII has raised various other issues, including assertions that the agency failed to conduct meaningful discussions, that the agency was precluded from considering WII's prior performance of the guard service requirements at issue here, and that the agency improperly criticized WII's proposal with regard to compensation issues, Internet training, and guard accommodations. We have considered all of WII's arguments and find no basis for sustaining its protest.