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## Decision

**Matter of:** Wackenhut Services, Inc.

**File:** B-402550.2

**Date:** June 7, 2010

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Richard J. Webber, Esq., Kavitha J. Babu, Esq., and Judith B. Kassel, Esq., Arent Fox LLP, for the protester.

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Denise A. McLane, Esq., Department of Homeland Security, for the agency.

Katherine I. Riback, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency failed to evaluate the awardee's proposal under the management approach factor in accordance with the solicitation when it considered the awardee's proposed approach, which was prohibited by the solicitation, as a benefit that exceeded the solicitation requirements, and the agency disparately evaluated proposals.

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### DECISION

Wackenhut Services, Inc., of Palm Beach Gardens, Florida, protests the award of a contract to Coastal International Security, Inc., of Lorton, Virginia, under request for proposals (RFP) No. HSCEEC-10-R-00001, issued by the Department of Homeland Security, Federal Protective Service (FPS).<sup>1</sup>

We sustain the protest.

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<sup>1</sup> The FPS is a security and law enforcement component of the Department of Homeland Security that is responsible for protecting federally owned or leased facilities, and for providing a safe environment in which Federal agencies can conduct their business without fear of violence, crime or disorder. RFP at 5.

## BACKGROUND

This procurement is for armed security guard services for four Drug Enforcement Agency (DEA) facilities throughout Virginia and Maryland, including DEA headquarters in Arlington, Virginia.<sup>2</sup> RFP at 6. Wackenhut is currently the incumbent contractor providing security services at DEA headquarters.<sup>3</sup>

The RFP, issued on October 20, 2009 as a commercial item acquisition, contemplated the award of a requirements labor-hour contract with fixed hourly rates for a base year and four 1-year options. RFP at 6, 8. To this end, offerors were directed to propose fixed hourly rates for providing basic and supervisory guard services, as well as clerk, driver, and temporary additional services for the base and each option year. RFP, Pricing Schedule.

The RFP stated that the award would be made on a best-value basis, considering price and the following evaluation factors listed in descending order of importance: relevant past performance, management approach, and the extent of participation of small disadvantaged business (SDB) concerns. The solicitation stated that past performance and management approach, taken individually, were significantly more important than the extent of SDB participation. The solicitation also stated that the non-price factors, when combined, were significantly more important than price. RFP at 33-34.

Regarding past performance, the RFP required offerors to identify a maximum of three contracts for evaluation. The RFP advised that these contracts would be evaluated for quality of performance and relevance, which was defined as contracts that were “currently being performed or performed within the past five years . . . that are of a similar or directly related scope, magnitude and complexity” to the effort described in the solicitation. RFP at 27.

Regarding management approach, the RFP indicated the importance of the quality and capability of each offeror’s management team and asked offerors to address in their proposals, at a minimum: (1) supervision of the guard force and quality control; (2) transitioning the guard force, including training and weapons

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<sup>2</sup> The DEA headquarters site is the largest of the four sites. Three smaller sites are located in Sterling, Virginia; Chantilly, Virginia; and Upper Marlboro, Maryland. RFP amend. 1, at 1.

<sup>3</sup> The protester provides armed guard services at DEA headquarters under a blanket purchase agreement awarded by DEA under a General Services Administration federal supply schedule. The other locations have been serviced by another contractor under a separate blanket purchase agreement awarded by FPS under the federal supply schedules. Agency Report (AR) at 2.

qualifications; (3) ensuring uninterrupted service by planning for and providing required relief to the guard force during breaks, lunch periods, and other absences; and (4) planning for and providing emergency guard services.<sup>4</sup> RFP at 28-29. The RFP requested that proposals “go beyond a mere repetition of the minimum requirements by offering innovative and effective management strategies and solutions,” and stated that offerors’ approaches that “exceed requirements in ways beneficial to FPS and/or that will enhance contractor performance . . . will be viewed as an asset which FPS may be willing to trade for price savings.” RFP at 28, 30.<sup>5</sup>

Prior to the time set for receipt of proposals, the agency amended the RFP to respond to questions from potential offerors. With respect to how offerors planned to provide relief for guards during breaks, lunch periods, and other absences in order to ensure uninterrupted and continuous service, the agency answered two questions asking whether supervisors could be used to provide relief. The agency’s answer was a succinct “No.”<sup>6</sup> RFP amend. 1, Question 40; amend. 2, Question 117.

Twenty offerors, including Wackenhut and Coastal, responded to the RFP by the proposal due date, and 15 proposals were evaluated. AR, Tab 13, Technical Executive Summary, at 2. Ratings of highly acceptable, acceptable, or unacceptable were assigned to proposals for the non-price factors, with neutral being an additional rating available for the evaluation of past performance where the offeror was found to have no relevant experience.<sup>7</sup> AR, Tab 8, Source Selection Plan, at 11-13. Based on the agency’s assessment of proposals, Coastal’s proposal was rated the highest under the non-price factors, and Wackenhut’s proposal was rated the second highest, as follows:

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<sup>4</sup> These and other areas were identified as “potential areas of risk in the successful management of guard services.” RFP at 29.

<sup>5</sup> With regard to the evaluation of the remaining factors (SDB participation and price), the RFP stated that the SDB participation goal was 5 percent, and that prices would be evaluated “to ensure that they are fair and reasonable for performance of the requirements.” RFP at 30, 32.

<sup>6</sup> Question 40 asked: “Are Rovers or Supervisors allowed to provide relief? ANSWER: No.” Question 117 asked: “Can Supervisors provide relief for any of the posts? . . . ANSWER: Solicitation is clear; supervisors do not provide relief . . .” RFP amends. 1 and 2.

<sup>7</sup> As is relevant here, a rating of highly acceptable was defined as: “[p]roposal meets and exceeds the requirement for an acceptable rating; a high probability of success in contract performance is demonstrated.” A rating of acceptable was defined as: “[p]roposal meets all the requirements of the solicitation with no deficiencies . . . [a] good probability of success in contract performance is demonstrated.” AR, Tab 8, Source Selection Plan, at 11-12.

Offeror	Past Performance	Management Approach	SDB Participation	Total Proposed Price
Coastal	Highly Acceptable	Highly Acceptable	Highly Acceptable	\$27,970,272.93
Wackenhut	Highly Acceptable	Acceptable	Acceptable	[DELETED]

AR, Tab 16, Post Negotiation Memorandum, at 6.

Coastal’s proposed management approach received a rating of highly acceptable because the agency found that the proposal exceeded the RFP requirements and provided “additional benefits” to the government. A few of the benefits cited by the agency include Coastal’s proposed use of trained drivers, an “enhanced supervision plan” for DEA sites, a “highly beneficial plan for transition,” a training academy, and a “pipeline of guards ready to properly staff the contract.” AR, Tab 16, Post Negotiation Memorandum, at 17; Tab 13, Technical Executive Summary, at 66. The agency also noted favorably Coastal’s proposed use of supervisors to provide relief for guards at the outlying locations<sup>8</sup> during breaks and absences, stating that this approach reduced the risk of open posts, “went above and beyond” the RFP requirements, and was superior to Wackenhut’s proposal. AR, Tab 13, Technical Executive Summary, at 66-67, 73; Tab 16, Post Negotiation Memorandum, at 18.

In contrast, Wackenhut’s proposed management approach was given a rating of only acceptable. Although the agency found that Wackenhut addressed all of the required elements and the proposal had no deficiencies, the agency concluded that the proposal did not contain innovations or exceed the RFP’s requirements. AR, Tab 13, Technical Executive Summary, at 26. For example, Wackenhut’s proposed approaches for supervision and quality control, transition,<sup>9</sup> planning for relief, and providing emergency guard services were found only to have met the requirements of the RFP, but not exceed them. With regard to Wackenhut’s plan to provide relief for guards during breaks and absences, the agency noted that the firm’s program

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<sup>8</sup> Coastal’s proposal stated that relief would be provided in the main building in Arlington, Virginia, by dedicated relief officers. AR, Tab 11, Coastal’s Technical Proposal, at 13.

<sup>9</sup> In considering transition, the agency favorably recognized that, because of Wackenhut’s incumbent status, there was less risk to performance during transition. However, the agency recognized that the requirements here were of a larger magnitude than the incumbent contract and the amount of reduced risk was unclear. AR, Tab 13, Technical Executive Summary, at 25, 73.

manager would schedule relief and that this approach did not include using supervisors to relieve the guards at their posts. Id. at 25.

The agency rated both offerors' proposals highly acceptable under the past performance factor, finding that both firms' contracts, in the aggregate, exceeded the magnitude required here and demonstrated a high probability of successful performance.<sup>10</sup> Id. at 24, 65. Coastal's proposal received a higher rating under the SDB participation factor because it exceeded the SDB goals stated in the solicitation, whereas Wackenhut's proposal only met the goals. Id. at 26, 67.

In sum, the agency concluded that "no other offeror was able to match [Coastal's] expertise and quality services." AR, Tab 16, Post Negotiation Memorandum, at 17. Noting that the non-price evaluation was significantly more important than the price evaluation, the agency determined that it was in the government's best interest to pay a higher price for Coastal's higher-rated proposal, given that:

the Government will get a highly reputable contractor, with a highly acceptable past performance and customer commitment that goes above and beyond their contracted duties, a management plan that will include enhanced supervision and a pool of both guards and trained . . . drivers, and SDB participation that goes beyond the [Department of Homeland Security's] SDB goals.

Id. at 19. The agency selected Coastal for award, and this protest followed.

## DISCUSSION

Wackenhut challenges the agency's evaluation of proposals under the management approach factor and argues that the source selection decision was not reasonable. Specifically, Wackenhut complains that the agency's evaluation of Coastal's approach for providing relief to guard workers was inconsistent with the RFP, and that offerors' proposals were evaluated disparately under the management approach factor.<sup>11</sup>

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<sup>10</sup> The agency considered favorably Wackenhut's performance on the incumbent contract, but noted also that the magnitude and complexity of the RFP here includes more buildings and more production hours than Wackenhut's incumbent contract. AR, Tab 13, Technical Executive Summary, at 73. Nonetheless, Wackenhut was still credited with a highly acceptable past performance rating. Id.

<sup>11</sup> The protester also argues that the awardee failed to include required resumes with its proposal. Comments at 2-4; Supplemental Comments 1-5. However, the resumes were not considered as part of the evaluation and therefore we fail to see how Wackenhut was prejudiced as a result. We deny this aspect of Wackenhut's protest.

An agency is required to evaluate proposals in a manner that is consistent with the terms of the solicitation, and to evaluate offers on a common basis. Contingency Mgmt. Group, LLC; IAP Worldwide Servs., Inc., B-309752 et al., Oct. 5, 2007, 2008 CPD ¶ 83 at 10. Where the agency's evaluation does not adhere to the solicitation's evaluation criteria, or where proposals are evaluated disparately, our Office will sustain the protest. Id. at 10-11. Our review of the record confirms that the agency failed to properly evaluate proposals here.

Despite the clear direction provided by the agency in answers to questions from potential offerors about not using supervisors for relief, Coastal's proposal indicated that the firm would use on-site supervisors to provide relief for guard workers at outlying sites at times when the supervisors are not performing supervisory duties. AR, Tab 11, Coastal's Technical Proposal, at 13. As noted above, the agency credited this as a benefit to the government that not only met, but exceeded the requirements of the RFP. AR, Tab 13, Technical Executive Summary, at 66-67. The agency specifically stated, with regard to Coastal's approach, that "relief will be provided in accordance with the contract's requirements," and it cited Coastal's approach as an "innovation" that contributed to the proposal's highly acceptable rating. Id.

The agency contends that it was reasonable to credit this aspect of the proposal because, although the RFP prohibited supervisors from providing relief, Coastal's use of supervisors here was limited to time when these personnel were acting in a non-supervisory capacity, and were not being billed at supervisory rates.<sup>12</sup> Supplemental AR at 9. In the agency's view:

since the person who will be providing relief will be doing so in a non-supervisory capacity and will not be charging the Government at supervisory rates, this does not conflict with the terms of the solicitation and there is no merit to [Wackenhut's] allegation.

Id.

We are unpersuaded by this argument. The solicitation was very clear that the agency did not want supervisors to provide relief. Wackenhut structured its proposal to provide relief to guard workers without relying on supervisors to provide relief, and the agency specifically noted that Wackenhut "understand[s] the [RFP] requirement that supervisors do not provide relief ('replacements')." AR, Tab 13, Technical Executive Summary, at 25. The agency took the opposite approach with regard to its evaluation of Coastal's proposal when it ignored this requirement and

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<sup>12</sup> [DELETED]

found that Coastal's plan to have supervisors provide relief was "innovat[ive]," "creative," and "exceeds the requirements" of the RFP. Id. at 66-67.

Based on the record here, we find that the agency waived for Coastal the requirement that supervisors cannot provide relief, and that Wackenhut was prejudiced by this action. We sustain the protest on this basis.

It also appears from the record that the agency may have evaluated proposals disparately in other ways under the management approach factor. In this regard, Wackenhut's proposal contained some of the same features that the agency viewed as advantageous in Coastal's proposal, but the record does not indicate that Wackenhut received the same favorable consideration in the evaluation. For example, as noted above, the agency cited as support for Coastal's highly acceptable rating that Coastal had its own training academy and a transition plan that included hiring the incumbent workforce. AR, Tab 16, Post Negotiation Memorandum, at 17. However, the record shows that Wackenhut also had its own training academy in the District of Columbia area, and its transition plan already consisted of at least a portion of the incumbent workforce because Wackenhut is the incumbent on the DEA headquarters contract. The record does not explain why Wackenhut was found only to have met the requirements of the RFP for these features, yet Coastal was found to have exceeded the requirements.<sup>13</sup> AR, Tab 13, Technical Executive Summary, at 25, 66-67; Tab 16, Post Negotiation Memorandum, at 17.

#### RECOMMENDATION

We recommend that the agency reevaluate proposals (holding discussions and seeking revised proposals if necessary) and make a new source selection decision. If, after evaluation, the agency selects an offeror other than Coastal for award, we recommend that the agency terminate the contract with Coastal. We also recommend that Wackenhut be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2010). Wackenhut should submit its certified claim for costs, detailing the time expended

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<sup>13</sup> The protester also complains that the agency did not consider myriad other aspects of offerors' proposals in the evaluation, or adequately document its past performance or tradeoff analysis. Given our recommendation, we need not address these issues, but the agency should consider the protester's arguments when implementing corrective action.

and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. Id. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson  
Acting General Counsel