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United States General Accounting Office
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Decision

Matter of: Wackenhut Services, Inc

File: B-286037; B-286037.2

Date: November 14, 2000

William W. Goodrich, Esq., David A. Vogel, Esq., and Richard J. Webber, Esq., Arent Fox Kintner Plotkin & Kahn, for the protester.
Myrna E. Friedman, Esq., Sargeant & Friedman, for SecTek, Inc., an intervenor.
Scott W. Barber, Esq., National Imagery and Mapping Agency, for the agency.
Marie Penny Ahearn, Esq., and John M. Melody, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where cost information was called for by solicitation to "validate that the proposed costs are consistent with the technical presentation," but fixed-price contract was to be awarded, agency was not required to conduct detailed cost analysis of awardee's proposal; agency conducted price analysis--consisting of comparison of awardee's price with others received and government estimate--and reasonably concluded that, since the prices were comparable, there was no basis for finding that awardee lacked understanding of the requirement.

2. Protest challenging evaluation of awardee's past performance is denied where awardee and protester both received high ratings from references, and protester's slightly better ratings were reasonably reflected in its somewhat higher consensus past performance rating.

3. Protest challenging decision to make award to offeror submitting higher-priced, higher-rated proposal is sustained where record includes inadequate documentation supporting selection decision.

DECISION

Wackenhut Services, Inc. protests the award of a fixed-priced award-fee contract to SecTek, Inc., under National Imagery and Mapping Agency (NIMA) request for proposals (RFP) No. NMA-401-00-R-0008, for armed guard services at the Washington Navy Yard. Wackenhut challenges the evaluation on several grounds, and argues that the agency failed to adequately document the rationale for its source selection decision.

We sustain the protest.

The RFP provided that award would be made on a best value basis, and that proposals would be evaluated under the following factors: technical, management, security (pass/fail), and past performance. Management was more important than technical, which was more important than past performance, which was more important than price. The non-price factors were significantly more important than price. Price was not to be scored. RFP, as amended (hereinafter RFP), §§ M-2 and M-3, at 38-41.

NIMA received seven proposals. The agency conducted discussions and provided an opportunity for final proposal revisions; neither SecTek nor Wackenhut revised their proposal. Contracting Officer's (CO) Statement at 4-5. SecTek and Wackenhut submitted the two highest-rated proposals as follows (with raw/weighted scores):[1]

	Tech.	Mgmt.	Past Perf.	Security	Total Raw Score	Total Weighted Score
SecTek	94/282[2]	97/582	94/94	Pass	285	958
Wackenhut	94/282	95/569	99/99	Pass	283	950

Consensus Evaluation; Memorandum for File at 2.

NIMA conducted a price analysis to ensure that total prices were fair and reasonable. The agency determined that the price proposals of four offerors, including SecTek's and Wackenhut's, were reasonable based on adequate competition and favorable comparison to the government estimate. Negotiation Memorandum at 3. Wackenhut's offered price of $12,239,564 was the lowest of the four reasonably priced offers, and SecTek's, at $12,331,076, was second lowest. Abstract of Offers.

The source selection team recommended award to SecTek and the source selection official (SSO) approved the recommendation. Navy Yard Guard Contract Recommendation at 1-2 (hereinafter Contract Recommendation). The agency then conducted a tradeoff analysis and determined that SecTek's proposal represented

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[1] The consensus evaluation included a revised technical evaluation, which was conducted because of inconsistencies identified in the individual evaluators' worksheets as follows: (1) numerical ratings which did not match the narrative write-up, (2) certain areas noted in the narrative which were not directly relevant to evaluation factors, and (3) a disparity in the way proposals were rated when providing basically the same information. Memorandum for the File, Aug. 23, 2000 (hereinafter Memorandum for the File), at 1.

[2] The evaluation scoring sheets provided adjectives for the numerical scoring as follows: 91-100 Superior, 81-90 Good, 71-80 Acceptable, 61-70 Marginal, and under 60 unacceptable.

the "greatest value" to the government "amongst the highest rated proposals based on both cost and non-cost factors." Negotiation Memorandum at 13. In this regard, the agency stated that "the difference in capability between the higher rated SecTek and the lower rated Wackenhut [wa]s worth the marginal difference in price between SecTek and the slightly lower priced Wackenhut." Id. The agency considered that both Wackenhut and SecTek received "superior" ratings under the technical, management, and past performance factors, but concluded that "SecTek's overall proposal was more superior than any other offeror's proposal with the exception of the past performance ratings received by Wackenhut and [another offeror not at issue here]." Id. at 14. The agency therefore made award to SecTek.

PRICE ANALYSIS

Wackenhut asserts that, had the agency considered whether required cost information furnished by SecTek "validate[d] that the proposed costs are consistent with the technical presentation," as the RFP described the purpose of the information, the agency would have become aware that technical advantages found in SecTek's proposal were not reflected in SecTek's price (and also would have found other flaws in the proposal), and thus were not valid discriminators in the award decision.

Even where cost information is required to be furnished by offerors, agencies are not required to conduct a detailed cost analysis of proposals where a fixed-price contract is to be awarded. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ __ at 4; Sperry Corp., B-225492, B-225492.2, Mar. 25, 1987, 87-1 CPD ¶ 341 at 3. Agencies may provide for a cost/price analysis for the purpose of assessing understanding of the requirement, or risk inherent in the offeror's approach, but the extent of the analysis in these circumstances is largely within the agency's discretion. Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6 at 4; Sperry Corp., supra, at 3.

NIMA conducted a price analysis, comparing SecTek's price to the other prices received and the government estimate. Because the prices were comparable, the agency found no reason to examine the specific elements of SecTek's price, or to conclude that there was some inconsistency between the price and the firm's highly-rated technical presentation that indicated a lack of understanding. In contrast, since the proposed prices of two other offerors were significantly below the government estimate, the agency determined that those offerors demonstrated a lack of understanding of the government's requirements and represented a high performance risk to the government. Negotiation Memorandum at 2. We find nothing unreasonable in the agency's actions.

PAST PERFORMANCE EVALUATION

Under the past performance factor, the RFP provided that the evaluation would be based on an assessment of responses to questions obtained from the references listed in the offerors' proposals, as well as any useful and relevant information

obtained from other sources by the government. RFP § M-2.2.4 at 40. Wackenhut's past performance score was 99 (out of 100 available) points. It argues that the agency unreasonably raised SecTek's past performance score from an initial rating of 85 to a final consensus rating of 94 points; it asserts that SecTek's original score accurately reflected the quality of the firm's references compared to Wackenhut's.

The consensus evaluation record indicates that SecTek's past performance score was "changed as a result of [a] disparity in the way various offerors were rated when providing basically the same information." Memorandum for the File at 3. Regardless of why the agency made the scoring adjustment, we find the final past performance scores reasonable. In the evaluation, the agency obtained two past performance references for each offeror. One reference assigned SecTek's performance a score of 8 out of 10 points. Past Performance Risk Analysis Questionnaires for SecTek. While this reference commented that SecTek had [DELETED], the reference nevertheless commented positively that SecTek was "Very cooperative," and satisfactorily fulfilled the requirements of the contract, and that the reference would hire them again. Id. SecTek's second reference assigned the firm a score of 9 points. The reference commented that there were "[DELETED], but they [w]ere resolved." The reference went on to state that SecTek's coverage nevertheless was "excellent," that the firm had "good corporate support and excellent project management," that it fulfilled the requirements of the contract and was cooperative, and that the reference would "Absolutely" hire them again. Id. Wackenhut received ratings of 9 and 10+ out of 10, with positive comments such as "Very cooperative," "Excellent coverage," "they have earned 100 [percent] of the award fees and all the incentives," "Total customer orientation," "Good corporate support," "Good communications," and "Pleasure to work with." Past Performance Risk Analysis Questionnaires for Wackenhut.

The evaluation in this area was unobjectionable. The RFP did not set forth any definitive method for determining precisely how many evaluation points would be assigned for various levels of quality reflected in the past performance references; the precise scores to be assigned were left to the reasonable judgment of the agency. While the record shows that SecTek's references were somewhat less favorable than Wackenhut's, SecTek's overall ratings nevertheless were very good. This being the case, and since there were no objective scoring guidelines that were to be applied, we think the 5-point difference in the firms' final past performance scores falls well within the bounds of reasonableness.

AWARD DECISION

Wackenhut challenges the conclusions on which the award decision was based, and maintains that the documentation in the record is inadequate to support the award decision. The protester maintains that the original tradeoff analysis, documented in the negotiation memorandum, failed to identify any aspects of SecTek's proposal that merited payment of a cost premium, and instead improperly was based on the overall point scores. See Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD ¶ 61 at 4-6. Additionally, the protester contends that, while the award recommendation

identifies apparent advantages of SecTek's management proposal, those advantages in fact are illusory, either because Wackenhut offered comparable features, or because the advantages cited are not reflected in, and thus are inconsistent with, the consensus evaluation or the proposals themselves. In response to the protest, the agency submitted a post-protest tradeoff analysis.[3] Supplemental Agency Report, (SAR) Oct. 6, 2000. Wackenhut asserts that this post hoc analysis also is inadequate, primarily because it is inconsistent with the contemporaneous record, and improperly relies on undocumented statements reportedly made during oral discussions.

We will uphold an award to a higher-rated offeror at a higher price where the result is consistent with the evaluation criteria and does not violate procurement statutes or regulations, and the contracting agency reasonably determines that the cost premium involved is justified considering the superiority of the selected proposal. J&J Maintenance, Inc., B-284708.2, B-284708.3, June 5, 2000, 2000 CPD ¶ 106 at 3; International Consultants, Inc.; International Trade Bridge, Inc., B-278165, B-278165.2, Jan. 5, 1998, 98-1 CPD ¶ 7 at 5-6. Where a price/technical tradeoff is made, the selection decision must be documented, and the documentation must include the rationale for the tradeoff, "including benefits associated with additional costs." Federal Acquisition Regulation (FAR) § 15.308. While we generally accord greater weight to contemporaneous evidence, we will consider post-protest explanations that provide a rationale for contemporaneous conclusions, so long as those explanations are credible and consistent with the contemporaneous record. Jason Assocs. Corp., B-278689 et al., Mar. 2, 1998, 98-1 CPD ¶ 67 at 6; ITT Fed. Servs. Int'l Corp., B-283307, B-283307.2, Nov. 3, 1999, 99-2 CPD ¶ 76 at 6. Where there is inadequate supporting documentation for a source selection decision, there is no basis for us to conclude that the agency had a reasonable basis for the decision. Jason Assocs. Corp., supra.

We agree with the protester that the record here contains inadequate documentation to support the award decision. There are a number of areas of SecTek's proposal that the agency attempts to portray as commendable features, superior qualities, or discriminators. However, the record shows that Wackenhut's lower-priced proposal, which was scored very close to SecTek's, also was recognized as providing several strengths, and the record contains no explanation as to why the agency preferred SecTek's strengths to Wackenhut's. In this regard, the original tradeoff determination recognized that both SecTek and Wackenhut received "superior ratings" under the technical, management, and past performance factors, but it then merely concluded that the difference in "capability" between the offerors "is worth

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[3] The agency's post-protest tradeoff analysis was submitted after our Office held an alternative dispute resolution/outcome prediction telephone conference, during which we informed the agency that the record at that point did not appear to set forth an adequate rationale for the award decision.

the marginal difference in price." Negotiation Memorandum at 13-14. The determination provides no explanation of the benefits that warrant paying SecTek's higher price. While the negotiation memorandum discusses the initial and final evaluations, including the strengths of the two proposals (no weaknesses were noted in either proposal), it does not indicate which strengths were considered in the tradeoff and does not explain the benefits associated with any particular strength. Similarly, the contract recommendation mentions "commendable," "attractive," or "superior" features of both offerors' proposals without indicating why SecTek's strengths outweigh Wackenhut's or otherwise warrant paying SecTek's higher price. Absent an explanation as to why SecTek's strengths were deemed more beneficial than Wackenhut's, there is no basis to conclude that the award decision was reasonable. The agency has attempted to cure this lack of documentation in the post-protest tradeoff analysis referenced by Wackenhut, which identifies discriminators between the proposals and purports to provide a detailed rationale for the award decision. However, this analysis consists largely of judgments that are not reflected in the contemporaneous record. We discuss several of the identified superior features of SecTek's proposal below to illustrate the flaws in the record and the inadequacy of the agency's rationale for the award decision.

Superior Benefits Package

SecTek's employee benefits and retention plan is described in the contemporaneous documentation as generous and attractive, and in the post-protest tradeoff analysis as an award discriminator. Negotiation Memorandum at 6; Contract Recommendation at 2; Post-Protest Tradeoff Analysis at 1, 4-5. The specific features on which the agency's conclusion was based are set forth only in the written discussion record, which refers to the firm's [deleted]. SecTek Oral Discussion at 2.[4] However, Wackenhut contends that it also offers a competitive salary, [DELETED] above the guards' salaries level under the current contract, and the agency neither disputes this assertion nor explains why SecTek's salary level nevertheless is superior.[5] Wackenhut further notes that there is no indication in SecTek's proposal

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[4] The consensus evaluation makes no mention of SecTek's benefits package; the negotiation memorandum simply notes SecTek's "generous benefits package" as a strength, without any elaboration on the specific benefits which were deemed generous. Negotiation Memorandum at 6.

[5] While the agency prepared a compensation analysis in response to the protest, that analysis shows only that for all years SecTek's hourly rates for guards and the project manager are only slightly [DELETED] than Wackenhut's, whereas Wackenhut's rates for shift supervisors are slightly [DELETED] than SecTek's. However, all of the differences between the offerors' rates, except one, account for less than [DELETED] per hour, and that exception, for SecTek's project manager for option year 4, is only [DELETED] per hour [DELETED] than Wackenhut's rates. It is

(continued...)

that the value of its [DELETED] plans exceeds the cost of the health and welfare fringe benefits already required to be provided by the successful offeror under the applicable wage determination. RFP exh. 4 at 6. The agency does not directly respond to this assertion, but cites as a benefit in its post-protest tradeoff analysis the fact that SecTek offers [DELETED]. However, neither of these features is contained in SecTek's proposal, and while the agency states that SecTek elaborated on these features during its oral discussions, there is no mention of them in the discussion record or elsewhere, and SecTek did not submit a revised proposal incorporating these features following discussions. See SecTek's Cost Proposal Narrative at 1-2. Absent some documentation that the features in fact were presented during discussions, and incorporated in SecTek's proposal, the features are not a reasonable basis for discriminating between the proposals for award purposes. See generally Checchi and Co. Consulting, Inc., B-285777, Oct. 10, 2000, 2000 CPD ¶ __ at 6 (agency must maintain a record of oral presentation adequate to permit a meaningful review).[6]

As for the employee retention plan, the contract recommendation refers to SecTek's [DELETED] as proposal benefits. Contract Recommendation at 2. We, however, find no reference in SecTek's proposal to [DELETED] and our review confirms the protester's assertion that it also offers [DELETED] as well as [DELETED] such as [DELETED]. Wackenhut Technical Proposal at 4-5.[7] While Wackenhut's proposal, unlike SecTek's, does not specify the [DELETED], the record does not show that the agency ever concluded that this set SecTek's proposal apart from Wackenhut's in the award decision; rather, it appears the agency ignored the similar features in Wackenhut's proposal. Since the [DELETED] programs appear comparable, this was not a reasonable discriminator.

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not apparent from this analysis how SecTek's salaries are more competitive than Wackenhut's.

[6] Although an e-mail message from one evaluator states that he increased his final management score for SecTek based on, among other reasons, the firm's presentation during oral discussions of the [DELETED] it remains that there is no documentation establishing that SecTek actually offered this feature and, more importantly, nothing in its offer that would bind it to provide the feature in performing the contract. Moreover, there remains absolutely no evidence regarding SecTek's purported [DELETED].

[7] The written record of oral discussions does not refer to SecTek's proposed [DELETED] as a beneficial feature. Rather, the agency's assertion in this regard is based on a contemporaneous e-mail message between evaluators which, in discussing the basis for raising SecTek's final evaluation management score, states that during oral discussions SecTek "gave examples" of [DELETED]. Revised Technical Evaluation, E-Mails, July 13, 2000, at 1.

Management Approach

The contract recommendation refers to SecTek's "proactive" management approach in identifying, addressing, and correcting common problems encountered with guard contracts, without elaborating on the "detailed information" purportedly provided by the firm, which was the basis for the agency's determination that SecTek's proposal was superior in this area. Contract Recommendation at 2. Similarly, the consensus evaluation alludes to SecTek's "Well-structured management approach," but, again, does not elaborate further. SecTek Consensus Evaluation at 2. The negotiation memorandum states that "SecTek has a well-structured and quality oriented management approach that is fair to its employees and stresses their continual improvement and morale," but, again, does not identify what aspects of the approach led to this conclusion. Negotiation Memorandum at 6.

In its post-protest tradeoff analysis, the agency for the first time identifies reasons for finding that SecTek offered a superior management approach: (1) "proactive" [DELETED] (2) [DELETED] and (3) [DELETED].[8] Post-Protest Tradeoff Analysis at 2-3. However, these features of SecTek's management approach go well beyond the references in the contemporaneous record. While all three features perhaps could be considered "proactive", consistent with the contract recommendation's cryptic reference, they do not appear to be consistent with the consensus evaluation's reference to "well-structured management approach," or to the references in the negotiation memorandum to "well-structured," "quality oriented," "fair to employees," or "stresses their continual improvement and moral." In other words, the post-protest analysis sets forth a new rationale for considering SecTek's proposal superior in this area. This being the case, this aspect of the post-protest tradeoff analysis is inconsistent with the contemporaneous record. Under these circumstances, we conclude that the agency's judgments--developed for the purpose of defending the protest--do not provide an adequate basis for us to conclude that the award decision was reasonable. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

Organizational Approach

The post-protest tradeoff analysis identifies as a discriminator SecTek's organizational chart, which the negotiation memorandum listed as a strength for providing a direct line of communication between the [DELETED]. Post-Protest Tradeoff Analysis at 5; SecTek Management Proposal at 4; see also Negotiation Memorandum at 6. However, Wackenhut's proposal showed its project manager reporting directly to the company president, which was evaluated as a strength in the consensus evaluation; the agency does not dispute Wackenhut's assertion that its

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[8] The agency asserts that it also determined that SecTek's [DELETED] evidences "proactive" recruitment. Post-Protest Tradeoff Analysis at 2. As discussed, however, there was no indication in SecTek's proposal of a [DELETED].

proposal was comparable in this regard. Wackenhut Management Proposal at 6; Wackenhut Consensus Evaluation at 3. Consequently, the record does not support use of this feature as a discriminator between the proposals.

In the post-protest tradeoff analysis, the agency attempts to further distinguish SecTek's organizational approach by noting that the firm provided more detailed information in this area than Wackenhut, including the [DELETED] and [DELETED]. However, the only mention of these features in the contemporaneous record is in the consensus evaluation, which lists as a strength that SecTek's [DELETED]. SecTek Consensus Evaluation at 2. There is no reference to [DELETED] or to [DELETED]. We conclude that these purported advantages of SecTek's proposal are largely post-protest judgments and that, as such, they do not provide a basis for concluding that the evaluation was reasonable.

Contingency and Phase-In/Start-Up Plans

In its post-protest tradeoff analysis, the agency identifies SecTek's backup contingency plan as a discriminator. Post-Protest Tradeoff Analysis at 7-8. However, the contemporaneous record does not indicate that this was a consideration in the award decision, and actually suggests that it was not. In this regard, the negotiation memorandum lists the contingency plan as a strength for both SecTek and Wackenhut and the consensus evaluation lists Wackenhut's "Excellent Contingency Plan" as a strength, but makes no mention of SecTek's contingency plan. Negotiation Memorandum at 5 and 6; Consensus Evaluation for Wackenhut at 3. Similarly, the post-protest tradeoff analysis identifies SecTek's phase-in/start-up plan as a discriminator. Post-Protest Tradeoff Analysis at 8. However, the consensus evaluation states that both SecTek and Wackenhut have "excellent" phase-in/start-up plans. Consensus Management Evaluation for SecTek at 2; Consensus Management Evaluation for Wackenhut at 3. We conclude that the record does not support consideration of these features as a basis for concluding that SecTek's proposal was superior to Wackenhut's.

RECOMMENDATION

Since the record shows that certain features of the proposals were explained during oral discussions, we recommend that NIMA reopen discussions with SecTek and Wackenhut, allow them to submit revised proposals, and then reevaluate the proposals. The discussions, evaluation and award decision should be fully documented, consistent with our decision. If the agency determines that Wackenhut's proposal represents the best value, we recommend that the agency terminate SecTek's contract for convenience and award a contract to Wackenhut. We also recommend that Wackenhut be reimbursed the costs of filing and pursing its

protest, including reasonable attorneys' fees. Bid Protest Regulations 4 C.F.R. § 21.8(d)(1) (2000). Wackenhut's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days after receiving this decision.

The protest is sustained.

Anthony H. Gamboa
Acting General Counsel