



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Coastal International Security, Inc.

File: B-400240.3; B-400240.4; B-400240.5

Date: September 24, 2009

Seth C. Berenzweig, Esq., John W. Polk, Esq., Terrence M. O'Connor, Esq., and Stephanie D. Wilson, Esq., Albo & Oblon, LLP, for the protester.
Richard J. Webber, Esq., Lisa K. Miller, Esq., and Kevin R. Pinkney, Esq., Arent Fox, LLP, for Wackenhut Services, Inc., an intervenor.
Vincent A. Salgado, Esq., and Karen M. Reilley, Esq., National Aeronautics and Space Administration, for the agency.
Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging evaluation of awardee's perceived overstaffing of requirement is denied where record shows that agency reasonably determined that the weakness did not reflect awardee's lack of understanding of solicitation requirements and that consideration of the overstaffing, which was reflected in the awardee's higher price, properly was addressed in the context of the price/technical trade-off decision.
 2. Protest that source selection authority improperly double-counted awardee's strength under past performance factor for meeting its small business subcontracting goals when evaluating awardee's proposal under a separate technical subfactor regarding proposed small business participation is denied where record shows that source selection official's analysis was done in the context of identifying award discriminators and was based on the logical connection between the small business participation subfactor, which considered small business goals proposed by offerors, and awardee's history of actually meeting its small business goals, as identified under the past performance factor.
-

DECISION

Coastal International Security, Inc. of Lorton, Virginia, protests the award of a contract to Wackenhut Services, Inc. of Palm Beach Gardens, Florida, under request for proposals No. NNX077040R, issued by the National Aeronautics and Space Administration (NASA) for agency-wide protective services. Coastal challenges NASA's technical evaluation and source selection decision.

We deny the protest.

BACKGROUND

On September 14, 2007, NASA issued the RFP calling for award of a single agency-wide indefinite-delivery/indefinite-quantity (ID/IQ) contract for protective services, consolidating individual contracts for protective services currently performed at 14 separate NASA locations across the United States.¹ The contemplated contract covers a range of protective services including: security, emergency management, fire fighting, export control, and information assurance services. RFP at Bates 17043. Offerors were required to propose fixed prices for the required services at each of the 14 NASA locations, which will be provided on a task order basis. In addition, NASA reserved the right to issue additional task orders not to exceed 20 percent of the amount of the total fixed price. The RFP provided that the contemplated ID/IQ contract would include a base period of 5 years plus 5 one-year option periods.

As described in the RFP, the underlying purpose of the contemplated agency-wide contract is to implement NASA's desire "to achieve uniformity, standardization, and where appropriate, centralization of protective services across the Agency," to provide "the ability to seamlessly inter-operate during Agency related contingencies worldwide, and in the event of emergencies, or special projects," and to implement "a comprehensive and effective security, emergency management and fire fighting program for the protection of people, property, operations, and information associated with the NASA mission and the Agency-wide protective services strategy." RFP at Bates 17045.

The RFP set forth three evaluation factors: mission suitability, past performance, and price. The RFP indicated that the mission suitability factor was more important than the past performance factor, and that when these two factors were combined, they were "significantly more important than the Price factor." RFP at Bates 18601. The mission suitability factor was comprised of four subfactors: (1) technical approach; (2) management approach; (3) small business participation approach; and (4) safety and health approach.

The mission suitability factor was scored using a 1,000 point scale. Scoring had several steps. First, NASA was to identify "significant strengths," "regular strengths,"

¹ The 14 locations include: Ames Research Center, Dryden Flight Research Center, Glenn Research Center, Goddard Space Flight Center, Headquarters, Independent Verification and Validation Facility, Johnson Space Center, Kennedy Space Center, Langley Research Center, Marshall Space Flight Center, Michoud Assembly Facility, Wallops Flight Facility, and White Sands Test Facility. RFP at Bates 16994-95.

“significant weaknesses,” and “regular weaknesses,” and then assign adjectival ratings based on the assessed strengths and weaknesses. In this regard, the RFP defined the various adjectival ratings (with accompanying percentile scores) as follows:

Adjectival Rating	Definition	Percentile Range
Excellent	A comprehensive and thorough proposal of exceptional merit with one or more significant strengths. No deficiency or significant weakness exists.	91-100
Very Good	A proposal having no deficiency and which demonstrates over-all competence. One or more significant strengths have been found, and strengths outbalance any weaknesses that exist.	71-90
Good	A proposal having no deficiency and which shows a reasonably sound response. There may be strengths or weaknesses or both. As a whole, weaknesses not offset by strengths do not significantly detract from the offeror’s response.	51-70
Fair	A proposal having no deficiency and which has one or more weaknesses. Weaknesses outbalance any strengths.	31-50
Poor	A proposal that has one or more deficiencies or significant weaknesses that demonstrate a lack of overall competence or would require a major proposal revision to correct.	0-30

RFP at Bates 25004.

Based on the adjectival rating assigned, NASA assigned a corresponding percentile score, which, when multiplied by the points available for a particular subfactor, would yield a total score for the subfactor. The mission suitability subfactors were weighted and assigned point values as follows: (1) technical approach (425 points); (2) management approach (375 points); (3) small business participation approach (100 points); and (4) safety and health approach (100 points). RFP at 18591.

Past performance was not numerically scored; rather, the RFP provided that proposals would be adjectivally rated as follows: excellent, very good, good, fair, poor, and neutral. RFP at 18599.

With respect to the price factor, offerors were required to submit a fixed price for each of the 14 NASA locations for the base period and each option period, as well as a price for “phase-in.” Each offeror’s total proposed price, including options, would be used for evaluation purposes. RFP § M.

Coastal and Wackenhut, among others, submitted proposals in response to the RFP. NASA established a source evaluation board (SEB) and based upon the findings of the SEB, the source selection authority (SSA) decided to establish a competitive range and hold discussions limited to Coastal and Wackenhut. After holding discussions with both offerors, the SEB reevaluated proposals and presented its findings to the SSA, who issued a decision on May 20, 2008, selecting Coastal for award. Wackenhut protested NASA's award decision to our Office; the protest was denied. See Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184. Wackenhut then protested the award in the United States Court of Federal Claims, which ruled in favor of Wackenhut in an opinion dated December 15, 2008.

In its decision, the Court ordered as follows:

NASA is hereby ordered to appoint a re-constructed SEB, specifically to include new SEB members to evaluate the Final "Technical Approach" subfactor, "Management Approach" subfactor, and "Small Business" subfactor of the "Mission Suitability" factor, with particular emphasis on explaining the SEB's reasons for arriving at final adjectival ratings, point scores, and any increase thereof. The SEB will then issue reconsidered Final Findings. In addition, NASA is hereby ordered to appoint a new SSA to evaluate the reconsidered Final Findings and, on or before March 2, 2009, to issue a reconsidered Source Selection Authority Final Decision explaining, in detail, the SSA's reasons for determining whether [Wackenhut's] or [Coastal's] proposal provides the "best value" to the Government.

Wackenhut Servs., Inc. v. U.S., 85 Fed. Cl. 273, 312-13 (Fed. Cl. 2008).

To comply with the Court's order, NASA established a new SEB, which conducted an entirely new evaluation of Wackenhut's and Coastal's proposals for the first three subfactors of the mission suitability factor (technical approach, management approach, and small business participation approach). The new SEB conducted its evaluation without considering the findings of the prior SEB and ultimately prepared what it termed a "traceability document" which tracked any changes and differences between the prior SEB's findings and those of the new SEB. The SEB also set forth its rationale explaining how the final adjectival ratings and scores were reached.

During the course of the reevaluation, the new SEB identified a significant weakness for Wackenhut based on concerns regarding overstaffing of the requirements at the Kennedy Space Center (KSC) and Wallops Flight Facility (WFF). Since this significant weakness had not been identified by the prior SEB and, as a consequence, had never been raised with Wackenhut during discussions, NASA, with permission from the Court, reopened discussions with Wackenhut and Coastal.

In a letter to Wackenhut, NASA set forth various weaknesses in Wackenhut's proposal which had been identified by the new SEB. One area of concern pertained to Wackenhut's overstaffing at KSC due to Wackenhut's inclusion of staffing for "shuttle launch and recovery operations." The launch and landing requirements were not included as part of the KSC basic requirement; rather, NASA intended to order this work through a separate task order. The discussion question regarding this issue read as follows:

The Offeror's staffing plan for KSC is substantially inefficient and fails to properly manage resources. The approach to workload fluctuations is fundamentally flawed because the Offeror has included staffing to support KSC "shuttle launch and recovery operations" in its base proposal (Vol. I, Part A, page 136; Vol. V, Staffing Plan tab, page 22, Section 6.0), contrary to the Government's intent to issue a separate IDIQ task order for such support (NPSC-TO-KSC, Attachment A, page 2). The resulting overstaffing appears substantial and is a significant weakness that would continue over the entire contract period of performance regardless of the need for launch and landing support.

AR, Tab 88, SEB Discussions with Wackenhut, at Bates 25131.

As it relates to the protest, NASA also raised concerns regarding Wackenhut's staffing at the Marshall Space Flight Center (MSFC) and Michoud Assembly Facility (MAF). At MSFC, NASA indicated that Wackenhut had overstaffed the emergency response team by seven Work Year Equivalents (WYE) and had understaffed MAF by one WYE for an "investigator." AR, Tab 88, SEB Discussions with Wackenhut, at Bates 25131.

Wackenhut responded to each of the weaknesses identified by NASA and revised its proposal accordingly. As directed by NASA, Wackenhut limited its proposal revisions to the specific weaknesses identified in the discussions letter. AR, Tab 88, SEB Discussions with Wackenhut, at Bates 25129. Regarding the overstaffing at KSC, Wackenhut reduced its KSC staff by [DELETED] WYEs--the staff tied to the erroneously included "shuttle launch and recovery operations" work. Specifically, Wackenhut responded as follows:

[Wackenhut] acknowledges the weakness and, as a result, we have conducted a review of the KSC staffing plan. Based upon this review, we identified [DELETED] WYE positions associated with launch/landing support . . . we have reduced the identified overstaffing during the base performance period. We will address all launch operations support through IDIQ task orders in all contract years.

AR, Tab 30, Wackenhut Final Proposal Revision, at Bates 6372.

After reviewing Wackenhut's and Coastal's responses to the additional round of discussions, the SEB prepared its final evaluation findings. Overall, under the mission suitability factor, both offerors received ratings of "very good," with Wackenhut receiving a total of 841 points and Coastal receiving 811 points.² Under the technical approach subfactor, the SEB determined that Wackenhut's proposal contained four significant strengths, two strengths and two weaknesses. As it relates to the protest, the four significant strengths were based on Wackenhut's: (1) response to the technical scenarios,³ which demonstrated an "exceptional" understanding of the requirements; (2) documentation of a "well-structured, effective, and professional security training program"; (3) "effective plan for staffing in response to unplanned requirements and emergencies"; and (4) "detailed descriptions of their quality management system and corrective action tracking system." AR, Tab 97, SEB Final Presentation to SSA, at Bates 25515.

The two weaknesses identified by the SEB pertained to Wackenhut's proposal for addressing requirements at MAF, MSFC, and KSC. The first weakness, which the SEB characterized as reflecting a "lack of understanding of requirements," included concerns regarding Wackenhut's approach at MAF and MSFC which first arose after the additional round of discussions. AR, Tab 97, SEB Final Presentation to SSA, at Bates 25545. The SEB noted that in addressing the staffing weakness identified during the additional round of discussions for MAF, Wackenhut introduced a new weakness, such that Wackenhut's revised staffing plan failed to support tasks associated with foreign travel briefings, technology protection, and communications security. *Id.* at Bates 25545.

Similarly, in addressing the agency's concern that Wackenhut's emergency response team at MSFC was overstaffed by approximately seven WYEs, Wackenhut reduced its staff by 7.2 WYEs and added that the emergency response teams could be augmented "through effective coordination with local law enforcement agency resources." AR, Tab 30, Wackenhut Final Proposal Revision, at Bates 06374. The SEB was concerned with this additional statement since, according to the SEB, MSFC is an exclusive federal jurisdiction installation and such augmentation would be precluded. The SEB therefore faulted Wackenhut for failing to understand this fact. AR, Tab 97, SEB Final Presentation to SSA, at Bates 25545.

² Because the Court did not require NASA to reopen its initial evaluation under the safety and health subfactor, both offerors received the ratings and scores assigned by the initial SEB. In this regard, both Wackenhut and Coastal received ratings of "very good," percentile ratings of 85 percent, and 85 points. AR, Tab 97, SEB Final Presentation to SSA, at Bates 25527-28.

³ The technical approach subfactor was composed of separately evaluated subelements, one of which, "understanding the requirement," called for offerors to respond to seven hypothetical technical scenarios.

The second weakness identified by the SEB concerned Wackenhut's staffing at KSC. Recognizing that Wackenhut had reduced its staffing at KSC by [DELETED] WYEs to [DELETED] WYEs based on the agency's cited concern regarding Wackenhut's staffing for launch and landings, the SEB found that Wackenhut's staffing at KSC was, nevertheless, "approximately [DELETED] higher than the actual delivered WYEs on the current contract at KSC and [was] only [DELETED] WYE less than [Wackenhut's] current KSC base workforce which contained an ongoing requirement to support shuttle launch and landing." AR, Tab 97, SEB Final Presentation to SSA, at Bates 25545. According to the SEB, Wackenhut's "inefficient staffing" reflected an "inefficient approach" and Wackenhut's "misunderstanding of the requirements at KSC." Id. at Bates 25545.

Based on its consideration of these findings, the SEB assigned Wackenhut an adjectival rating of "very good" and a percentile score of 85 percent under the technical approach subfactor, which translated to 361 points. With respect to the evaluation of Coastal's proposal under the technical approach subfactor, the SEB found that the proposal contained two significant strengths based on its "comprehensive and detailed security training program" and its "exceptional quality management system supported by a strong process improvement program," four strengths, and no weaknesses. Coastal also received an adjectival rating of "very good," but it received a slightly lower percentile score of 80 percent, which translated to 340 points. AR, Tab 97, SEB Final Presentation to SSA, at Bates 25512-13.

Under the management approach subfactor, the SEB rated both offerors' proposal "very good" based on each having a single significant strength and seven regular strengths, without any weaknesses. Wackenhut's significant strength was based on its "thorough and comprehensive phase-in plan," while Coastal's significant strength was tied to its "comprehensive approach of integrating business and information systems, utilizing commercial off-the-shelf software, which provides ready access to data NASA-wide." Id. at Bates 25520-21. Based on the assessed significant strengths and strengths, Wackenhut received a score of 87 percent (326 points) and Coastal received a score of 83 percent (311 points).

Under the small business participation approach subfactor, the SEB rated Coastal's proposal "very good," based on one significant strength resulting from Coastal's proposed small business goals, which "appreciably exceeded the aggressive NASA small business goal, exceeded three of the sub-category goals, and significantly exceeded two sub-category goals," and three strengths. Id. at Bates 25524. Wackenhut's proposal received a rating of "good" based on three strengths. The SEB assigned Coastal a 75 percent score (75 points), and Wackenhut a score of 65 percent (69) points.

As it relates to the protest, Coastal’s and Wackenhut’s proposed small business contracting goals, as compared to NASA’s goals as set out in the RFP, were as follows:

Category ⁴	NASA Recommended Goals	Coastal’s Goals	Wackenhut’s Goals
SB	40%	42.58%	41.42%
SDB	10%	[DELETED]	[DELETED]
WOSB	5%	[DELETED]	[DELETED]
HUBZone	3%	[DELETED]	[DELETED]
VOSB	3%	[DELETED]	[DELETED]
SDVOSB	3%	[DELETED]	[DELETED]
HBCU/MI	1%	[DELETED]	[DELETED]

AR, Tab 97, SEB Final Presentation to SSA, at Bates 25525, 25556.

With regard to past performance, since the Court did not require NASA to reconsider this aspect of its evaluation, the new SEB carried forward the initial SEB’s findings and ratings for Wackenhut and Coastal for this factor. Both offerors received ratings of “very good.” The initial SEB had identified six strengths for Wackenhut and four strengths and one weakness for Coastal. AR, Tab 97, SEB Final Presentation to SSA, at Bates 25532-35.

After completing its evaluation, the new SEB presented its findings to a new SSA. In his selection statement, the SSA indicated that he considered the SEB’s findings and questioned the SEB on the material it presented. In this regard, the SSA separately considered the SEB’s findings with respect to the significant strengths, strengths, and weaknesses for Wackenhut and Coastal. Under the mission suitability factor, the SSA specifically addressed the two regular weaknesses identified by the SEB in its evaluation of Wackenhut’s proposal and concluded that “neither weakness was of sufficient importance to influence my assessment of the merits of Wackenhut’s Technical Approach.” In his consideration of the SEB’s concerns regarding MSFC and MAF, the SSA concluded that the issues involved “very few personnel,” were “readily correctable,” and, in the SSA’s view, were matters solely of staffing and did not reflect a lack of understanding of the requirements by Wackenhut, and that even

⁴ The acronyms used in the table are as follows: small business concerns (SB), small disadvantaged business concerns (SDB), women-owned small business concerns (WOSB), HUBZone small business concerns (HUBZone), veteran-owned small business concerns (VOSB), service-disabled veteran-owned small business concerns (SDVOSB), and historically black colleges and universities and minority institutions (HBCU/MI).

if they did evidence a lack of understanding, the weakness was “greatly offset by the significant strength Wackenhut received for its response to the technical scenarios which the SEB said demonstrated an exceptional understanding of the requirements.” AR, Tab 98, SSA Decision, at Bates 25565-66.

Regarding the second weakness, Wackenhut’s excess staffing at KSC, the SSA indicated that he disagreed with the SEB’s conclusions that Wackenhut’s staffing was necessarily “inefficient” and reflected a “misunderstanding” of the KSC requirements. AR, Tab 98, SSA Decision, at Bates 25566. Rather, the SSA determined that “this weakness might reflect an approach which allowed Wackenhut to respond to both basic contract requirements and future [task orders].” *Id.* The SSA concluded that Wackenhut’s proposed staffing “represented a legitimate business approach to the requirements and determined any inefficiencies associated with this approach would be reflected in the Pricing factor.” AR, Tab 98, SSA Decision, at Bates 25566.

After addressing the SEB’s findings for each offeror individually, the SSA engaged in a comparative assessment of Wackenhut’s and Coastal’s proposals with respect to the non-price factors and identified several discriminators for the purpose of making his best value decision. Under the technical approach subfactor, as a general matter, the SSA determined that the differences between the offerors’ proposals under this factor were greater than what appeared in the SEB’s findings since he did not place importance on Wackenhut’s weaknesses due to issues at MAF, MSFC, and KSA. AR, Tab 98, SSA Decision, at Bates 25569. The SSA further noted that both offerors received significant strengths for having strong security training programs and detailed quality management systems, but he concluded that Wackenhut had the superior technical proposal based on its additional significant strengths for its responses to the technical scenarios and its effective staffing plan for unplanned requirements and emergencies. AR, Tab 98, SSA Decision, at Bates 25569. The SSA found the significant strength Wackenhut received for answering the technical scenarios to be particularly noteworthy because “it revealed the extent to which Wackenhut understood how to perform the contract.” *Id.* The SSA also indicated that Wackenhut’s significant strengths for unplanned requirements and emergencies “was extremely pertinent to the selection decision” because many NASA locations are subject to damage from hurricanes and “NASA’s mission involves high risk operations as evidenced by tragedies such as the Challenger and Columbia failures.” *Id.* After comparing the offerors’ regular strengths, the SSA concluded that they did not present any discriminators.

Under the management approach subfactor, the SSA concluded that Wackenhut “submitted a slightly superior Management Approach.” AR, Tab 98, SSA Decision, at Bates 25571. In this regard, the SSA noted that, while the offerors’ significant strengths and strengths appeared to offset one another, when he asked the SEB to explain Wackenhut’s slight numerical advantage under this subfactor, the SEB explained that “there were nuances within the findings that gave the edge to

Wackenhut.” AR, Tab 98, SSA Decision, at Bates 25570. Specifically, the SEB indicated that while both offerors’ compensation plans were “excellent,” the Wackenhut team offered very similar compensation plans to employees of all team members, which the SEB believed would create a more stable workforce by reducing the tendency for employees to compare different compensation packages among firms on the Wackenhut team. The SSA agreed that this was a distinguishing feature, which “should reduce the tendency of employees to move between team members with the likely effect being an increase to morale and efficiency.” AR, Tab 98, SSA Decision, at Bates 25570-71. The SEB also indicated that while Coastal’s fire protection plan was “adequate,” Wackenhut’s program for training and certifying fire personnel, based on its relationship with the Texas A&M Texas Engineering Extension Service, was particularly noteworthy. The SSA agreed that this difference was important based on the fact that fire protection is a large component of the requirement. The SEB further indicated that Wackenhut had an edge with respect to its risk management approach since Wackenhut proposed to use the risk management plan currently being used by NASA. The SSA determined that such an approach would be “more user friendly” given that the agency is already familiar with the plan. AR, Tab 98, SSA Decision, at Bates 25571.

Notwithstanding the different adjectival ratings received by Wackenhut (good) and Coastal (very good) under the small business participation approach subfactor, the SSA concluded that the differences between the offerors under this subfactor “were not meaningful for purposes of selection.” AR, Tab 98, SSA Decision, at Bates 25572. In his decision, the SSA noted that both offerors proposed to exceed the overall small business goal by similar percentages, and that both offerors proposed to meet or exceed all of the small business subcategory goals, with the exception of one subcategory goal which Coastal did not propose to meet, a matter which the SSA did not consider negatively given what he regarded as Coastal’s reasonable explanation for not meeting the goal. According to the SSA, Coastal’s higher adjectival rating was based on the fact that Coastal “greatly exceeded” the RFP’s goals for two of the small business subcategories. AR, Tab 98, SSA Decision, at Bates 25571. He further concluded that Coastal’s significant strength in this regard should be considered in light of the strength (discussed further below) that Wackenhut received under the past performance factor for actually meeting its small business goals—a strength that Coastal did not share.

The SSA did not identify any discriminators for selection with respect to the offerors’ proposals under the safety and health subfactor.

Under the past performance factor, the SSA noted that he found differences in the strengths each offeror received. Specifically, the SSA found that each offeror received the same or similar strengths, except that Wackenhut also received strengths in the areas of providing high quality services and meeting its small business goals. According to the SSA, Wackenhut’s strength for providing high quality service, which was based on positive customer feedback, was “important,”

provided a “meaningful difference,” and led the SSA to conclude that Wackenhut’s past performance was “slightly superior” to that of Coastal. AR, Tab 98, SSA Decision, at Bates 25572.

Ultimately, the SSA concluded that Wackenhut’s proposal represented the best value to the government. Wackenhut’s total evaluated price was approximately \$1.216 billion, higher than Coastal’s total price of approximately \$1.178 billion. The SSA determined that Wackenhut’s superiority under the Mission Suitability factor, and its superior past performance, which gave the SSA “a little higher level of confidence that Wackenhut would perform well on this effort,” warranted paying a slightly higher price (approximately \$38 million), particularly given that the award is for an ID/IQ contract where the actual costs of performance would not be known until the completion of the contract. AR, Tab 98, SSA Decision, at Bates 25573. After learning of NASA’s selection of Wackenhut for award and receiving its debriefing, Coastal filed this protest.

Coastal generally asserts that price should have been the deciding factor for selection in this case since the two offerors were “qualitatively essentially equal.” Protester’s Comments at 18. According to Coastal, the SSA’s decision reflects that he was “straining at gnats and swallowing camels in a tortured effort to somehow justify spending more of the taxpayers’ money by awarding the contract to Wackenhut.” Protester’s Post-Hearing Comments, at 10. In an effort to chip away at the SSA’s conclusion that Wackenhut was technically superior to Coastal, Coastal argues that the SSA failed to reasonably consider the weaknesses identified in Wackenhut’s technical approach for MAF, MSFC, and KSA; gave unreasonable weight to Wackenhut’s responses to the technical scenarios; unreasonably failed to identify a discriminator in favor of Coastal under the small business participation subfactor and improperly considered Wackenhut’s past performance under this subfactor; unreasonably determined that Wackenhut maintained an advantage under the past performance factor with respect to “quality service”; and failed to sufficiently explain his trade-off analysis.⁵ Coastal further argues that the SSA’s award decision was the result of improper influence from a NASA KSC official, and that Coastal was not afforded an opportunity, as required by Federal Acquisition Regulation (FAR) § 15.306(d)(3), to respond to allegedly false adverse past performance information provided by the KSC official.

⁵ In its initial protest, Coastal argued that the SSA unreasonably considered other discriminators as part of his selection decision, specifically, Wackenhut’s common compensation plan and its fire protection approach. The agency addressed these issues in its report. In its comments on the agency report, the protester did not attempt to rebut or otherwise address the agency’s responses to these issues; accordingly, we consider it to have abandoned these arguments. CM Mfg., Inc., B-293370, Mar. 2, 2004, 2004 CPD ¶ 69 at 3.

In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, but instead examines the record to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Wackenhut Servs., Inc., supra, at 6. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Id.

As an initial matter, there is no basis for the protester's contentions that the SSA did not sufficiently explain his decision that Wackenhut's higher-rated, higher-priced proposal represented the best value to the government and that the SSA should have found the offerors' proposals to be "essentially equal" and made award based on price alone. The record reflects that the SSA conducted a detailed and thorough analysis of the offerors' evaluated strengths and weaknesses and made a trade-off decision based on these findings. The SSA's decision fully considered the various aspects of the offerors' proposals, reasonably identified discriminators in Wackenhut's favor, and addressed Wackenhut's various weaknesses assigned by the SEB. His trade-off analysis identified the benefits associated with Wackenhut's advantages under the non-price factors, compared them to Coastal's lower price, and ultimately concluded that these advantages were worth Wackenhut's extra cost. Coastal's belief that the offerors' proposals were essentially equal reflects mere disagreement with the agency's determinations which, as noted above, does not provide a basis for finding the award decision unreasonable.⁶ Id.

Turning to the specific flaws identified by Coastal regarding the SSA's analysis, we begin our discussion with Coastal's arguments that the SSA failed to reasonably consider Wackenhut's weaknesses under the technical approach subfactor. With respect to the MAF and MSFC issues, the SSA's conclusion that the weaknesses were very minor is consistent with the SEB's evaluation. In a hearing held by our Office, the SEB chairperson described the SEB's concerns regarding MAF and MSFC as mere "nits" and indicated that they were readily correctable. Hearing Tr. at 80-81. Specifically, the staffing issue at MAF implicated a total of one WYE and the

⁶ Coastal filed a supplemental protest arguing that it was unreasonable for the SSA not to have reached the same conclusion as the prior SSA, who found the offerors' proposals to be essentially equal. The new SSA's decision, however, was based on new findings made by a new SEB. In addition, as explained above, the prior SSA's decision was set aside by the Court. Accordingly, we fail to see the relevance of the prior's SSA's determination. In any event, although Coastal was aware of the prior SSA's findings and those of the new SSA when it filed its initial protest, it first raised this issue in a supplemental protest after the agency submitted its report. Since this later-raised contention was based on information in Coastal's possession sufficient to put it on notice of the issue prior to the filing of its initial protest, this supplemental protest is an untimely piecemeal filing. Litton Sys., Inc., Data Sys. Div., B-262099, Oct. 11, 1995, 95-2 CPD ¶ 215 at 2-3.

emergency response team issue at MSFC had no staffing implications at all. Id. at 80-81. In fact, it was clear to the SEB that Wackenhut had proposed adequate emergency response staff for MSFC, thus its sole concern related to whether Wackenhut understood the limitations stemming from MSFC's status as an exclusive federal jurisdiction enclave. Id. at 80-81, 169.

Given that Wackenhut's weakness involved a single WYE at MAF, which is insignificant when compared to the size of the overall effort,⁷ and the fact that the MSFC issue did not concern Wackenhut's proposed staffing approach at all and, as a consequence, did not implicate Wackenhut's understanding of the emergency response mission requirements, we conclude that the SSA acted reasonably in deciding to afford these issues little or no weight in his selection decision.

At the hearing, it became apparent that the second weakness identified by the SSA under the technical approach subfactor, Wackenhut's KSC staffing, generated significant differences of opinion among the members of the SEB team regarding the nature and scope of the concern. The SEB chairperson testified that before NASA reopened discussions with Wackenhut, the SEB spent several weeks attempting to identify firm requirements for staffing at KSC to little or no avail. She indicated that the overall KSC staffing requirement was a "moving target" with "at least four if not five different numbers," ranging from approximately 331 WYEs to 421 WYEs. Id. at 38-39, 42, 44. Notwithstanding the fact that the SEB had questions regarding the true extent of the staffing requirement at KSC, the SEB concluded that Wackenhut, which had proposed approximately [DELETED] WYEs for the overall requirement at KSC, was overstaffed by approximately [DELETED] WYEs; according to the SEB, this constituted a "significant weakness." While the SEB viewed Wackenhut as being overstaffed for the overall requirement, the SEB chairperson testified that the board did not know precisely where the overstaffing arose; nevertheless, some of the overstaffing was clearly linked to Wackenhut's inclusion of launch and landing work, which was not part of the KSC basic requirement. Id. at 46.

During discussions with Wackenhut, NASA did not identify a concern regarding Wackenhut's general overstaffing for KSC. Rather, NASA solely asked Wackenhut to address its erroneous inclusion of staffing for launch and landing.⁸ As noted

⁷ Both Wackenhut and Coastal proposed utilizing over 1,000 WYEs each year to perform the contract requirements.

⁸ It would appear that the agency's discussions with Wackenhut regarding staffing for KSC were materially misleading since they were limited to the issue of staffing for launches and landings and did not reflect the true nature of the agency's concern, which was Wackenhut's overall excess staffing at KSC. As a consequence, Wackenhut never had an opportunity to address the basis for its final KSC staffing weakness, as identified by the SEB. It is a fundamental precept of negotiated procurements that discussions, when conducted, must be meaningful, equitable, and
(continued...)

previously, Wackenhut addressed this specific concern by reducing its KSC staffing by approximately [DELETED] WYEs, down to approximately [DELETED] WYEs, to account for removal of the launch and landing work. AR, Tab 30, Wackenhut's Final Proposal Revision, at Bates 6372.

Notwithstanding this reduction, the SEB concluded that Wackenhut's proposal remained overstaffed at KSC by approximately 13 WYEs and that this overstaffing should be brought to the SSA's attention by identifying it as a regular weakness, thereby allowing the SSA "to determine what weight or significance it merits." *Id.* at 73. While identifying this overstaffing as a weakness, the SEB believed it to be a "minor" issue, consistent with the solicitation definition for a regular weakness.⁹ *Id.* at 77. The record reflects that the SEB members did not think that the overstaffing would undermine Wackenhut's ability to perform the KSC requirements; rather, they viewed the overstaffing primarily as a concern with respect to price and its impact on agency resources. *Id.* at 143. In this regard, one member of the SEB testified that "[t]he bottom line is this is a big cost to the agency. That was my concern as far as the whole finding" and he found the increased cost due to the overstaffing to be "unjustified." *Id.* at 141-42. In a similar vein, the SEB chairperson testified that by paying for overstaffing for 13 WYEs, the KSC security program would potentially suffer because it would have "to do without something else and what would that something else be." *Id.* at 74-75.

Testimony from the SSA on this issue reflects that his analysis was consistent with the underlying basis of the SEB's concerns. Contrary to the protester's assertions, the record shows that the overstaffing issue had no bearing on Wackenhut's ability to perform the KSC work and, by discounting the weakness, the SSA did not afford Wackenhut any credit regarding their ability to perform. Rather, the SSA simply recognized, as did the SEB, that overstaffing, in the end, was not a performance issue; it was a price issue, which would ultimately be factored in as part of any trade-off analysis. In this regard, the SSA testified as follows:

(...continued)

not misleading. *AT&T Corp.*, B-299542.3, B-200542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 6.

⁹ One member of the SEB initially held a different opinion, believing the overstaffing to be a "significant weakness" and prompting him to prepare a dissenting opinion to this effect. This SEB member, however, ultimately withdrew his dissenting opinion due to the fact that the agency was unable to identify, with any degree of certainty, the required staffing for KSC, and agreed with the SEB's determination that Wackenhut's overstaffing reflected a regular weakness, which was defined as a "minor concern." Hearing Tr. at 149-50; AR, Tab 97, SEB Final Presentation to SSA, at Bates 25508.

Q: . . . Did you give credit to Wackenhut for their additional staffing at KSC?

A: No. I treated that -- and obviously I wasn't clear enough in my explanation. I treated it in two categories. One was their ability to perform the work. It seemed clear to me that they had the ability to perform the work. The question was whether they had more people than they needed to do the work.

So in terms of being able to do the work, I treated them as being capable of doing it. In terms of the price, that increased the price that they were billing, which when I was weighing things out, a higher price is a negative.

Q: So in essence, if I can characterize your analysis, Wackenhut, by increasing its staffing perhaps shot itself in the foot, so to speak, competitively because they were competing with a higher price?

A: Yes. That's exactly what I was -- my analysis and that [was] exactly what I was attempting to get across in this statement is that on the technical side, they didn't hurt themselves, in my view. They had enough people to do the work and they could do it competently.

There was an argument about whether they had more than they needed. And, as I said earlier, my concern was based on the fact that the feedback we had gotten through several iterations was that the requirements at Kennedy were not, on the government's side, incredibly precise and stable, that [] made me somewhat reluctant to immediately assume that the fact that they didn't hit a particular point that we had at that particular time in our evaluation, it wasn't necessarily a weakness.

On the other hand, it definitely increased the price and that was going to count against them when they factored in the pricing for the whole thing.

Hearing Tr. at 210-12.

Based on this record, it is evident that the SSA considered Wackenhut's KSC overstaffing in its proper context, as an issue bearing on Wackenhut's total price, which was ultimately factored into the SSA's selection decision through his trade-off analysis. Nothing in the record leads us to conclude that the SSA's determination in this regard was unreasonable or otherwise improper.

Coastal also objects to the consideration given by the SSA to Wackenhut's significant strength for its response to the RFP technical scenarios under the technical approach subfactor. The technical scenarios were included as a basis for evaluating offerors' understanding of the requirements and the RFP advised offerors to "demonstrate their specific understanding of the requirements of this contract and the labor resources needed to successfully perform them by responding to the [seven] technical scenarios." RFP at Bates 17271. The SEB determined that Wackenhut's responses to the technical scenarios were a "significant strength" because they demonstrated an "exceptional understanding of the requirements," and "greatly enhance the potential for successful contracting performance." AR, Tab 97, SEB Presentation to SSA, at Bates 25516. The SSA agreed with the SEB's assessment, finding Wackenhut's significant strength in this regard "telling since it revealed the extent to which Wackenhut understood how to perform the contract." AR, Tab 98, SSA Decision, at Bates 25569. These findings were consistent with the RFP's description of the technical scenarios, which were to provide a basis for evaluating an offeror's understanding of the requirements.

Coastal (which, unlike Wackenhut, did not receive a significant strength for its responses to the technical scenarios) bases its challenge here entirely on discrediting the value of the technical scenarios as an analytical tool for determining which offeror would be better able to perform the solicitation requirements. Coastal asserts that a "competent writer can answer a question very well given any degree of research and expert assistance," and "responses to the technical scenarios are limited to contingency operations which only occur on an infrequent basis." Protest at 13-14. To the extent Coastal believes that the technical scenarios did not provide a valid basis for evaluating offerors' understanding of the requirements, this argument concerns an alleged solicitation impropriety, which should have been raised prior to the closing timely for receipt of proposals, and is therefore untimely at this juncture. See Bid Protest Regulations, 4 C.F.R. § 21.2(a) (2009). Otherwise, Coastal's allegations amount to nothing more than its mere disagreement with the degree to which Wackenhut's significant strength provided a valid basis for differentiating offerors' proposals, which does not provide a basis for finding that the SSA unreasonably exercised his discretion.

Coastal further argues that, under the small business participation approach subfactor, the "very good" rating it received, based on a significant strength identified by the SEB, as contrasted with Wackenhut's "good" rating, based on no significant strengths, should have resulted in a discriminator in Coastal's favor. According to Coastal, the SSA "conjured away the difference between the two offerors." Protester's Comments at 22.

As noted above, the SSA, in his selection decision, concluded that there were no discriminators between the offerors under the small business participation approach subfactor. Noting that both offerors proposed to exceed the overall small business goals by similar percentages, he concluded that the different ratings received by the

offerors reflected the fact that Coastal “greatly exceeded” two of the seven small business subcontracting goals set forth in the RFP. AR, Tab 98, SSA Decision, at Bates 25571. The SSA believed that this aspect of Coastal’s proposal was essentially offset by the strength Wackenhut received under the past performance factor for actually meeting its small business goals.

Coastal argues that considering Wackenhut’s strength under the past performance factor in analyzing the small business participation approach subfactor was inconsistent with the evaluation criteria in the RFP and resulted in an improper “double-counting” of Wackenhut’s past performance strength. This argument is unpersuasive.

While it is true that the small business participation approach subfactor did not provide for evaluating offerors based on their history of meeting their proposed goals, the SSA’s analysis does not reflect a departure from the evaluation criteria or “double-counting” since he was not engaging in an evaluation of Coastal’s or Wackenhut’s proposals under this subfactor. Rather, he was exercising his discretion in identifying discriminators for the purpose of making an award decision. As part of his analysis, he drew a logical connection between the small business participation approach subfactor, which considers small business goals proposed by offerors and their approaches to achieving these goals, and the fact that Wackenhut had a history of actually meeting its small business goals, as identified under the past performance factor. Wackenhut’s demonstrated ability to meet its goals, a strength unmatched by Coastal, provided the SSA with an additional level of confidence that Wackenhut would actually meet the goals it proposed. This ultimately muted Coastal’s noted advantage associated with proposing to exceed the RFP’s goals for two of the small business subcategories, where the SSA concluded that Coastal’s advantage, as identified by the SEB, did not serve as a discriminator for the purposes of his award decision. We have no basis to find the SSA’s judgment in this regard unreasonable, or otherwise inconsistent with the RFP.

Coastal also challenges the notion that Wackenhut had an advantage under the past performance factor with respect to the quality of service provided. The record reflects that the original SEB’s findings, which provided the basis for the SSA’s determination since they were not set aside by the Court, did in fact credit Wackenhut with a strength for its demonstrated “successful performance in providing ‘high-quality’ service in Government Contracts.” AR, Tab 76, Original SEB’s Final Presentation to Original SSA, at Bates 23222. The original SEB did not identify a similar strength regarding Coastal’s past performance. Coastal essentially argues that in identifying this strength as a discriminator, the SSA failed to consider the fact that data contained in the Past Performance Information Retrieval System (PPIRS) reflected that Coastal had twice the number of “excellent” ratings as compared to Wackenhut. The SSA specifically considered this difference and concluded that the difference was not particularly meaningful since contractors cannot control the number of customers who place data into the PPIRS system.

While Coastal ultimately disagrees with the SSA's decision not to differentiate between the offerors based on the PPIRS information, the record does not demonstrate that his analysis was unreasonable or otherwise improper.¹⁰

As a final matter, Coastal contends that the SSA was improperly influenced by a high-level government official at KSC, who was biased in favor of Wackenhut, and who, in an effort to undermine Coastal's competitive position, presented the SSA with false information regarding alleged statements made by Coastal personnel after it was initially awarded the contract at issue here, but before the award was challenged at our Office and then at Court. Because the information had never been presented to Coastal, the firm argues that NASA was required to afford it an opportunity to address the adverse information through discussions since the FAR provides that, where discussions are held, agencies must, at a minimum, address "adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR § 15.306(d)(3).

During the hearing, the SSA testified that he had met with NASA's Associate Director for Business Operations at KSC, who raised concerns with Coastal's ability to perform the KSC requirements based on statements allegedly made by Coastal personnel after Coastal was initially awarded the contract here. The SSA provided credible testimony indicating that the information provided by the KSC official did not factor into his selection decision. Specifically, he unequivocally testified as follows:

Q: Did [the information] impact your decision as identified in your SSA statement?

A: No.

* * *

Q: [], you're telling me that these critical comments [the KSC official] made to you about Coastal didn't affect your decision? That's what you're telling us?

A: Yes.

¹⁰ The record reflects that the original SEB, considering all of the offerors' past performance information, to include information provided by the offerors, PPIRS ratings, customer evaluation questionnaires, and information independently obtained by the SEB, credited both offerors with a strength based on their overall past performance exceeding expectations. AR, Tab 76, Original SEB's Final Presentation to Original SSA, at Bates 23185, 23223. The SEB, however, also identified Wackenhut's demonstrated customer service as a separate strength; Coastal did not receive a strength in this area.

Hearing Tr. at 204-05.

Considering that the SSA expressly indicated that he did not consider the information, and there is nothing in the SSA's written decision or the record before us which suggests otherwise, it appears that the adverse information regarding Coastal did not in fact play a role in the award decision. As a consequence, there is no basis for our Office to conclude that Coastal suffered any prejudice in connection with the information having been presented to the SSA. Armorworks Enters., LLC, B-400394, B-400394.2, Sept. 23, 2008, 2008 CPD ¶ 176 at 8 n.7 (prejudice is an essential element of any protest).

The protest is denied.

Daniel I. Gordon
Acting General Counsel