



COMMISSION ON WARTIME CONTRACTING IN IRAQ AND AFGHANISTAN

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SPECIAL REPORT ON EMBASSY SECURITY CONTRACTS

Lowest-priced security not good enough for war-zone embassies

“With respect to local guard contracts for a Foreign Service building which exceed \$250,000 and are entered into after February 16, 1990, the Secretary of State shall ... award contracts to the technically acceptable firm offering the lowest evaluated price.”

Source: 22 USC 4864.

Unlike other federal agencies, the U.S. Department of State is forbidden by law to select anything but the lowest price and “technically acceptable” offer when awarding contracts to protect its overseas buildings—even if this means passing up offers from firms offering higher quality and better experience. In contingency operations like those in Iraq and Afghanistan, this prohibition can have negative consequences for security, wartime mission objectives, and America’s image.¹

The Commission recommends removing this lowest-price restriction so that State Department contracting officers can—like their counterparts in other government agencies—use their professional judgment to select from the entire continuum of “best value” criteria and make appropriate trade-offs between cost or price and other relevant factors. When American lives and American interests are at stake, quality and experience must be considered along with price.

The Commission on Wartime Contracting in Iraq and Afghanistan reached this conclusion based on research, travel to Afghanistan, and its September 14, 2009, hearing that focused on recent allegations of misconduct among employees of the State Department’s contractor, ArmorGroup North America (AGNA). AGNA, a unit of Wackenhut Services, Inc., contracted to protect the U.S. Embassy and personnel in Kabul, Afghanistan. The company attracted intense media scrutiny when a watchdog group released photos showing AGNA employees in alcohol-fueled acts of sexual misconduct and degradation of subordinate staff.

BACKGROUND

Applicable law

Since 1990, the State Department has operated under restrictions imposed by 22 USC 4864. The law has been amended, but its intent remains: “to ensure maximum competition for local guard

1. 10 USC 101. A contingency operation is defined as a military operation that may involve U.S. armed forces in hostilities, or that affects active-duty status of military personnel in time of war.

contracts abroad concerning Foreign Service buildings.” The law requires State Department officials to provide special care and handling for U.S. firms when procuring guard services for U.S. embassies and other Foreign Service buildings. For example, it prescribes a 10 percent downward adjustment to the offer price of U.S. firms in evaluation for a contract award; it requires helping U.S. firms acquire local licenses and permits; and, where dealing in local currency could impose a hardship on U.S. firms, it requires solicitations to be stated and payments made in U.S. dollars.

The concern for this report, however, is the mandate in 4864(c)(3) that all offers be evaluated on a lowest-price, technically acceptable (LPTA) basis: “With respect to local guard contracts for a Foreign Service building which exceed \$250,000 and are entered into after February 16, 1990, the Secretary of State shall ... award contracts to the technically acceptable firm offering the lowest evaluated price.”²

Lowest-priced technically acceptable evaluation

Within the continuum of best-value evaluation techniques, the lowest-priced technically acceptable (LPTA) evaluation technique is a useful approach for clearly identifiable contract requirements where the risk of unsuccessful performance is small. The Federal Acquisition Regulation 15.101-2 states that an LPTA evaluation is “appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.”

Essentially, the LPTA evaluation technique presumes the lowest price is the best value. This makes sense in cases when the government is buying a routine product or simple service that does not require special attributes and where a competitive base of acceptable contractors exists, as with office supplies or cleaning services. When the requirement is more complex or the environment more troublesome, the best value may not always be achieved through the LPTA technique. Under LPTA competitions, companies all too often “buy-in” with unrealistically low prices. Conversely, higher-quality companies with possibly higher-priced offers may choose not to compete.

Other federal entities do use LPTA evaluations in the contingency environment. For example, the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A) uses LPTA extensively to promote contracting with local-national contractors who might not have the skills to correctly respond to more complex evaluation criteria. However, JCC-I/A contracting officers are not prohibited from using best-value trade-off evaluations when they consider them appropriate, as long as they obtain written concurrence from their contracting director.³

Using the LPTA evaluation technique may have two serious unintended consequences for contract performance:

- An offeror who “under-bids” to win an LPTA competition may be motivated to use every means possible to limit costs afterwards in order to achieve a higher profit under difficult circumstances. Such post-award cost-cutting may include hiring a less qualified workforce, skimping on the quantity and quality of needed materials and equipment, and obtaining inexpensive and poor-quality subcontractors. Most importantly, under-bidding may also involve reduced levels of management oversight. In an interview with the Commission earlier in 2009, the CEO of a security firm said

2. 22 USC 4864, Increased participation of United States contractors in local guard contracts abroad under diplomatic security program.

3. JCC-I/A Acquisition Instruction, 15.101-100, April 1, 2009.

Under LPTA competitions, companies all too often “buy-in” with unrealistically low prices.

the LPTA evaluation technique created a “race to the bottom that drives security service providers to the lowest-cost solution.”

■ High-quality contractors, whose services are likely to be more expensive, anticipate their competitors’ willingness to buy-in to the contract with an unrealistically low price. Knowing that their chances of winning an award are low, the most highly qualified contractors often decide not to expend their limited resources on responding to LPTA solicitations—a de facto restriction of competition. For example, in contracting security for the U.S. Embassy in Afghanistan, the government received only two offers deemed “technically acceptable,” even though dozens of security companies operate in Iraq and Afghanistan. As a result, the State Department struggles with a poorly performing contractor.

Under the current statutory mandate, State Department contracting officers do not have the freedom to consider these unintended consequences.

Best-value trade-off evaluation

A best-value evaluation allows a trade-off among technical factors, the contractor’s past performance, management, and cost or price. It is intended to achieve the best overall benefit to the government (and taxpayers) in instances when the use of cost or price alone is not good enough for reaching the desired outcome. A best-value evaluation does consider cost or price, but also allows the contracting officer to evaluate and make trade-offs between cost or price and other factors such as past performance, quality, delivery, management expertise, technical approach, experience of key personnel, management structure, and risk.

Best-value evaluation in a contingency environment such as Iraq or Afghanistan would give due weight to the needs of operational commanders. For example, it could include evaluating a contractor’s ability to hire and manage a workforce whose actions will reflect favorably on—or at least not discredit—the United States. Evaluating a contractor’s management approach can be difficult without an opportunity to compare offers using such factors as the contractor’s past performance and analyzing the degree of risk to contract performance. A best-value evaluation provides that opportunity.

The wartime security mission

In 2004, when the military removed its guards from U.S. embassies in both Iraq and Afghanistan, the Department of State was faced with contracting for security for two embassies in a contingency environment vulnerable to hostile acts. Because contractors supporting contingency operations are perceived as representatives of the United States, it is critically important that agency contracts include requirements for proper employee behavior. Local nationals seldom distinguish among military personnel, civilian employees, or contractors: the Afghan on the street simply sees an American.

The AGNA security contract to protect the U.S. Embassy in Afghanistan has six specific contractual requirements of exemplary behavior by the contractor

AGNA CONTRACT REQUIREMENTS

■ Contractor personnel shall be expected to perform and conduct themselves with proper decorum, subject to the U.S. Chief of Mission.

■ Each Contractor employee or subcontractor employee is expected to adhere to standards of conduct that reflect credit on themselves, their employer, and the United States Government.

■ The Government requires a favorable image and considers it to be a major asset of a protective force in particular. The employee or subcontractor’s attitude, courtesy, and job knowledge are influential in creating a favorable image.

■ The use of abusive or offensive language, quarreling, intimidation by words, actions, or fighting is considered unacceptable performance under this contract. Participation in disruptive activities that interfere with normal and efficient Government operations is also considered unacceptable performance.

■ The security guards must not participate in or support any activities, which would be disruptive to the performance of their duties or would decrease the efficiency of the security force operation.

■ Support of the U.S. and Host Government Relation: The security guards must not become involved in any activities which would prompt public criticism, or cause discredit or interference with U.S.–Host Government Relations.

Source: Contract between State Department Office of Acquisition Management and AGNA, contract number S-AQMPD-07-C-0054, section H and exhibit B.

security force. At its September 14 hearing, the Commission heard testimony that AGNA management had failed to live up to their contractual responsibilities for both contract performance and workforce behavior. The LPTA methodology may have significantly contributed to these failures.

CONTRACTOR FAILURES

Government got what it paid for

According to the litany of complaints about poor contract performance and behavior by AGNA, the company's in-country leadership team was slow to respond to problems and improperly performed their duties as a contingency contractor. Further, as the lowest-priced contractor, AGNA appears to have bought in to the security guard contract at the U.S. Embassy in Afghanistan.

Evidence of this buy-in was discussed at the September 14 hearing, when Mr. Samuel Brinkley, Vice President, Homeland Security and International Security Services, Wackenhut Services Inc., testified that Wackenhut's offer was about \$80 million more than AGNA's.⁴ At the time the contract was competed, Wackenhut—which now owns AGNA—was a competitor.

The State Department contract file indicates that Wackenhut's offer was actually \$110 million more than AGNA's. That \$110 million, amounting to almost 60 percent of the actual contract award of \$189 million, could have bought more guards, more ammunition, improved training, and provided better management of employees—all required under the contract, regardless of the price.

Contract performance

The State Department has struggled for more than two years with AGNA's poor contract performance. The contracting officer issued a cure notice and multiple letters outlining ongoing concerns and citing specific deficiencies in an attempt to improve AGNA's performance. From the onset, AGNA failed to provide the number and quality of security guards required. Over three dozen members of the embassy guard force had inadequate English language proficiency and could not effectively communicate with embassy personnel or visitors to the compound.

Further, AGNA failed to provide acceptable food services, proper documents for newly hired employees, adequate training, or enough guard uniforms—all of which were required in the contract. There were other failures. Letters from the State Department to the contractor described these conditions as undermining "performance of the contract to such a degree that the security of the U.S. Embassy in Kabul is in jeopardy."⁵



State Department witnesses at Commission's Sept. 14, 2009, hearing on DoS contract oversight.

4. Hearing transcript, Commission on Wartime Contracting in Iraq and Afghanistan, September 14, 2009, 237, http://www.wartimecontracting.gov/images/download/documents/hearings/20090914/CWC_State_Dept_Contractor_Oversight_Transcript_2009-09-14.pdf

5. Letter dated July 19, 2007, from State Department to AGNA, Subject: Cure Notice Issued per FAR 49.402-3 / Contract No. S-AQMPD-07-C0054. Other letters from State Department to AGNA include one dated September 21, 2008, Subject: Show Cause Notice for Continued Weaknesses in Performance Under Contract No. SAQMPD-07-C0054, and another dated April 1, 2009, Subject: TCN Senior Guards Resume Approval.

Workforce behavior

The unintended consequences of using the lowest-price technically acceptable technique were highlighted in testimony at the Commission's September 14 hearing as witnesses described alcohol-fueled acts and lurid behavior. Where was the contractor's management during this time? In some instances, management participated in these incidents; in others, it ignored them.

“I am not here to defend the indefensible.”

At the September 14 hearing, Samuel Brinkley, Wackenhut Services, addressed the behavior of his employees, stating “I am not here to defend the indefensible.”⁶ Mr. Brinkley continued: “Certain of our personnel behaved very badly. I am personally embarrassed by their misbehavior.” Commissioner Grant Green told the Under Secretary of State for Management

that he viewed AGNA employees' rogue behavior as “a reflection on the company's culture at all levels ... [and] a reflection in the end on our country at a very critical time when we are attempting to win the hearts and minds of the Afghan people.”⁷

Witnesses described alcohol-fueled acts and lurid behavior.



Industry panel at Commission's Sept. 14, 2009, hearing, I-r: William Ballhaus, DynCorp; Doug Brooks, IPOA; Samuel Brinkley, Wackenhut.



Commissioners pose questions during the Sept. 14, 2009, security-contract hearing.

6. Hearing transcript, Commission on Wartime Contracting in Iraq and Afghanistan, September 14, 2009, 172, http://www.wartimecontracting.gov/images/download/documents/hearings/20090914/CWC_State_Dept_Contractor_Oversight_Transcript_2009-09-14.pdf

7. Hearing transcript, Commission on Wartime Contracting in Iraq and Afghanistan, September 14, 2009, 36, http://www.wartimecontracting.gov/images/download/documents/hearings/20090914/CWC_State_Dept_Contractor_Oversight_Transcript_2009-09-14.pdf

FINDING:

Lowest-price mandate is inappropriate for security at war-zone embassies

As a result of the Commission's work in September, we find that mandating the LPTA evaluation process is inappropriate for contracts involving security of U.S. embassies in contingency environments such as Iraq and Afghanistan. Mr. Doug Brooks, President of IPOA,⁸ testified at the September hearing of "a need to have some flexibility and [a] need to be able to adjust the resources depending on the level of risk."⁹

The State Department is responsible for making U.S. embassies secure, yet the law limits their ability to do so in hostile environments by mandating the lowest-price contract rather than encouraging the acquisition of best value through trade-offs between price and other evaluation factors. The government is forced into an untenable choice between contract termination and a re-competition under the same evaluation constraints, or continuing a bad bargain and accepting repeated poor performance.



RECOMMENDATION:

Amend the law to permit best-value competition

The Commission recommends that Congress amend 22 USC 4864 to authorize the Department of State to award security service contracts using the full continuum of best-value trade-off evaluation techniques as provided in the Federal Acquisition Regulation.

A new competition is approaching for the U.S. Embassy in Iraq. A decision must also soon be made about the future direction of the guard-service contract requirements at the U.S. Embassy in Afghanistan.

Without legislative relief from this restrictive mandate, our embassies will be forced once again to struggle with managing low-price, low-quality security contracts. The Commission urges a quick response to this recommendation.

8. IPOA was previously known as the International Peace Operations Association.

9. Hearing transcript, Commission on Wartime Contracting in Iraq and Afghanistan, September 14, 2009, 242, http://www.wartimecontracting.gov/images/download/documents/hearings/20090914/CWC_State_Dept_Contractor_Oversight_Transcript_2009-09-14.pdf

The Commission on Wartime Contracting is an independent, bipartisan legislative commission established in Section 841 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to study federal agency contracting for reconstruction, logistical support, and security functions in Iraq and Afghanistan.

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