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**United States Department of State
and the Broadcasting Board of Governors
Office of Inspector General**

Report of Inspection

Review of Contracting Allegations at Embassy The Hague, the Netherlands

Report Number ISP-I-07-10, December 2006

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EXECUTIVE SUMMARY

The Office of Inspector General (OIG) reviewed the award process for Embassy The Hague's packing and shipping services contract (S-NL 800-06-R-0001), awarded in August 2006. The review determined that the contract was awarded to an offeror whose proposal did not meet all of the technical standards specified in the solicitation. Furthermore, three offerors' proposals were improperly disqualified, resulting in the award of the contract to other than the lowest bidder. The contracting officer did not provide the technical evaluation panel with adequate instructions about its responsibilities, and actions taken by the panel could have been the result of misunderstanding about the "lowest price technically acceptable" evaluation process that was to be used in the solicitation evaluation. Errors in the contract evaluation process were also not identified prior to contract award.

Responsibility for the integrity of the contracting process rests with the post's contracting officer, who, as source selection authority, must exercise independent judgment in awarding the contract according to terms specified in the solicitation. Failure to follow applicable contracting regulations can result in serious consequences. Acts of negligence or carelessness in the performance of duty resulting in waste of public funds or inefficiency can be grounds for disciplinary action, ranging from a letter of reprimand to removal for cause (3 FAM 4377).

OBJECTIVES, SCOPE, AND METHODOLOGY

The primary objective of this review, as requested by senior officials of Embassy The Hague in August 2006, was to: 1) determine whether the post's technical evaluation and contract award process followed applicable federal and Department regulations in connection with the award of contract S-NL 800-06-R-0001; 2) document facts surrounding the allegations below to determine whether further investigation was warranted; and 3) assist Embassy The Hague in determining a future course of action. OIG was also asked to evaluate three specific allegations:

- 1) That companies submitting bids for the above-referenced contract were improperly disqualified from consideration;
- 2) That the winning bidder, De Haan Removals, did not submit information documenting past performance, specifically financial statements; and
- 3) That the technical evaluation panel did not conduct proper due diligence in looking at the qualifications of prospective bidders, i.e., by assessing references and conducting site visits.

To accomplish these objectives, OIG obtained and reviewed criteria related to contract award procedures. The relevant criteria for OIG's work are found in the Federal Acquisition Regulation (FAR), Foreign Affairs Manual, Foreign Affairs Handbook, Department of State Acquisition Regulations, and 5 CFR 2635 (Standards of Ethical Conduct for Employees of the Executive Branch). OIG personnel reviewed and retained copies of relevant contract files from Embassy The Hague staff and the Bureau of Administration's Office of the Procurement Executive (A/OPE). OIG staff also interviewed employees involved with the solicitation and discussed management controls over contracting operations with relevant personnel at post.

The review took place in The Hague, the Netherlands, between August 28 and 30, 2006, and in Washington, DC, between September 1 and 12, 2006. Inspector Arne B. Baker conducted the review according to professional standards in *Quality Standards for Inspections*, issued by the President's Council on Integrity and Efficiency.

BACKGROUND

Embassy The Hague initiated the procurement process for a fixed-price, indefinite-delivery, indefinite-quantity, packing and shipping contract on February 17, 2006. The solicitation closed on April 10, 2006, and the technical evaluation panel submitted an evaluation of offerors' bids on June 20, 2006. Contract Number S-NL 800-06-R-0001 was awarded to De Haan Removals on August 1, 2006, pursuant to A/OPE approval. The total amount of the award, including four option years, was 635,336 euros, or approximately \$812,000. The technical evaluation panel consisted of Lisette Lobbezoo, Howard Scheckner, and Ronald van Pelt, all locally employed staff at Embassy The Hague. The contracting officer/general services officer (GSO), James Jenkins, was acting management counselor during the review period.

ALLEGATION 1: COMPANIES THAT BID ON THE CONTRACT WERE IMPROPERLY DISQUALIFIED FROM CONSIDERATION

OIG staff found that offerors were improperly disqualified from consideration. The procurement action was not conducted in a manner above reproach and with complete impartiality and preferential treatment for none (FAR 3.101-1). Furthermore, the technical evaluation of the offers was not assessed solely on the factors and subfactors specified in the solicitation (FAR 15.305(a)), and the contracting file did not adequately document strengths, deficiencies, significant weaknesses, and risks in its proposal evaluations (FAR 15.305(a)). This assessment was based solely on a review of objective evaluation factors required by the solicitation. (For this discussion, "objective evaluation factors" refers to those evaluation factors specified in the solicitation that are clear, objective, and readily verifiable from the contracting files.) OIG staff did not attempt to assess the subjective evaluation factors used in the evaluation process.¹

¹Members of technical evaluation panels are selected for their subject matter expertise to make decisions that involve subjective judgments. The OIG team found that one of the bids assessed as technically unacceptable was from Crown Relocations, a major multinational freight forwarding company with 3,000 employees and \$300 million in annual sales. The panel rated the company's proposal as technically unacceptable under the categories Necessary Personnel, Necessary Equipment, and Financial Resources. Neither the contracting officer nor the panel prepared a narrative explanation of these ratings.

The successful offeror, De Haan Removals, did not submit a certificate of insurance or a statement that it could obtain the necessary insurance. The evaluation panel rated De Haan Removals as technically acceptable in this category.

The panel inappropriately rated three bid packages as technically unacceptable. One of the offerors, Voerman, was rated as technically unacceptable because the company was not a permanent business with an established address and telephone number. However, the company listed a Dun and Bradstreet number, a street address, and a telephone number in its contract proposal. There was no indication in the file that this information was insufficient to establish Voerman as a bona fide corporation. Voerman was also rated as technically unacceptable because it did not provide a list of clients with past performance. On page 4 of the bid, the company listed several clients, including the Dutch Ministry of Foreign Affairs. There was no information in the contracting file explaining the decision to rate the Voerman bid as technically unacceptable in this category.

The panel also rated the Voerman bid as technically unacceptable because the company did not provide a certificate of insurance or a statement that the company could obtain insurance. On page 7 of the bid, the company stated that it can obtain required policies from Relo Insurance and other sources. There was no information in the contract file documenting the reasons for rating Voerman as unacceptable in this category.

Another offeror, Crown, was rated as technically unacceptable for not submitting a list of clients with past performance. Page 59 of the proposal contained a reference list of worldwide diplomatic customers that employ Crown. There was no information in the file documenting reasons that the list of clients with past performance history was deemed technically unacceptable.

The third offeror, KHZ, was rated as technically unacceptable for not providing a list of clients with past performance. However, on page 57 of its bid, the company did provide a list of U.S. government customers that included the Department of Defense and the Drug Enforcement Administration. There was no information in the contract file documenting why this information was deemed technically unacceptable.

ALLEGATION 2: THE SUCCESSFUL OFFEROR DID NOT SUBMIT INFORMATION ON PAST PERFORMANCE, SPECIFICALLY FINANCIAL STATEMENTS

Contrary to the allegation, OIG staff found that the successful offeror's proposal package did, in fact, contain financial statements. The solicitation did not explicitly require financial statements. Past performance by the successful offeror was not documented in the contract file, but the company did provide a comprehensive, five-volume solicitation package that addressed the company's qualifications and background, including past service as a contractor to the embassy.

ALLEGATION 3: THE TECHNICAL EVALUATION PANEL DID NOT REVIEW THE QUALIFICATIONS OF PROSPECTIVE BIDDERS BY CHECKING REFERENCES AND CONDUCTING SITE VISITS

OIG staff found that the panel did not review the qualifications of prospective bidders by checking references and conducting site visits. It should be noted that site visits and reference checks are not required by procurement regulations. The solicitation states that "technical acceptability will include a review of past performance and experience, as defined in Section L.1.1, along with any technical information provided by the offeror with its proposal. In addition the Government may request an appointment to look at the offeror's facilities." References provided by offerors, including one reference at Embassy Brussels, were not contacted, and no site visits occurred. Documentation of past performance of the incumbent contractor was not noted in the contracting file.

POSSIBLE FRAUD INDICATORS/RED FLAGS

The OIG team noted a number of possible fraud indicators during the review. These are:

- The successful offeror, De Haan, did not furnish a certificate of insurance or statement of insurance in the bid. This technical defect was not noted by the technical evaluation panel, which rated the De Haan proposal as acceptable in this category. De Haan's bid was otherwise responsive to the requirements in Sections B, K, and L of the solicitation.

- The panel rated as technically unacceptable three other offerors' proposals, even though they contained the objective information that the solicitation required. These ratings resulted in the elimination of the three offerors' proposals from consideration. One of these proposals was for a lower total cost than the successful offeror's proposal. Offerors whose bids were rated as technically unacceptable for questionable reasons included KHZ, Crown, and Voerman.
- OIG was told that three boxes of bid documents in the possession of Ronald van Pelt, Lisette Lobbezoo, and James Jenkins contained the bid proposals the panel had reviewed and all relevant documents. However, each box contained a substantially different set of documents. Also, the official contract file had not been secured with the other documents and, when reviewed, was in an unlocked cabinet under the control of Eugenio Danjo, a Foreign Service national.
- OIG asked to review the original, signed contract on August 29, 2006. GSO James Jenkins produced a document that contained his signature and the successful offeror's original signatures. This document differed from the two SF-33s originally submitted by the contractor in that the originals misspelled Mr. Jenkins' name and had other minor differences. The contracting file does not contain evidence of when the second SF-33 was completed.
- The original letters to unsuccessful offerors contained erroneous statements that could have had the effect of discouraging protests or questions. The letter to DeGruijter, an unsuccessful offeror, stated that the amount of the successful bid was 555,690 euros. The successful bid amount was 635,336 euros. The letter to another unsuccessful bidder, Van der Velde, said that the company's proposal was not in the competitive range. In fact, no competitive range was established, and this was not the reason that the company's bid was rejected.
- The GSO did not correct technical errors prior to award. One panel member did not evaluate all bid packages, for example, but signed the panel form. The final package did not contain a narrative discussion of factors used to rate offerors' bids, as required by the FAR.

MITIGATING FACTORS

The OIG team also identified mitigating factors in the review. These are:

- Foreign Service nationals on the technical evaluation panel did not have contracting training and would not normally be expected to be knowledgeable about contracting procedures.
- Foreign Service nationals on the panel received oral instructions from the GSO, who followed up with an e-mail. However, the e-mail did not contain detailed instructions on the procedures that the panel should follow in its evaluation.
- Contracting files and interviews with employees indicate that the panel may have considered factors that were irrelevant to a determination of technical acceptability, i.e., price and value for money. According to the “lowest price technically acceptable” source-selection process specified in the solicitation, the panel is to evaluate only the technical acceptability of proposals. Tradeoffs are not permitted in this source selection process (FAR 15.101-2(b)(2)). Instead, the contract is to be awarded to the lowest price source that meets technical acceptability standards in the solicitation.
- OIG found no evidence of improper contact with offerors, nepotism, acceptance of gifts, or overt interference with the panel’s operations by any party.
- Collusion between the three members of the panel, the contracting officer, and/or outside parties is possible but unlikely.

FINDINGS AND RECOMMENDATIONS

Although OIG's review did not reveal criminal or misconduct violations by embassy personnel, Embassy The Hague should improve management controls over formal contracts. Because the technical evaluation process for this contract solicitation was flawed, the OIG team recommends that the embassy recompile the contract and not exercise the option to extend the contract after the end of the one-year base performance period. The contracting officer and technical evaluation personnel should institute additional controls in a new solicitation to promote a fair, transparent, and equitable outcome. OIG makes the following recommendations to assist Embassy The Hague in these objectives:

Recommendation 1: Embassy The Hague should determine a timeframe for issuing a new packing and shipping contract solicitation. (Action: Embassy The Hague)

Recommendation 2: Embassy The Hague should retain date-stamped envelopes that document the date and time of receipt of completed solicitations, as required by Federal Acquisition Regulation 15.208. (Action: Embassy The Hague)

Recommendation 3: Embassy The Hague should provide a new technical evaluation panel with the model memo found in Exhibit 4.5 of the *Overseas Contracting and Simplified Acquisition Handbook*. The panel should be instructed to furnish a narrative description of the facts used to determine a proposal's technical acceptability that describes the proposal's strengths, deficiencies, significant weaknesses, and risks. (Action: Embassy The Hague)

Recommendation 4: Embassy The Hague should assign at least one direct-hire American officer to the technical evaluation panel. (Action: Embassy The Hague)

Recommendation 5: Embassy The Hague should instruct the new panel to contact references provided by offerors to document past performance and to conduct site visits to review contractor facilities and personnel. (Action: Embassy The Hague)

Recommendation 6: Embassy The Hague should request a visit from the Regional Procurement Support Office to review the mission's contracting processes and procedures. (Action: Embassy The Hague)

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