



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Watkins Security Agency, Inc.

**File:** B-248309

**Date:** August 14, 1992

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Paul J. Seidman, Esq., Seidman & Associates, for the protester.  
Katherine S. Nucci, Esq., Dykema Gossett, for OMNISEC International, an interested party.  
Michael Colvin, Department of Health & Human Services, for the agency.  
Paula A. Williams, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Firm which submitted the highest-priced of three proposals reasonably found to be technically equal is not an interested party to protest an award since price properly was the determinative factor for award and protester would not be in line for award if the protest were sustained.

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## DECISION

Watkins Security Agency, Inc. protests the Department of Health and Human Services's award of a contract to OMNISEC International under request for proposals (RFP) No. SSA-RFP-91-0849. The procurement, a 100-percent small business set-aside, is to obtain armed guard services at the Social Security Administration Woodlawn complex and the Health Care Financing Administration complex in Maryland. Watkins protests the agency's refusal to terminate OMNISEC's contract after the Small Business Administration (SBA) regional office determined that OMNISEC was not a small business concern.<sup>1</sup>

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<sup>1</sup>Initially, Watkins protested that the award to OMNISEC was improper because the agency failed to give unsuccessful offerors preaward notification of the name and location of the apparent successful offeror, as required by Federal Acquisition Regulation (FAR) § 15.1001(b)(2), thereby precluding other offerors from filing a timely size status protest. This issue is academic since, as explained below,

We dismiss the protest because Watkins is not an interested party to protest since there is an intervening offeror which would be in line for award if the protest were sustained.

The RFP, issued on July 10, 1991, contemplated the award of a firm, fixed-price contract for a base year with three 1-year options, and the RFP provided that award would be made to the offeror whose proposal was most advantageous to the government, price and other factors considered. The RFP set forth two primary technical criteria: (1) the offeror's proposed technical approach (worth 60 points of the available 100 points) and (2) the qualifications and experience of the organization and proposed personnel (worth 40 points). Under technical approach, two subfactors were listed: (1) management approach plan (30 points) and (2) detailed draft training plan (30 points). The RFP stated that technical considerations were more important than price, and provided that price would be evaluated on the basis of the total for the base and option years.

Four proposals were received, three of which were determined to be technically acceptable and were included in the competitive range. The agency held written discussions with each offeror and each was requested to submit a best and final offer (BAFO). The offerors, their BAFO scores and total evaluated prices are shown below:

	<u>Technical</u>	<u>Price</u>
Watkins	98.5	\$ 15,745,111.00
Stay	95.8	\$ 15,521,356.89
OMNISEC	94.5	\$ 13,836,896.40

Based on the evaluation results, which included the evaluators' point scores and narrative statements, the contracting officer determined that all three proposals were technically equal, and decided to make award on the basis of lowest price. On March 30, after reviewing each firm's price, the contracting officer selected OMNISEC based on its low price, and award was made to that firm on March 31. OMNISEC had proposed to use as a subcontractor, Securiguard, Inc., the incumbent large business which has provided the contract services since 1989.

The unsuccessful offerors were not notified of the selection prior to execution of the award. Instead, written notice to Watkins and Stay was mailed on March 31, and on April 1, the contracting officer notified both firms by telephone of the

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a timely size status protest was filed and HHS has agreed to take appropriate action based on SBA's final determination in this regard.

award. On April 6, Watkins filed a written size protest, as supplemented on April 7, with the contracting officer. On April 6, Stay also submitted a size protest to the contracting officer. That same day, the contracting officer made a written determination to waive the required preaward notice to unsuccessful offerors. To justify her decision, the contracting officer noted that the procurement had been delayed because of an investigation by the Office of Inspector General which began on December 4, 1991, and ended on March 4, 1992; thus, an expedited award was necessary to provide the new contractor an overlapping phase-in period to start work by midnight on April 4, the date that the incumbent's contract would end.

On April 7, the contracting officer forwarded both size protests to the SBA. On April 10, Watkins filed this protest with our Office.<sup>2</sup> The SBA regional office determined that based on its affiliation with Securiguard, OMNISEC was other than a small business concern for purposes of this procurement.<sup>3</sup> OMNISEC timely appealed the regional office's determination to the SBA's Office of Hearings and Appeals (OHA). See 13 C.F.R. § 121.1705(a)(2) (1992). HHS has advised our Office that it will delay any corrective action until the OHA has issued a final ruling, and that if the regional office's determination is upheld, HHS will terminate OMNISEC's contract and make award to Stay, the offeror next in line for award. See Eagle Design and Mgmt., Inc., B-239833 et al., Sept. 28, 1990, 90-2 CPD ¶ 259, aff'd, Eagle Design and Mgmt., Inc.--Protest and Recon., B-239833.5, Apr. 17, 1991, 91-1 CPD ¶ 380.

Where selection officials reasonably regard proposals as being essentially equal technically, price may become the determining factor in making an award decision notwithstanding that the evaluation criteria assigned price less importance than technical considerations. See Warren Elec. Constr. Corp., B-236173.4; B-236174.5, July 16, 1990, 90-2 CPD ¶ 32. Whether a given point spread between competing offerors indicates significant superiority of one proposal over another depends on the facts and circumstances

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<sup>2</sup>On April 20, the head of the agency's Office of Acquisition and Grants Management approved the contracting officer's determination that due to urgent and compelling circumstances significantly affecting the interests of the United States, contract performance should not be suspended pending our decision.

<sup>3</sup>The regional office found that both Watkins's and Stay's size status protests were timely since they were delivered to the contracting officer within 5 days after notification that OMNISEC had been awarded the contract.

of each procurement. Merdan Group, Inc., B-231880.3, Feb. 28, 1989, 89-1 CPD ¶ 210.

We find no basis on which to object to the contracting officer's determination that the technical proposals of the three offerors were technically equal. First, the relative point scores, OMNISEC 94.5, Stay 95.8, and Watkins, 98.5 (a range of difference of less than 5 percent) were very close. See Arthur D. Little, Inc., B-243450, July 31, 1991, 91-2 CPD ¶ 106. Second, as between the Stay and Watkins proposals, while Watkins objects that a direct best buy comparison was not conducted between the two, Watkins has not provided any basis for the conclusion that its proposal should have been found technically superior to Stay's. Moreover, from our review of the record we find that the evaluators' sheets and narrative are consistent with the determination that the two proposals are technically essentially equal. Accordingly, in light of Stay's lower price, the agency properly views Stay, not Watkins, as in line for award if the OHA upholds the regional office's determination that OMNISEC is a large business.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (1992). Since Watkins is not next in line for award, it is not an interested party to protest the award to OMNISEC. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

The protest is dismissed.

  
Ronald Berger  
Associate General Counsel