



OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of

SECURITAS SECURITY SERVICES USA, INC.,

Petitioner,

vs.

DEPARTMENT OF TRANSPORTATION,  
STATE OF HAWAII,

Respondent,

and

UNIVERSAL PROTECTION SERVICE, LP, dba  
ALLIED UNIVERSAL SECURITY SERVICES,

Intervenor.

PDH-2021-005

HEARINGS OFFICER'S  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND DECISION

Administrative Hearings Officer:  
Rodney K.F. Ching

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION

I. INTRODUCTION

On March 30, 2021, Securitas Security Services USA, Inc., ("Petitioner" or "Securitas"), filed a Notice of Administrative Appeal and Request for Hearing ("Petition") to contest the Department of Transportation, State of Hawaii's ("Respondent" or "HDOT" or "DOTA") denial of Petitioner's protest regarding a Request for Proposals ("RFP") for the Furnishing of Security Services at the Hawaii State Airports, Project No. ES1963-21 ("Project"). The matter was set for hearing on April 19, 2021 and the Notice of Hearing and Pre-Hearing Conference was duly served on the parties.

On April 6, 2021, a Pre-Hearing conference was held in this matter. Over objection of Petitioner, the undersigned Hearings Officer GRANTED Universal Protection Service, LP dba Allied Universal Security Services' ("Intervenor" or "Allied") oral Motion to Intervene in this proceeding.

On April 15, 2021, Respondent filed its Motion to Dismiss and/or for Summary Judgment ("MSJ"). On April 16, 2021, Petitioner filed its Memorandum in Opposition to Respondent's MSJ ("Memo Opp"). On April 16, 2021, Intervenor filed its Joinder in Respondent's MSJ ("Joinder").

On April 19 and 20, 2021, this matter came on for hearing before the undersigned Hearings Officer in accordance with the provisions of Hawaii Revised Statutes ("HRS") Chapters 91, 92 and 103D and Hawaii Administrative Rules ("HAR") Title 3 Chapters 122 and 126, Title 6 Chapter 22 and Title 19, Chapter 201. William C. McCorriston, Esq., Brett R. Tobin, Esq., Jordon J. Kimura, Esq., and Jamie H. Tokioka, Esq. appeared on behalf of Petitioner with Petitioner's representative, Sanj Sappal, Vice-President, present; Deputy Attorney General Duane M. Kokesch, Esq. appeared on behalf of Respondent; and William Meheula, Esq., Natasha L.N. Baldauf, Esq. and Terrence M. Lee, Esq., appeared on behalf of Intervenor with John Constable, Lynette Yi, Robert Magovern and Elizabeth Thomas present. The parties agreed to admit Joint Exhibits J-1 to J-8, the Declarations of Sanj Sappal, Clint Kirgan and Davin Hironaka, Petitioner's Exhibits 1 to 9, Respondent's Exhibits I, J and K, and Intervenor's Exhibits I-1 to I-24 into evidence for both the MSJ and case-in-chief. Respondent's MSJ was heard first, which was *partially* granted, as more fully explained below, and then the hearing on the remaining counts was heard.

At the conclusion of the Petitioner's case, Respondent renewed its MSJ on all remaining counts, and Intervenor made an oral motion to dismiss Count A, which was granted as more fully explained below.

At the conclusion of the hearing, the parties agreed to file and exchange written closing arguments by 4:30 p.m. on April 27, 2021. On April 27, 2021, all parties submitted their written closing arguments which were e-filed on April 28, 2021.

Having reviewed the exhibits, testimony of witnesses, arguments of counsel, and having considered the MSJ, Memo Opp and Joinder, together with the records and files herein,

the Hearings Officer hereby renders the following findings of fact, conclusions of law and decision.

## II. FINDINGS OF FACT

1. On August 3, 2020, Respondent released its RFP for the Project. The date set for receipt of offers was September 30, 2020. See Exhibit J-1.

2. On August 4, 2020, Respondent issued Addendum 1 to the RFP. See Exhibit I-3.

3. On August 28, 2020, Respondent issued Addendum 2 to the RFP. See Exhibit J-2.

4. On September 16, 2020, Respondent issued Addendum 3 to the RFP. See Exhibit J-3.

5. Addendum 3 to the RFP states, among other things:

### PROPOSAL EVALUATION

The DOTA reserves the right to reject any or all Proposals and waive any defects if the DOTA believes the rejection or waiver to be in the best interest of the DOTA. The right to waive defects does not extend to Proposals that are out of compliance with the requirements found in the Hawaii administrative Rules.

The evaluation will be based solely on the evaluation criteria detailed in this RFP and shall be performed by the selected members of the Evaluation Committee consisting of at least three (3) governmental employees with sufficient qualifications and experience in this area.

See Exhibit J-3 at page 408.

6. On September 23, 2020, Respondent issued Addendum 4 to the RFP. See Exhibit I-3.

7. On October 21, 2020, Respondent issued Addendum 5 to the RFP which, among other things, requested Best And Final Offers (“BAFO”) by 12:00 p.m. HST on October 28, 2020. See Exhibit J-4.

8. On or about October 28, 2020 Petitioner submitted its BAFO in the amount of approximately \$198M. See Exhibits J-5 and 3.

9. On or about October 28, 2020, Intervenor submitted its BAFO in the amount of approximately \$178M. See Exhibit J-6.

10. A 5-member Proposal Review Committee (“PRC”) consisting of the five (5) district<sup>1</sup> airport managers independently scored the Proposals submitted by Petitioner and Intervenor using a Complex Matrix developed by Lori Beckman of Aviation Security Consulting. See Exhibits J & K.

11. The PRC issued the following scores to Securitas on its proposal for an average total score of 62.5 out of 110 points:

<b>Section</b>	<b>Craig Fujihara</b>	<b>Kathy Wade</b>	<b>David Bell</b>	<b>Tiffinie Smith</b>	<b>Bruce Kaiwi</b>
Company Background (20 points)	4	6	8	8	4
Knowledge & Experience (25 points)	15	13	15	15	15
Work Plan & Approach (35 points)	14	11.2	14	21	14
Price (30 points)	27	27	27	27	27.01
Securitas Totals (110 points)	60	57.2	64	71	60.01

See Petitioner’s Final Argument at page 8, Exhibit J-7 at page 1206, and Exhibit K.

12. The PRC issued the following scores to Allied on its proposal for an average total score of 96.28 out of 110 points:

<b>Section</b>	<b>Craig Fujihara</b>	<b>Kathy Wade</b>	<b>David Bell</b>	<b>Tiffinie Smith</b>	<b>Bruce Kaiwi</b>
Company Background (20 points)	20	20	20	16	20
Knowledge & Experience (25 points)	25	22	25	25	25
Work Plan & Approach	21	22.4	21	28	21

<sup>1</sup> Honolulu, Maui, Kauai, Hilo and Kona

(35 points)					
Price (30 points)	30	30	30	30	30
Allied Total (110 points)	96	94.4	96	99	96

See Petitioner’s Final Argument at page 8, Exhibit J-7 at page 1206 and Exhibit K.

13. By letter dated November 9, 2020, Respondent informed Intervenor that it was awarded the contract based on its Proposal submitted and its Contract Price of \$178,761,091.88. See Exhibit I-14.

14. On November 13, 2020, Respondent posted the notice of award of the Contract to Intervenor.

15. By letter dated November 24, 2020, Petitioner lodged its Protest of Award (“Protest” or “Protest Letter”) with Respondent alleging, among other things, five (5) legal grounds (“Counts”) for the Protest:

- A. The RFP mandates disqualification and rejection of Allied’s proposal, which is incomplete, indefinite, ambiguous and conditional.
- B. The scoring methodology/evaluation process was arbitrary and capricious.
- C. The evaluators used criteria outside the RFP.
- D. Allied is not the most responsible offeror.
- E. HDOT has failed to allow Securitas a meaningful opportunity to protest the RFP.

See Exhibit J-7.

16. By letter dated March 23, 2021 (“Protest Denial”), Respondent denied Petitioner’s Protest stating, among other things, as follows:

After consideration of the reasons for your client’s protest as stated in the Protest letter, your client’s protest is DENIED.

The Hawaii Department of Transportation (HDOT) denied Securitas’s protest for numerous reasons as described in this letter, including but not limited to, untimeliness, sufficiency of the solicitation, adequacy of the evaluation, and Transportation

Security administration (TSA) airport security violations by Securitas Security Services USA, Inc. (Securitas), endangering passenger safety. The HDOT may not disclose the substance of those violations without the written permission of the Under Secretary of Transportation for Security since it contains sensitive security information.

Violations that have occurred while Securitas provided airport security services has put the safety of passengers at risk. The sole purpose of this procurement is to provide airport security. In addition, Securitas protests this RFP and the procedures which are based on the RFP and procedures that are substantially similar to the ones used a few years ago when Securitas was awarded the contract without complaint. Based on the entire RFP, the solicitation process, and all other pertinent information, Securitas has failed to establish that the HDOT did not act in accord with the Constitution, statutes, rules or the solicitation.

\* \* \*

Finally, the Proposal Review Committee (PRC) used as RFP Complex Matrix to facilitate scoring. The Matrix clearly defined all the key points in the RFP with cross reference to the Section of the RFP and the four scoring criteria: (1) Background and Company Information, (2) Knowledge and Experience, (3) Plan and Approach and (4) Proposal Price. The four scoring criteria was further briefly defined in the scoring matrix box and referenced other sections of the RFP. Based on the complete information contained within the RFP and addenda, the scoring methodology used by the HDOT was not inconsistent, not highly subjective, and did not contain unclear standards or guidelines even if that federal standard applied, which it does not. The scoring methodology was therefore not arbitrary and capricious and the HDOT must deny Securitas' protest.

\* \* \*

Notwithstanding the untimeliness of the protest, Securitas argued that the PRC used improper criteria when evaluating offers. However, the solicitation put offerors on notice of pertinent criteria, including background, experience, knowledge, company information, and plans. As such, the PRC properly evaluated the offers. The PRC used an RFP Complex Matrix to facilitate scoring. The Matrix clearly defined all the key points in the RFP with cross reference to the Section of the RFP and the four scoring criteria; 1 Background and Company Information, 2 Knowledge and Experience, 3 Plan and Approach and 4 Proposal Price. Therefore, Securitas's protest is denied based on content as well.

See Exhibit J-8.

17. On March 30, 2021, Petitioner filed the instant Petition which alleges four (4)

*Circumstances of Protest:*

- A. HDOT used an arbitrary and capricious scoring methodology.
- B. HDOT relied on criteria outside the RFP.
- C. Securitas is the responsible offeror vis-à-vis Allied.
- D. HDOT has failed to allow Securitas a meaningful opportunity to protest the RFP.

See, Petition at 5, Statement of Circumstances of Protest.

18. On April 5, 2021, Respondent filed its Response to the Petition (“Response”).

### III. CONCLUSIONS OF LAW

If any of the following conclusions of law shall be deemed to be findings of fact, the Hearings Officer intends that every such conclusion of law shall be construed as a finding of fact.

#### 1. JURISDICTION AND BURDEN OF PROOF

HRS §103D-709(a) extends jurisdiction to the Hearings Officer to review and determine *de novo* any request from any bidder, offeror, contractor or governmental body aggrieved by a *determination* of the chief procurement officer, head of a purchasing agency, or a designee of either officer made pursuant to HRS §§ 103D-310, 103D-701 or 103D-702. The Hearings Officer is charged with the task of deciding whether those *determinations* were in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation or contract, and shall order such relief as may be appropriate. See §HRS 103D-709(h).

Petitioner has the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree of proof shall be by a preponderance of the evidence. See §HRS 103D-709(c).

The issue for determination by this Hearings Officer is whether Respondents’ denial of Petitioner’s Protest was proper. The sub-issues include:

- A. Whether the RFP mandates disqualification and rejection of Allied' s proposal, on the grounds of being incomplete, indefinite, ambiguous and/or conditional.
- B. Whether the scoring methodology/evaluation process was arbitrary and/or capricious.
- C. Whether the evaluators used criteria outside the RFP.
- D. Whether Allied is not the most responsible offeror.
- E. Whether HDOT has failed to allow Securitas a meaningful opportunity to protest the RFP.

## 2. STANDARD OF REVIEW FOR EVALUATION OF PROPOSALS

*Evaluation of proposals; technical merits;* The determination of the relative technical merits of offers is a matter primarily left to the **procuring agency and is entitled to great weight**. The agency is in the best position to determine which technical proposal best meets its needs and must bear the burden for any difficulties incurred by a defective evaluation. The role of the Hearings Officer is therefore not to substitute his/her judgment for that of the agency. Rather, **the Hearings Officer will determine whether a reasonable basis exists** for the conclusions reached or whether the conclusions are instead shown to be unreasonable, arbitrary, capricious, or contrary to law. Mere disagreement with the decision of the evaluators is insufficient to show that the evaluation of proposals is unreasonable or the result of bias. See, *Roberts Hawaii School Bus, Inc. v. Kathryn S. Matayoshi, in her capacity as Superintendent/Chief Procurement Officer, Department of Education, State of Hawaii, PDH-2017-001 and 2017-002 [Consolidated] (April 13, 2017)*. (emphasis added.) See Procurement Code Desk Reference, 2020 Edition at page 33.

## 3. RESPONDENT'S MSJ

Summary judgment is appropriate if the record herein shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. The evidence, all reasonable inferences from the evidence, must be viewed in the light most favorable to the non-moving party. See, *Nan, Inc. vs. DOT, SOH and Hawaiian Dredging Construction Company, Inc.*, PDH 2015-006 (Sept. 4, 2015), citing *Koga Engineering & Construction, Inc. v State*, 122 Haw. 60, 78, 222 P.3d 979, 997 (2010). "Bare allegations or factually unsupported conclusions are



insufficient to raise a genuine issue of material fact[.]” *Reed v. City & County of Honolulu*, 76 Haw. 219, 25, 873 P.2d 98, 104 (1994).

#### 4. PETITIONER’S PROTEST

In its Protest Letter, Petitioner alleges *five (5)* Counts:

- A. The RFP mandates disqualification and rejection of Allied’s proposal, which is incomplete, indefinite, ambiguous and conditional.
- B. The scoring methodology/evaluation process was arbitrary and capricious.
- C. The evaluators used criteria outside the RFP.
- D. Allied is not the most responsible offeror.
- E. HDOT has failed to allow Securitas a meaningful opportunity to protest the RFP.

See Exhibit J-7.

Notwithstanding, in its Petition, Petitioner only raises *four (4)* Circumstances of Protest<sup>2</sup> - Because the Protest Letter was the initiating document for this administrative review, the Protest Denial contains the procuring officer’s *determinations* that the Hearings Officer must review, the evidence and arguments presented at the hearing overlap multiple Counts, and in the interest of completeness - the Hearings Officer hereby organizes this Decision addressing the *five (5) Counts (A to D)* contained in the *Protest Letter*.

For the reasons stated below, the Hearings Officer GRANTED *partial* summary judgment in favor of Respondent and Intervenor on Counts A, D and E, and finds and concludes that Petitioner has NOT met its burden of proof on Counts B and C.

#### 5. HEARINGS OFFICER’S DETERMINATIONS

##### **A. THE RFP DOES NOT MANDATE DISQUALIFICATION AND REJECTION OF ALLIED’S PROPOSAL**

In its Protest Letter, Petitioner asserts, among other things, that: “The RFP mandates disqualification and rejection of Allied’s proposal, which is incomplete, indefinite, ambiguous and conditional.” See Exhibit J-7 at page 1207. Petitioner asserts that Allied’s

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<sup>2</sup> See, Petition at page 5, Statement of Circumstances of Protest.

Proposal was incomplete, indefinite, ambiguous and conditional because it stated that: “change in statutory, living wages, or CBA-mandated costs **will be billed as incurred to reflect change** should a new CBA be ratified. Allied reserves the right to **adjust** wages and billing rates accordingly and will hold their margins pending any benefit changes.” See Exhibits J-6 at page 890 and J-7 at page 1207 (emphasis added.)

Davin Hironaka, area comptroller for Securitas, testified among other things that in his opinion Allied’s pricing was “conditional.” Petitioner also argues that *had* Allied included collective bargaining wage increases of 2-3 % per year, which Petitioner did in its BAFO, Allied’s Proposal would be more than \$178M and closer to Petitioner’s \$198M. Petitioner did not quantify the amount or assert that Allied’s Proposal would have been more than \$198M had the CBA wage increase(s) been included.

Respondent and Intervenor assert that Allied’s BAFO acknowledged the RFP and Addenda which *cures* any ambiguity. See Exhibit J-6 at page 763.

The Hearings Officer is persuaded by the evidence and Respondent’s and Intervenor’s arguments. First, HDOT did not disqualify or reject Allied’s Proposal as non-responsive and, in fact, determined that both Allied and Securitas passed Phase 1 and were on the priority list. Ultimately, HDOT awarded the Contract to Allied after the PRC scored the proposals. The Hearings Officer gives *great weight* to the determinations of the procuring agency regarding the relative technical merits of offers. See, *Roberts Hawaii School Bus, Inc. v Kathryn S. Matayoshi, in her capacity as Superintendent/Chief Procurement Officer, Department of Education, State of Hawaii, PDH-2017-001 and 2017-002 [Consolidated]* (April 13, 2017).

Second, according to Ms. Beckman, any ambiguity on the alleged conditional nature of Allied’s Proposal was corrected by Addendum 3, which *only allowed wage increases under HGEA changes*.

60. We understand the existing security contractor’s employees at the Hawaii Airports are unionized. Will the selected contractor be able to submit change orders for any future bargained wages and benefits (medical insurances, PTO, holiday pay, etc.) increases with the Union?

Response: **Only wage increases under HGEA changes.** All other costs should be factored into the overhead.

See Exhibit J-3 at page 0451 (emphasis added).

In its BAFO of approximately \$178M, Allied *agreed to be bound by all requirements of the RFP and all Addenda*. See Exhibit J-6 at pages 995-996. Allied *reiterated* on the record that they agreed to their BAFO of \$178M and agreed to comply with the RFP including all Addenda. Petitioner appeared to concede this issue.

MR. TOBIN: So I think the issue is still up for your review. I don't think it's been established sufficiently to rule on a Motion to Dismiss at this stage.

THE HEARINGS OFFICER: Wasn't all that cured by the best and final offer of \$178,000,000 and agreeing to comply with the addenda?

MR. TOBIN: That's sort of what I'm saying, Mr. Ching. There are parts of the best and final offer that seem to say otherwise. If they are going to – **if Allied is willing to say on the record and stick to it that it's 178 hard and fast, we're not going to try and change it then, you know, I think that maybe that does address the issue.** But based on the document itself, it's not that clear.

THE HEARINGS OFFICER: Mr. Meheula, it's been tossed over to you. **Is Allied's position that any ambiguity was cured by the best and final offer of \$178,000,000 and agreement to comply with all the addenda?**

MR. MEHEULA: **Yes. They agreed to comply.**

See Transcript Volume 1 at page 158, lines 4-25 (emphasis added.)

Although NOT raised in its Protest Letter, Petitioner raised three (3) additional points in its Memo Opp in support of its position on Count A. The Hearings Officer concludes that these three (3) points are *untimely raised* and therefore, *dismissed*. See HRS §103D-701. Notwithstanding the *untimeliness*, in the interest of completeness, the Hearings Officer hereby adopts and incorporates by reference herein **Intervenor's Closing Argument** addressing these three (3) points as follows:

“Securitas’ opposition to the SJ Motion filed 4/16/21 at p.6 supported its position that Allied’s proposal was incomplete, indefinite and ambiguous on three grounds, each of which will be discussed below.

**1. “Failure to include an Addendum Acknowledgment Form as required by Addendum No. 2 of the RFP.”**

Allied made this acknowledgement in its Proposal cover letter and Executive Summary (J-6 at #000763, 770). The PRC did not complain about that form of acknowledgement in the 10/16/20 virtual interview. See Lynette Yi (“Yi”) testimony, 4/20/21 Tr. at 315-16. Accordingly, Allied repeated that acknowledgement of all addenda in its BAFO cover letter and Executive Summary (J-6 at #000996, 1002).

In addition, the PRC has the discretion to waive non-substantive RFP requirements. HAR § 3-122-31(c)(1)(B) that states: “If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the procurement officer may waive the informalities.” In fact, Section 5 of the RFP states: The DOTA reserves the right to reject any or all Proposals and waive any defects if the DOTA believes the rejection or waiver to be in the best interest of the DOTA. The right to waive defects does not extend to Proposals that are out of compliance with the requirements found in the Hawaii Administrative Rules.” See J-1 #000077.

**2. Resubmission of its entire, complete proposal in its best and final offer, as opposed to only the sections that were different from the original proposal in contradiction to Addendum No. 5 of the RFP (J-4 a.4)**

This is another form over substance argument. Allied’s BAFO included the entire proposal and highlighted changes to make it easier for the PRC to identify changes in its BAFO. Allied clearly described this approach in its BAFO cover letter that stated: “We have highlighted the revised text/section in accordance with the requirements in Addendum No. 5.” See J-6 #000996. Allied did not believe then and does not believe now that this approach violates Addendum 5 that states: “Only those sections of the original submitted proposal that are changed must be submitted, with changes in revision text highlighted.” See Yi testimony, 4/20/21 Tr. at 316-17. Regardless, the PRC has the discretion to waive that requirement.

**3. Submission of a single, generic work plan vaguely characterized as a “standardized work plan,” purportedly intended to be used across all airports, as opposed to submission of separate, detailed work plans for each of the four airport districts in contradiction to Addendum No. 3 of the RFP.**

Again, Allied explained in its Proposal cover letter and Executive Summary (J-6 at #000763, 770) that its Work Plan and Transition Plan would be standardized to apply to all districts. In the Work Plan section of the proposal, Allied explained the reason it adopted this planning approach:

Allied Universal has conceptualized a plan to accommodate each district/airport by adhering to the standardized work plan to receive the same response efforts, resources and support, regardless of size or geographical location. Each DCSM will be equipped with maintaining and following the work plan for each airport under their respective districts.

J-6, #AUS00793. Thereafter, at the virtual interview, the PRC did not complain about this approach and thus, Allied retained it in its BAFO. See Yi testimony, 4/20/21 Tr. at 313. Ironically, Securitas' non-Oahu District work plans almost exclusively incorporated the Oahu District Work Plan. See e.g., J-5 #000651. In fact, neither offeror violated Addendum 3 Section 4.10.4, which stated that a "Work Plan shall be presented for each District listed in this RFP" but it did not require different work plans for each district.

Fujihara testified that he understood that Allied's work plan was standardized so that all districts would receive the same response efforts, resources and support regardless of geographical location. As noted above, he also understood that four unbilled team members were dedicated to implement this standardized work plan and concluded that the Allied work plan "went into more detail" and "did not leave anything to second guess." See 4/20/21 Tr. at 273-76."

See **Intervenor's Closing Argument** at pages 20 to 22.

The Hearings Officer concludes that Allied's Proposal was *not* incomplete, indefinite, ambiguous or conditional; and that ambiguity, if any, was cured by Allied's BAFO of \$178M and agreement to comply with the RFP including all Addenda.

The Hearings Officer initially denied the MSJ on Count A on the grounds that there were genuine issues of material fact. After Petitioner rested its case, Respondent renewed its MSJ and Intervenor made an oral Motion to Dismiss Count A. There was no factual dispute that Allied submitted its BAFO in the amount of approximately \$178M and included therein its agreement to comply with the RFP including all Addenda. Allied's BAFO did not provide them with an unfair

advantage because *both* offerors were bound by the RFP and Addenda including *only allowing wage increases under HGEA changes*.

Accordingly, the Hearings Officer concluded that there were no genuine issues of material fact *as a matter of law*, any ambiguity was cured by Allied's BAFO and GRANTED summary judgment in favor of Respondent and Intervenor on Count A.

**B. HDOT DID NOT USE AN ARBITRARY AND CAPRICIOUS SCORING METHODOLOGY.**

Petitioner asserts that "the scoring methodology used by the PRC was inconsistent, highly subjective, and did not clearly articulate to the evaluators or provide standards or guidelines on how to score proposals." In its Protest Letter and Petition, Petitioner cited five (5) *items* of what it perceived as the RFP evaluation *criteria* lacking standards, guidelines and/or specificity. As a result, Petitioner asserts that "the PRC *arbitrarily and capriciously* scored Allied higher than Securitas, which was contrary to law." See Petition at pages 5 and 8 (emphasis added.)

Respondent and Intervenor assert that inasmuch as Count B is based on the *content* of the RFP, it is *untimely* under HRS § 103D-701(a) because the Protest was submitted on November 30, 2020 *after* the date set for receipt of offers which was September 30, 2020. Notwithstanding the untimeliness, Respondent and Intervenor assert that the PRC comprising of five (5) district<sup>3</sup> airport managers relied on the RFP and Addenda thereto including a Complex Matrix developed by Lori Beckman of Aviation Security Consulting and did NOT arbitrarily or capriciously score Allied higher than Securitas.

The Hearings Officer is persuaded by the facts, law and Respondent's and Intervenor's arguments that any claim(s) based on the *content* of the RFP are *untimely* under HRS §103D-701(a) and, therefore, are summarily dismissed. HRS §103D-701(a) provides in relevant part as follows:

**§103D-701 Authority to resolve protested solicitations and awards.** (a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or a designee as specified in the solicitation. Except as provided in sections 103D-303 and 103D-304, a protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto; \* \* \* provided further that **no protest based upon the content of**

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<sup>3</sup> Honolulu, Maui, Kauai, Hilo and Kona.

**the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers.**

HRS §103D-701(a) (emphasis added.)

The RFP was released on August 3, 2020. The date set for receipt of offers was September 30, 2020. Petitioner did *not* file its Protest letter until November 24, 2020, well *after* date set for receipt of offers. Accordingly, the Hearings Officer granted *partial* summary judgement against Petitioner dismissing any claims that the *content, more specifically the five (5) items*, of the RFP was arbitrary and capricious.

The next issue is whether the PRC *applied* the RFP evaluation criteria, Addenda and Complex Matrix in an *arbitrary and capricious* manner when scoring Allied higher than Securitas.

As noted in *Roberts Hawaii School Bus, Inc. v. Kathryn S. Matayoshi, in her capacity as Superintendent/Chief Procurement Officer, Department of Education, State of Hawaii, PDH-2017-001 and 2017-002 [Consolidated] (April 13, 2017)*, the procuring agency's determinations of the relative technical merits of proposals are *entitled to great weight*. The Hearings Officer's job is to determine whether a *reasonable basis* exists for the conclusions reached or whether the conclusions are instead shown to be unreasonable, arbitrary, capricious, or contrary to law.

***Evaluation of proposals; technical merits;*** The determination of the relative technical merits of offers is a matter primarily left to the procuring agency and is **entitled to great weight**. The agency is in the best position to determine which technical proposal best meets its needs and must bear the burden for any difficulties incurred by a defective evaluation. The role of the Hearings Officer is therefore not to substitute his/her judgment for that of the agency. Rather, **the Hearings Officer will determine whether a reasonable basis exists for the conclusions reached or whether the conclusions are instead shown to be unreasonable, arbitrary, capricious, or contrary to law**. Mere disagreement with the decision of the evaluators is insufficient to show that the evaluation of proposals is unreasonable or the result of bias.

See, *Roberts Hawaii School Bus, Inc. v. Kathryn S. Matayoshi, in her capacity as Superintendent/Chief Procurement Officer, Department of Education, State of Hawaii, PDH-2017-001 and 2017-002 [Consolidated] (April 13, 2017)*. (emphasis added.) Procurement Code Desk Reference, 2020 Edition at page 33.

Petitioner asserts, among other things, that they are the incumbent airport security provider contractor for 16 years, 5 years ago they had near-perfect scores on a similar RFP, and that they are the only bidder with prior experience with contracts in similar size, scope and complexity *within the State*.

Respondent asserts that the PRC evaluators used the bidder responses to the RFP and Addenda and consistently scored Securitas lower based on the objective criteria as stated in the Complex Matrix.

Clint Kirgan, lead person assembling Securitas' proposal testified, among other things, that he was *surprised* to hear that the Project contract was awarded to Allied and that it was *unexpected*. See Transcript Volume 1 at page 40 lines 6 to 10. Five (5) years ago Securitas had a near-perfect score based on an *evaluation system similar to this one*.<sup>4</sup> See Transcript at page 40 lines 14 to 16. Five (5) years ago Securitas was awarded a three (3) year contract with 1 year renewals. See Transcript Volume 1 at page 40 lines 17 to 24. Mr. Kirgan testified that Securitas is a *better company* today than 5 years ago because in 2019 it acquired Global Security Consulting Group ("Global"). See Transcript Volume 1 at page 49 line 22 to page 50 line 7.

Petitioner relies on Section 4.91 of the RFP which states that "Points will be awarded during the evaluation process for prior experience with contracts in similar size, scope and complexity **within the State**." See Exhibit J-4 at page 505 (emphasis added.) See also, Exhibit J-1 at pages 069 and 077.

The Hearings Officer credits the testimony of Lori Beckman of Aviation Security Consulting. She provided technical support for the PRC and developed the Complex Matrix to assist the evaluators tabulate their scores. See Exhibits J and K.

According to Ms. Beckman, prior experience working in the State of Hawaii *was never meant to be in the RFP criteria* because it created an advantage for the incumbent. She wanted to make sure that a few large companies were able to apply. See Transcript Volume 1 at page 184 line 14 to page 185 line 11. This is consistent with the Legislative intent of *fostering*

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<sup>4</sup> The Hearings Officer finds it disingenuous that Securitas touts its near perfect score 5 years ago in response to an RFP *similar to his one*, then goes on to criticize the evaluation criteria of the instant RFP as being "inconsistent, highly subjective, and did not clearly articulate to the evaluators or provide standards or guidelines on how to score proposals received in response to the RFP;" "Item No. 1 does not specify how these 20 points are to be distributed;" "nowhere does the RFP explain how the PRC would assign points under Item No. 2;" "Item No. 3 is similarly vague and ambiguous." See Exhibit J-7 at pages 1208 to 1209.



*broad-based competition among vendors.*<sup>5</sup> Accordingly, the *prior experience working in the State of Hawaii* criteria was *removed* by Addendum 3, which responded to bidder questions:

64. In Section 5.2 Evaluation Criteria Phase 2 the table states: A maximum of 5 points will be awarded during the evaluation for **prior experience working in the State of Hawaii** in providing armed law enforcement and security services for similar size and capacity.” This requirement seems to **create a competitive disadvantage to bidders other than the incumbent.** There are no other programs combining Law Enforcement and Security of this size and capacity of which we are aware. Would the authority consider **removing** this advantage or otherwise modify it to include similar programs outside Hawaii?

Response: This requirement has been **removed** in this addendum 3.

See Exhibit J-3 at page 0451 (emphasis added.)

Notwithstanding, the removal of the *prior experience working in the State of Hawaii* criteria by Addendum 3, it was *mistakenly* still included in Addendum 5. See Exhibit J-4 at page 505, 4.91 4. According to Ms. Beckman, it would not have mattered if Securitas was awarded scores of 5 all the way across and Allied was scored a 1, Securitas’ scores still would have been lower than Allied:

The one thing that I did notice though, when I saw the response to the protest is that Securitas was concerned about that. And I went into the scoring sheet and **actually gave them a 5 all the way across and Allied a 1 and they still scored lower overall than Allied would have.**

**To me, it’s irrelevant because it wouldn’t have mattered.**

See Transcript Volume 1 at page 185 lines 12 to 19 (emphasis added.)

The Hearings Officer finds and concludes that even if Securitas were to be awarded the 5 points (max) by all 5 evaluators, for *prior experience working in the State of Hawaii*, based on the inadvertent *mistake*<sup>6</sup>, Securitas’ total score for Knowledge and Experience,

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<sup>5</sup> In enacting Hawaii Revised Statutes (“HRS”) Chapter 103D, the Hawaii Public Procurement Code (“Code”), the Legislature sought to establish a comprehensive code that would: (1) provide for fair and equitable treatment of all persons dealing with the procurement system; (2) **foster broad-based competition among vendors** while ensuring accountability, fiscal responsibility, and efficiency in the procurement process; and (3) increase confidence in the integrity of the system. *Standing Committee Report No. S8-93, 1993, Senate Journal at 39; HAR §3-120-1.* See, *Hawaiian Dredging Construction Co. v. City & County of Honolulu, PCH 99-6 (August 9, 1999); Wheelabrator Clean Water Systems, Inc. v. City & County of Honolulu, PCH 94-1 (November 4, 1994); Fletcher Pacific Construction Co., Ltd. v. State Dept. of Transportation, PCH 98-2 (May 19, 1998)* (emphasis added.)

<sup>6</sup> of leaving the *prior experience working in the State of Hawaii* criteria in the scoring matrix

as well as their overall score, would still be well below Allied's scores. See Exhibit K. This "technical" mistake should not stand in the way of the taxpayer saving \$20M. See, *FV Coluccio Construction Co., Inc. v. City & County of Honolulu, Department of Environmental Services and Department of Budget and Fiscal Services. PDH-2018-005 (May 8, 2018)*.

Petitioner asserts that the acquisition of Global makes Securitas a *better company today than five (5) years ago*. On the contrary, a detailed comparison of Securitas' and Global's prior experience combined, compared to Allied's experience still shows an overwhelming experience criteria in favor of Allied.

*Securitas* secures two (2) Cat X airports, whereas *Allied* secures seven (7). *Global* secures *terminals*, whereas *Allied* secures the entire *airport* authority. A comparison of Securitas' BAFO, Exhibit J-5 at pages 582 and 587, with Allied's BAFO, Exhibit J-6 at page 779, reveals an overwhelming *experience* factor in favor of Allied, which, accordingly, explains why the PRC *objectively* scored Allied higher than Securitas.

Securitas' experience:

Cat X Airport: Daniel K Inouye International Airport:  
Continuously since 2004 including all 11 airports in Hawaii;

Cat X Airport: Detroit Metropolitan International Airport: Our contract with Wayne County airport Authority at Detroit Metropolitan Airport and Willow Run airport was awarded March 15, 2017.

Syracuse Hancock International Airport: Began on July 1, 2017.

See Exhibit J-5 page 582.

Global's experience:

Cat X Airport: John F. Kennedy International Airport: **Terminal 4** since June 2017.

Cat X Airport: Washington Dulles International Airport:  
Subcontractor to HSS for **35%** of the aviation security services.  
**Terminal** and airport perimeter security.

Cat X Airport: Newark Liberty International Airport: **Terminal** security services in United Airlines exclusive space **Terminal C** and **Terminal A** at Newark Airport.

Cat X Airport: Minneapolis-Saint Paul International Airport:  
Contracted by **Delta Airlines**.

See Exhibit J-5 at page 587 (emphasis added.)

Allied's experience:

As of April 2020, Allied Universal secures more than two dozen large and medium **airports** complying with Title CFR 49 1542 Airport Security Regulations, over a dozen general aviation facilities and more than four dozen air cargo and international air carrier screening operation with airfield access. . . **Major airports** Allied Universal services includes John F. Kennedy International Airport, La Guardia Airport and Rochester International Airport in NY; Newark Liberty International Airport in NJ; Jacksonville International Airport, Ft. Lauderdale-Hollywood International Airport and Miami International Airport in FL; Dallas Love Field and San Antonio International Airport in TX; Memphis International Airport in Tennessee; Philadelphia International Airport, Burbank Hollywood Airport and John Wayne International Airport in CA.

Allied Universal's current aviation security scope includes:

Contracts for (7) Cat X **airports**  
Contracts for (18) Cat 1 and 2 **airports**  
Contracts for (16) Cat 4 and GA **airports**

See Exhibit J-6 at page 779 (emphasis added.)

The Hearings Officer finds and concludes that *all five* (5) evaluators on the PRC scored Securitas consistently lower than Allied in *all categories* of the RFP and Addenda. See Exhibit K. The Hearings Officer concludes that Petitioner has NOT met its burden of proof in establishing that the scoring methodology used by the PRC was arbitrary and/or capricious.

**C. HDOT DID NOT RELY ON CRITERIA OUTSIDE THE RFP**

Petitioner asserts that "The evaluators used Criteria Outside the RFP." See Protest Letter at Count C. Petitioner listed six (6) bullet points of examples of PRC's *improper evaluation*. See Exhibit J-7.

Respondent asserts that the RFP language was sufficient to put all offerors on notice that past performance would be evaluated even though it was not specifically indicated in the evaluation criteria. "The PRC obtained background information through references for

offerors, excluding Securitas's subsidiary references because Securitas indicated during their interview that it would not use the subsidiary for this project." See Exhibit J-8 at page 1221.

At the outset, the Hearings Officer credits the testimony of Lori Beckman that *none of the evaluators asked her any questions outside of the proposals*:

Q. Are you aware of anything that any of the members scoring or considering factors outside the RFP?

MR. TOBIN: I would still object as to - you're asking if she is aware of what they were aware of. It doesn't seem like there is any foundation there. Also hearsay.

THE HEARINGS OFFICER: She can answer within her own understanding and knowledge. So overrule that objection.

A. **I never had any of them ask me any thing that was outside of what they were reading in the proposal.**

See Transcript at page 184 lines 1 to 13 (emphasis added.)

The Hearings Officer also credits the testimony of Craig Fujihara. Mr. Fujihara testified, among other things, that he is employed by the Hawaii Department of Transportation Airport Division. See Transcript Volume 1 at page 207 line 3. He was the chairperson of the PRC. See Transcript Volume 1 at page 209 line 2. Each island had a representative on the review committee. See Transcript Volume 1 at page 209 line 5. Lori Beckman provided technical assistance to the PRC including development of the Complex Matrix. The PRC met telephonically to discuss the information on the proposals, but not the scores. See Transcript Volume 2 page 234 line 5 to page 235 line 17. Mr. Fujihara relied solely on the responses to the RFP and looked at completeness and detail in arriving at a score.

Q. Did you or anyone else on the committee consider information outside the proposal or any of the addendum?

A. No, no. It was only, it was strictly by the answers that they submitted.

See Transcript Volume 1 at page 212 line 25 to page 213 line 4.

With regard to the six (6) bullet points of alleged *improper evaluation*, the Hearings Officer agrees with the arguments contained in Respondent's Denial Letter and Closing Argument,

which are incorporated by reference herein, and Intervenor’s Closing Argument, which the Hearings Officer adopts in full as follows:

“SECURITAS’ § C EVALUATORS USED CRITERIA OUTSIDE THE RFP CLAIM IS WITHOUT MERIT

Section C of the Protest listed six criteria that Securitas argues was not referenced in the RFP.

**Protest § C at Point 1** states:

Under the “Background and Company Information” evaluation criteria set forth in Item No. 1, the PRC faulted Securitas for including needed logistical positions and compliance manager but praised Allied for having 4 unbilled staff (whereas Securitas had 8). Kirgan Decl. ¶ 6. HDOT indicated during the debriefing that that Airport Compliance Manager position appeared to be more beneficial to meeting company requirements and service to their employees rather than support the needs of the client and requirements of the contract. *Id.* ¶ 7. Nowhere in the RFP, however, was the PRC permitted to dock points for such added support. *See generally* Exhibits 1 [J-1], 2 [J-3], & 3 [J-5].

J-7 #001210 (emphasis added). Clint Kirgan, Securitas administrative specialist testified:

Allied proposed, I believe it was four unbilled support positions. And Securitas proposed five of its own unbilled, we refer to them as value added support positions. And in the evaluator's comments that I had hand transcribed at that debriefing meeting it was noted that the comments for Allied reflected it as a benefit, an advantage. Whereas under Securitas it was perceived as a disadvantage, there was a remark they felt that specifically one position, a compliance officer position, for some reason they felt it only benefited Securitas, it had no benefit to the client.

4/19/21 Tr. at 51.

The “4 unbilled staff” was a reference to the four positions noted in the opening page of Allied’s work plan that stated:

In addition to the Hawaii Branch Management and Operations Team, there will be a team specifically dedicated to the Hawaii State Airports, that will be non-billable to DOTA. Allied Universal recognizes the operational depth, the impact of time to meet staffing requirements, and the overall support needed for the successful execution of the contract and work plans by district/airport. As such, we will have a dedicated Director of Operations, Human Resource

Manager, Senior Human Resource Coordinator, and Recruiter, who will be dedicated to the Hawaii State Airports in support of the Key Personnel Management Team.

J-6 #001025 (emphasis added). Fujihara testified that he understood that Allied's work plan was standardized so that all districts would receive the same response efforts, resources and support regardless of geographical location. He also understood that four unbilled team members were dedicated to implement this standardized work plan and concluded that the Allied work plan "went into more detail" and "did not leave anything to second guess," supporting the "quality, clarity and completeness of Allied's plan. See 4/20/21 Tr. at 273-76.

The "Airport Compliance Manager" was referenced in Securitas' proposal as follows:

The Airport Compliance Manager will perform a variety of specialized administrative functions with a specific emphasis on Human Resources compliance to include (but not limited to) licensing, wage and hour, meal and rest, OSHA/safety, union, employee files, regulatory reporting. Performs operational, regulatory and compliance audits and will also perform special projects and analyses as required. Validates that management and employees are in compliance with the rules and regulations of regulatory agencies and that company policies and procedures are being followed.

J-5 #000760. Even if the PRC preferred Allied's four above-referenced managers to Securitas' Airport Compliance Manager, based on the purportedly relative service they would be providing HDOT that determination would not be arbitrary and capricious.

**Protest § C at Point 2** states:

The PRC faulted Securitas for its description of its key personnel, finding that Securitas' proposal included incumbent managers at the State's airport without any "check-in" to see if HDOT personnel within a district wanted to retain the incumbent manager. Kirgan Decl. ¶ 8. The RFP, however, does *not require* that any offeror vet any manager with HDOT personnel. The PRC imposed an additional evaluation factor outside the requirements set forth in the RFP, and this evaluation factor should never have been considered by the PRC.

Addendum 5 at § 3.26 entitled “Minimum Qualifications by Position” has specific requirements for CSM, and DCSMs (J-4 #000469-76). Furthermore, Addendum 5 at § 4.9.1 entitled “Offeror Experience” requested:

Identify the key qualified personnel who will be assigned to the Contract, if selected. At a minimum, include names and brief resumes of the CSM, DCSMs and the Training Manager being considered for the Contract. The resumes should be included as Appendix A (see Section 4.6) and will not count towards the maximum page count of the proposal.

J-4 #000505 (emphasis added). In addition, HDOT’s letter inviting Securitas to the virtual interview specifically invited the proposed CSM, DCSM for each district and training manager (Ex. 1 #000001). In the interest of completeness, as the incumbent who was proposing retention of all of its current key personnel, Securitas did not address the quality of service each such key personnel provided HDOT during its current contract, nor afforded HDOT the opportunity in its proposed plan to provide recommendations on key personnel. Allied, on the other hand, proposed key personnel and also welcomed HDOT’s recommendation to retain incumbent key personnel (J-6 #000786).

**Protest § C at Point 3** states:

The PRC faulted Securitas’ proposal due to Securitas’ reliance of the past experience of Global Security Consulting Group (“Global”), which merged with Securitas in January 2019. Kirgan Decl. ¶ 9. As to “Offeror Experience,” however, the RFP only requires an offeror to “[p]rovide information on firm’s background and qualifications” and to “demonstrate such experience by describing at the minimum, [sic] two (2) contracts of similar size, scope, and complexity.” See Exhibit 3 at 107. Even removing references to Global’s experiences in Securitas’ proposal, Securitas set forth four current contracts that it, and not Global, maintains in the State and other locations, demonstrating its experience in the field. See Exhibit 4 at 19 [J-5 #000582]. The PRC imposed evaluation criteria outside the RFP when it deducted points as result of Global’s experience. Moreover, the RFP does not set forth any qualitative or quantitative standards as to how each contract experience should be judged or how many points awarded for each experience.

J-7 #001209-10 (emphasis added). However, Securitas’ proposal in response to 4.9.1.2 request to *“provide examples of experience working within the framework of TSA regulations and Security Directives,”* other than existing services provided

at Hawaii State airports, *only* listed Global's experience.<sup>7</sup> J-5 #000586-87. Even in response to the 4.9.1.1 overall experience request, Securitas devoted 3 pages to Global (J-5 #000579-81) and only 1 page to Securitas' experience (J-5 #000582).

This caused HDOT to ask Securitas:

- It appears Global is managing the aviation contracts now, but not Hawaii? What does this mean in regard to Hawaii and HDOT-A contract?

Ex. 1 #000004. At the virtual interview, Securitas responded:

The acquisition of Global has further extended the already vast aviation security knowledge and experience Securitas already had throughout the world. This acquisition is part of the reason why Securitas is the largest aviation security services provider in the world. That said, the aviation security services provided to the Hawaii State airports will continue to be managed by your local Securitas Hawaii team, the same people you are already used to working with. Global will not be directly managing the Hawaii State airports contract.

I-12 #AUS000184 (emphasis added). The above is compared to Allied's response to 4.9.1.2:

As of April 2020, Allied Universal secures more than two dozen large and medium airports complying with Title CFR 49 1542 Airport Security Regulations, over a dozen general aviation facilities, and more than four dozen air cargo and international air carrier screening operations with airfield access, accounting for more than **4 million hours** of comprehensive security and screening services per year.

Major airports Allied Universal services includes **John F. Kennedy International Airport, LaGuardia Airport, and Rochester International Airport** in NY; **Newark Liberty International Airport** in NJ; **Jacksonville International Airport, R. Lauderdale-Hollywood International Airport, Miami International Airport** in FL; **Dallas Love Field and San Antonio International Airport** in TX; **Memphis International Airport** in Tennessee; **Philadelphia International Airport, Burbank**

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<sup>7</sup> Securitas' 3/30/21 Appeal at 11 argued: "HDOT relies on purported "piling up TSA violations" as the basis for its finding that Securitas is not the most responsible offeror when compared to Allied. . . [but] TSA violations were never raised by HDOT as a basis for scoring Securitas lower in the debrief session." At the hearing, Fujihara confirmed that even though he was aware of TSA violations as HDOT liaison with TSA, in scoring, he nonetheless only considered information in the proposals (4/19/21 Tr. at 209-10, 212-13).



**Hollywood Airport and John Wayne International Airport in CA.**

Allied Universal's current aviation security scope includes:

+ Contracts for **(7) Cat X airports**, totaling **over 40,000-man hours per week**

+ Contracts for **(18) Cat 1 & 2 airports**, totaling **over 13,000-man hours per week**

+ Contracts for **(16) Cat 4 & GA airports**, totaling **nearly 5,000-man hours per week**

J-6 #001011.

Fujihara testified he gave Securitas a score of 3 out of 5 for Item 2 on Knowledge and Experience because in response to § 4.9.1.2 Securitas mostly relied on Global's experience (4/20/21 Tr. at 244-45). Allied's response at (J-6 #000779) had more detail of the type of TSA regulated service provided (4/20/21 Tr. at 258) and confirmed that his score sheet eliminated the "in State" experience as amended in Addendum 3 (4/20/21 Tr. at 273). The argument that the "PRC imposed evaluation criteria outside the RFP when it deducted points as result of Global's experience" is a mischaracterization of a comparison of the proposals. Rather, HDOT reasonably could have concluded based on the proposals that without Global's experience directly managing this contract, Allied has more aviation security experience in the U.S. than Securitas and more experience "*working within the framework of TSA regulations and Security Directives.*" Arriving at that conclusion based on the proposals would be fact-based, not arbitrary and capricious.

Further, the argument that Global's non-involvement in Hawaii should not matter since Securitas had a near perfect score in this category in 2015 when Global was not associated with Securitas ignores: (a) Securitas' 2020 proposal in comparison with Allied's 2020 proposal is the only thing that counts in 2020; and (b) that the requirements of the 2020 RFP included many new requirements, see Beckman testimony<sup>8</sup>, and comparison of Securitas' 2015 proposal (Ex. 8) with its 2020 proposal (J-5).

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<sup>8</sup> Beckman testified (4/19/21 Tr. at 161-71) that the 2020 RFP added new requirements related to:  
- Training plan

**Protest § C at Point 4** states:

As reflected by the PRC's scores under Item No. 2 (Knowledge and Experience), four of the five evaluators rated Allied a perfect 25 out of 25 in this category while the fifth evaluator provided Allied with a score of 22, and Securitas received an average score of 14.6 in this category from each of the evaluators, nearly ten points below Allied. Section 3 of the RFP mandates the PRC to consider an offeror's "prior experience with contracts in similar size, scope, and complexity within the State." Exhibit 3 at 107 ¶ 4.9.1 [J-4 #000505 (emphasis added). Allied, however, could not have scored the maximum amount of points allowed under Item No. 2 by any evaluator because it was only registered to do business in this State in 2013, and Securitas has held the contracts to provide security services at the State's airports for the last sixteen years, including having held the statewide contract since 2007, without any major incidents. Sappal Decl. ¶ 17. With its sixteen years of experience serving Hawaii's airports, Securitas is the only security company with the prior experience working in the State in providing armed law enforcement and security services of similar size and capacity (as it currently employs approximately 1,100 officers to perform the statewide contract to provide security services at the State's airports). Id. ¶ 18. By granting Allied, which lacks similar experience in the State, a near perfect score under this category, the PRC ignored the evaluation criteria contained in Item No. 2.

J-7 #001211 (Emphasis added). As noted above, the significance of experience in the State of providing "armed law enforcement and security services" was removed so as not to give the incumbent an unfair competitive advantage. See Addendum 3 at section 5.2 (J-3 #000409), Addendum 3 in question 64 (J-3 #000451), Section 5.2, which was not amended in Addendum 5 (J-4 #000461) and was not on the PRC score sheet (Ex. K #001285). The Offerors were provided notice of this change. Securitas did not protest that change before the BAFO was presented. Thus, it would not be arbitrary and capricious if the PRC did not give Securitas extra credit

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- Training hours required
  - Re-Occurring training
  - Semi-Annual requalification
  - Consistency across the islands / districts
  - Skill sets
  - Industry certifications
  - Honolulu, Kahului, Kona LEO previously had insufficient training/requirements
  - Technical specifications
  - Psychological testing
  - Critical thinking skills
  - Virtual shooting training/range

for its relative experience in Hawaii in providing “armed law enforcement and security services”.

**Protest § C at Point 5** states:

On Item No. 3 (Plan and Approach), the PRC faulted Securitas for not providing an emergency response plan with its proposal. Kirgan Decl. ¶ 10. But the RFP does not require submission of an emergency response plan with an offeror’s proposal. Rather, Section 3.30 of the RFP states that the “Contractor will develop and complete their own formal, written Emergency Response Plans that are consistent with the airport’s emergency plans. . . . A copy of the Contractor Emergency Response Plans will be provided to the ASC prior to Contract transition.” Exhibit 2 at 81 [J-3 #000479] (emphasis in original). The PRC thus imposed an additional condition in its evaluation not set forth in the RFP by faulting Securitas for failing to submit an emergency response plan with its proposal.

J-7 #001211 (emphasis added). As discussed above, Section 4.10.4 entitled “Work Plan” specifically requested:

4. Address the capabilities to immediately ramp up security services during major emergencies and/or increases in levels of State or federal security. Please elaborate on the strategy to have a pool of pre-certified personnel to quickly serve as law enforcement officers and other security personnel during such emergencies.

J-4 #000507 (emphasis added) (“**Request 4**”). In addition, Section 3.29 discusses Emergency Staffing:

There may be situations such as a temporary security incident, elevated security levels and Security Directives issued by the TSA that will require DOTA to require the Contractor to increase immediately staffing levels from one to all State airports in this Contract.

Contractor must submit a written plan for emergency staffing increases in Contractor’s Proposal. Emphasis should be placed on increasing part time staff hours before assigning overtime whenever possible. The Emergency Staffing Plan can be an appendix to the Proposal.

J-4 #000479. Finally, Section 3.30 states:

The Contractor will develop and complete their own formal, written Emergency Response Plans that are consistent with the airport’s emergency plans. The DCSM will keep their emergency response plans current and ensure that all Contractor personnel are knowledgeable of both their emergency plans. A copy of the

Contractor Emergency Plans will be provided to the ASC prior to Contract transition.

No party questioned Fujihara on this issue and neither Allied nor Securitas attached an emergency response plan to its proposal. However, Allied substantively addressed emergency response in its work plan matrix in response Request 4 that stated as its “Tangible Deliverables:”

- Quick Response Team (CRT)
- QRT Master Roster per District
- QRT to complete initial and recertification training required for their designated positions to fill
- Emergency response time and priority level is key
- Willing to transfer personnel inter-island in the event of emergency or natural disaster
- Monthly health & welfare checks on QRTs to determine availability and eligibility
- Risk Advisory Consulting Services (RACS) ODOs
- Communication Priority Lists (CPL) from AUS chain of command to DOTA

J-6 # #001026. Allied’s BAFO also addressed Request 4 in narrative format (J-6 #001080-83) and discussed emergency response items in its Transition Plan matrix (J-6 #001086). On the other hand, Securitas’ response to Request 4 had no planning deliverables (J-5 #000623-24). Thus, if the PRC gave Allied more points than Securitas regarding emergency response, that would not be an arbitrary and capricious decision.

**Protest § C at Point 6** states:

On Item No. 3 (Plan and Approach), the PRC faulted Securitas for not addressing a training plan in its proposal. Kirgan Decl. ¶ 11. But the RFP does not require submission of a training plan with an offeror’s proposal. Rather, Section 3.30 of the RFP states that “[a] Training Plan must be submitted to DOTA prior to Contract transition and then carried out as approved by the AIRLC.” Exhibit 2 at 81 [J-4 #000479] (emphasis in original). The PRC thus imposed an additional condition in its evaluation not set forth in the RFP by faulting Securitas for failing to submit a training plan with its proposal.

J-7 #001211-12 (emphasis added). Addendum 5, Section 3.31 states:

The Contractor is responsible for providing at minimum, the training required by position in Figure 2 and shall be responsible for providing training to all Contractor staff prior to assuming Posts. Post testing, recurrent and remedial training must be provided to

ensure that all Contractor staff are properly trained to carry-out their assigned duties. A Training Plan must be submitted to DOT A prior to Contract transition and then carried out as approved by the AIR-LC. All training must be individually documented in employee training folders and made available to DOT A upon request.

Addendum 5 then goes on to discuss 3.32 Law Enforcement Officer Training, 3.33 ASO/TCO Training that included and Initial Training matrix in Figure 2, and Annual Training in Figure 3, 3.34 Training Materials, 3.35 Test/Written Assessments, 3.36 Documentation and 3.37 Evaluations. J-4 #000479-84.

As discussed above, Section 4.10.4 entitled “Work Plan” specifically requested:

9. Provide your firm's proposed staffing plan to hire, train, and fulfill the requirements of the contract within a limited timeframe between contract award and start date.

J-4 #000507 (emphasis added) (“**Request 9**”). In response to Request 9 and information requested in Sections 3.32 to 3.37, Allied’s BAFO extensively discussed its training program (J-6#001058-67).

Furthermore, in response to Questions 8, and 12-16 from PRC to Allied related to training (I-10 #AUS000092), at the virtual interview, Allied prepared and discussed 12 slides that described its training program (I-11 #AUS000108, 112-123). On the other hand, Securitas in response to Questions 6, and 8-17 from PRC as to training (Ex. 1 #000003-4), presented at the virtual interview 7 slides that described its training program in less detail than Allied’s presentation slides (I-12 #AUS000177-183). Securitas should have known that HDOT wanted to learn more about its training program than what was presented in its proposal because it asked many training questions and the first question stated: “*The Proposal acknowledged that there is training required by the RFP. Please expand on Proposer's training plan to organize and implement the various training requirements.*” Ex.1 #00003 (emphasis added).

In addition, Beckman who as technical advisor to the PRC drafted additional requirements in the RFP, testified with respect to each offeror’s training plan:

Allied was very thorough. They had a lot of detail in their proposal. Securitas was very high level. There was only a couple of paragraphs where they had the opportunity to really expand on how they would take it to the next level with this new contract and they didn't take that opportunity. And we even gave them an opportunity in questions that the PRC asked to circle back and provide more information and they still didn't do it.

4/19/21 Tr. at 203-04.<sup>9</sup>

In light of the plethora of requests from the PRC to both parties relating to training, the argument that the PRC did not request a training plan in the RFP is simply not true. The PRC clearly requested detailed information on training and given the relative submissions on training, it would not be arbitrary and capricious for the PRC to give Allied a higher score under item 3 for Plan and Approach.”

See, Intervenor's Closing Argument at pages 11 to 20.

The Hearings Officer finds and concludes that the evaluators on the PRC did not use criteria outside the RFP. The Hearings Officer concludes that Petitioner has NOT met its burden of proof in establishing Count C.

**D. ALLIED IS A RESPONSIBLE OFFEROR AND MOST ADVANTAGEOUS TO HDOT**

In its *Protest Letter*, Petitioner asserts that Allied is *not* the *most responsible* Offeror. In its *Petition*, Petitioner asserts that it is the *responsible* offeror vis-à-vis Allied.

It should be noted at the outset that Petitioner never argues that Allied is not a responsible offeror, so this argument is off the mark. Responsibility is a pass/fail standard and can be determined at any time prior to award. See *Browning -Ferris Industries of Hawaii, Inc. v. Dept. of Transportation, PCH 2000-4 (June 8, 2000)*; *Okada Trucking Co. v. Board of Water Supply, et al.* 97 Haw. 544 (App. 2001).

Petitioner seems to be asserting that it is *more responsible* than Allied based on sixteen (16) years of superior service in the State of Hawaii, TSA violations were never raised by HDOT as a basis for scoring Securitas lower in the debrief session and is not an evaluation factor

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<sup>9</sup> Securitas tried to impeach Beckman during the hearing by implying that she was biased against Securitas, in favor of Allied and influenced the PRC, but despite fishing for evidence, it introduced none. See e.g., Tr. at 188-89, 195. In fact, Fujihara testified that Beckman was not involved in scoring: “In our scoring evaluation there was only the [PRC] members. No one else.” See 4/20/21 Tr. at 269.

set forth in the RFP, Allied is a California company and it never walked the neighbor island airports to better understand them, and HDOT does not acknowledge the PRC's incorrect assumption that Allied was the only vendor to offer a current SAFETY Act designation. See Petition at pages 11-12.

Respondent asserts that Securitas' prior violations of TSA regulations indicates an inability to perform fully the contract requirements with integrity and reliability which will assure good faith performance and HDOT has the *sole discretion* to determine if an offeror is responsible and which proposal is the most *advantageous* for the state. See Response at pages 37-39.

The Hearings Officer agrees with Respondent's argument and accordingly GRANTED summary judgment in favor of Respondent on this Count.

In the RFP, HDOT specifically reserved the right to reject any and all Proposals and waive any defects if the HDOT believes the rejection or waiver to be in the best interest of the HDOT. See Exhibit J-3 at page 408. HDOT has the sole *responsibility and discretion* to determine whether the offeror is a "responsible" offeror, that is, whether the offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. HRS §103D-310 provides in relevant part:

**§103D-310 Responsibility of offerors.**

\* \* \*

(b) Whether or not an intention to bid is required, **the procurement officer** shall determine whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For this purpose, the officer, in **the officer's discretion**, may require any prospective offeror to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy board.

HRS §103D-310 (Emphasis added.)

Responsibility may be determined *at any time prior to award*:

A responsible bidder is a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance. Capability refers to the capability at the time of award of contract. Accordingly, these definitions are consistent with the conclusion that Responsibility may be **determined at any time up to the awarding of the contract**.

*Browning -Ferris Industries of Hawaii, Inc. v. Dept. of Transportation, PCH 2000-4 (June 8, 2000); Okada Trucking Co. v. Board of Water Supply, et al. 97 Haw. 544 (App. 2001) (Emphasis added.)*

The law and administrative rules allow the procuring officer to discuss proposals with the responsible offerors, revise proposals and even allows offerors to submit new proposals prior to receipt of BAFO. See HRS §103D-303(f) and HAR §3-122-53(e)(1).

HRS §103D-303(g) provides that that the *standard* is not which offeror is *more responsible*, but which proposal is more *advantageous* to the state taking into consideration *price* and other evaluation factors.

**§103D-303 Competitive sealed proposals.**

\* \* \*

(g) Award shall be made to the responsible offeror whose proposal is determined in writing to be the **most advantageous**, taking into consideration **price and the evaluation factors** set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

See HRS §103D-303(g) (emphasis added.)

As noted in *Roberts Hawaii School Bus, Inc. v. Kathryn S. Matayoshi, in her capacity as Superintendent/Chief Procurement Officer, Department of Education, State of Hawaii, PDH-2017-001 and 2017-002 [Consolidated] (April 13, 2017)*, the procuring agency's determinations of the relative technical merits of proposals are *entitled to great weight*. The Hearings Officer's job is to determine whether a *reasonable basis* exists for the conclusions reached or whether the conclusions are instead shown to be unreasonable, arbitrary, capricious, or contrary to law.

***Evaluation of proposals; technical merits;*** The determination of the relative technical merits of offers is a matter primarily left to the procuring agency and is **entitled to great weight**. The agency is in the best position to determine which technical proposal best meets its needs and must bear the burden for any difficulties incurred by a defective evaluation. The role of the Hearings Officer is therefore not to substitute his/her judgment for that of the agency. Rather, **the Hearings Officer will determine whether a reasonable basis exists for the conclusions reached or whether the conclusions are instead shown to be unreasonable, arbitrary, capricious, or contrary to law**. Mere disagreement with the decision of the evaluators is insufficient to show that the evaluation of proposals is unreasonable or the result of bias.



See, *Roberts Hawaii School Bus, Inc. v. Kathryn S. Matayoshi, in her capacity as Superintendent/Chief Procurement Officer, Department of Education, State of Hawaii*, PDH-2017-001 and 2017-002 [Consolidated] (April 13, 2017). (emphasis added.) Procurement Code Desk Reference, 2020 Edition at page 33.

The undisputed facts are that both Allied and Securitas were deemed to be responsible offerors. Responsibility is a pass/fail standard and can be determined at any time prior to award. The standard is not who is the *most responsible* offeror, but whose proposal is determined in writing to be the *most advantageous*, taking into consideration *price* and the *evaluation factors* set forth in the RFP. See, HRS §103D-303. The credible evidence, and there is no *genuine* issue, is that the Allied scored higher than Securitas on *all* evaluation factors set forth in the RFP and Addenda by *all* evaluators. Allied's BAFO in the amount of approximately \$178M is approximately \$20M *less* than Securitas' BAFO. The Hearings Officer finds and concludes that Allied's Proposal is/was responsible and clearly the most *advantageous* to HDOT and the State. Accordingly, the Hearings Officer GRANTED summary judgment in favor of Respondent on this Count.

**E. HDOT DID NOT PROHIBIT SECURITAS A MEANINGFUL OPPORTUNITY TO PROTEST THE RFP**

Petitioner asserts that HDOT refused to produce information in a timely manner in response to its request for HDOT's "RFP procurement files and related documents or communications" under the Uniform Information Practices Act ("UIPA") and HAR §3-126-6 which resulted in a failure to allow Securitas a meaningful opportunity to protest the award.

Respondent asserts that it *must* withhold government records that are protected under HRS §§92F-173(2), (3) and (4) and/or HAR §3-126-6. In this case, because the contract had *not* been awarded and rather a *notice* of award was made, government records that were marked confidential were *not* provided to Securitas based on the law<sup>10</sup> which includes documents that are *confidential, proprietary*, and financial information as claimed by Allied.

The Hearings Officer is persuaded by Respondent's position on this issue. HAR §3-126-6(b) allows the HDOT to withhold information that is *proprietary, confidential, or otherwise permitted or required to be withheld by law or rules*:

(b) The chief procurement officer or designee shall, upon written request, make available to any

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<sup>10</sup> HAR §3-126-6

interested party information submitted that bears on the substance of the protest **except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or rules.**

See HAR §3-126-6(b) (emphasis added.)

The undisputed facts are that Petitioner made a request for information under the UIPA and HAR §3-126-6. It is also undisputed there are *thousands of pages* of documents introduced as exhibits in this matter - see Joint Exhibits J-1 to J-8, Petitioner's Exhibits 1 to 9, Respondent's Exhibits I, J and K, and Intervenor's Exhibits I-1 to I-24 – including, but not limited to the “RFP procurement files and related documents or communications” as requested by Petitioner.

On these facts, the Hearings Officer cannot conclude that HDOT refused to produce information in a timely manner in response to a request under HAR §3-126-6 thereby prohibiting Securitas a meaningful opportunity to protest the RFP.

With regard to Petitioner's request for information under the UIPA, whether HDOT complied with the request or not is *moot* because the Hearings Officer concludes that he does not have jurisdiction over disputes regarding the UIPA. Petitioner's remedies under Chapter 92F include requesting *administrative review* with the Office of Information Practices, see HRS §§92F-41 and 92F-42<sup>11</sup> and/or bringing civil action against HDOT in *circuit court*, see HRS §92F-27.

The Hearings Officer finds and concludes that Petitioner was not deprived of a meaningful opportunity to protest the RFP. Accordingly, the Hearings Officer granted summary judgment in favor of Respondent on this Count.

### **OVERALL CONCLUSION**

Petitioner and Intervenor were the two remaining Offerors after Phase 1. Both were responsible and on the priority list. Notwithstanding the RFP calls for a minimum of *three (3)* evaluators with *sufficient qualifications and experience in this area*, this PRC had *all five (5) district managers* from the major Hawaii airports reviewing the Proposals, which if anything provides for more objectivity and less opportunity for error. Respondent's PRC used a Complex Matrix, developed by a contracted airport security consultant and based on the evaluation criteria set forth

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<sup>11</sup> And appealing the agency's denial pursuant to HRS §92F-27.5

in the RFP, to evaluate and score the two Proposals. *All five (5) evaluators on the PRC independently scored Intervenor substantially higher than Petitioner on all evaluation criteria set forth in the RFP and Addenda.*<sup>12</sup> *Even if Securitas were to be awarded the 5 points (max) by all 5 evaluators, for prior experience working in the State of Hawaii based on the inadvertent mistake in the RFP and Addenda and Allied was awarded 1 point, Securitas' total score for Knowledge and Experience, as well as their overall score, would still be well below Allied's scores. The BAFOs and scores on the Complex Matrix demonstrate that the PRC's evaluation and scoring of the proposals was NOT arbitrary or capricious, nor did it use criteria outside the RFP and/or Addenda. A side-by-side comparison of the information submitted in response to the RFP corroborates Allied's detail and completeness in answering the questions and objectively demonstrates the basis for Allied's higher scores. See Exhibit A attached to Intervenor's Closing Argument. The PRC is entitled to great weight*<sup>13</sup> *in evaluating the technical merits of proposals. Based on the foregoing, the Hearings Officer concludes that there was a reasonable basis for HDOT to score the proposals in favor of, and award the Contract to, Allied.*

At the end of the day, the Procurement Code was meant to ensure that government purchases will be made in an *economical* and efficient manner that will *benefit the people of the State*. Allied's Proposal, at \$20M less than Securitas' coupled with higher scores on *all* evaluation criteria, is clearly the most *advantageous* to people of the State of Hawaii. The procurement process worked. Petitioner has *not* sustained its burden of establishing that HDOT's determinations in denying the Protest were contrary to the Constitution, statutes, regulations, or the terms and conditions of the solicitation.

Insofar as consistent herewith, the Hearings Officer also adopts and incorporates by reference herein Respondent's and Intervenor's Closing Arguments submitted on 4/27/2021 and e-filed on 4/28/2021.

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<sup>12</sup> Allied's combined average score was 96.28 compared to Securitas' average score of 62.5 out of a total 110 points.

<sup>13</sup> See, *Roberts Hawaii School Bus, Inc. v. Kathryn S. Matayoshi, in her capacity as Superintendent/Chief Procurement Officer, Department of Education, State of Hawaii*, PDH-2017-001 and 2017-002 [Consolidated] (April 13, 2017). (emphasis added.) Procurement Code Desk Reference, 2020 Edition at page 33.

IV. DECISION

Based upon the foregoing findings and conclusions, the Hearings Officer orders as follows:

1. Respondent's motion to dismiss/motion for summary judgment (joined by Intervenor) is granted, in part, and denied in part;
2. Intervenor's oral motion to dismiss Count A after Petitioner rested its case is granted.
3. Petitioner's Petition is dismissed with prejudice;
4. Respondent's denial of Petitioner's Protest is affirmed;
5. Each party shall bear its own attorneys' fees and costs; and
6. The protest bond of Petitioner shall be deposited into the general fund.

Dated at Honolulu, Hawaii: \_\_\_\_\_

*Rodney K.F. Ching*

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RODNEY K.F. CHING  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs