



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delany, Siegel, Zorn & Associates, Inc.

File: B-243368.3

Date: February 24, 1992

Tama Zorn for the protester,
James K. White, Esq., and Lesslie Viguerie, Esq., Department
of Commerce, for the agency.
Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. In evaluating proposals for award of an indefinite-quantity contract, protest that agency failed to properly credit protester's proposal for alleged ability to provide overall cost savings due to higher efficiency performance is denied where protester's past performance record contradicts its representations regarding cost effectiveness and protester has not identified any particular attribute or qualification of proposed personnel which the agency failed to consider.

2. Protester's speculation that agency will fail to properly administer contract is not for consideration by the General Accounting Office.

DECISION

Delany, Siegel, Zorn & Associates, Inc. (Delany) protests the Department of Commerce's (DOC) award of a contract to Susan Grimes Associates (Grimes) under request for proposals (RFP) No. 52SAAA100016. The RFP contemplated award of an indefinite-quantity contract to perform investigations of DOC employee discrimination complaints. Delany asserts that, in evaluating its proposal, DOC failed to properly consider the greater efficiency offered by the personnel it proposed. Delany also protests that the awardee intends to improperly inflate the number of hours charged to the government during contract performance.

We deny the protest.

The RFP was issued on February 14, 1991. As amended, the RFP contemplated award of an indefinite-quantity contract for discrimination investigations for a 4-month base period with five 1-year option periods. The RFP provided that individual delivery orders would be issued as investigative work was required and stated that the level of effort for each delivery order would be negotiated on an individual basis.

Section M of the RFP provided that technical factors would be more important than cost in selecting the successful offeror. Regarding technical proposals, the RFP required offerors to submit resumes for not more than seven investigators and stated that the qualifications of these personnel would be the most important technical evaluation factor.¹ Specifically, the RFP provided for evaluation of the proposed investigators' length of prior investigative experience and specific experience in performing "one-stage" investigations.² With respect to cost proposals, offerors were required to propose fixed-price labor rates and the RFP provided that cost proposals would be evaluated by applying the proposed labor rates to the estimated quantities of hours specified in the RFP.³

The proposals submitted by Delany and Grimes received the highest technical scores of all proposals received. Because the two proposals were determined to be technically equal, the decision to award to Grimes was based on its lower evaluated cost.

Delany protests that, in evaluating proposals, DOC failed to recognize the capacity for efficiency of the personnel it proposed. Delany maintains that, even though it proposed a

¹The RFP also provided for evaluation of technical proposals on the basis of an offeror's project management and support systems, and its experience as an organization.

²The RFP stated that the contractor would be required "to conduct and deliver complete discrimination complaint investigations as a final product in one-stage." Some federal agencies require a two-stage investigative approach calling for a draft report and secondary investigation prior to final delivery.

³DOC estimated that 15,000 hours of work annually would be required under the contract. This estimate was based on DOC's experience over the last 4 years during which the average length of an investigation was 155 hours.

higher labor rate than Grimes,⁴ Delany's greater efficiency would have enabled the agency to negotiate delivery orders with fewer hours, thereby resulting in overall cost savings to the government. Specifically, Delany asserts that under the contract awarded to Grimes, investigations will be performed at an average cost of \$3,100. Delany maintains that it should have received the award because it could perform the investigations sought by DOC at an average cost of \$2,800 and, "[t]hus, we over [offer] a savings to the Department of Commerce of approximately 10 percent."⁵

The determination of the relative merits of proposals is primarily a matter of agency discretion which we will not disturb unless it is shown to be unreasonable or inconsistent with the stated evaluation criteria. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441. A protester's mere disagreement with the agency's judgment does not render that judgment unreasonable. Id. Here, our review of the agency's evaluation of proposals provides no basis to question the agency's source selection decision.

The information in the record does not support Delany's claims regarding its greater efficiency and overall cost savings. In its protest, Delany stated that it recently performed six discrimination complaint investigations for DOC under a federal supply schedule contract. The record shows that Delany performed these investigations at an average cost to the government of approximately \$3,300

⁴The agency has designated the rates proposed by the awardee as proprietary information; accordingly, our decision today does not discuss specific rates proposed by either offeror.

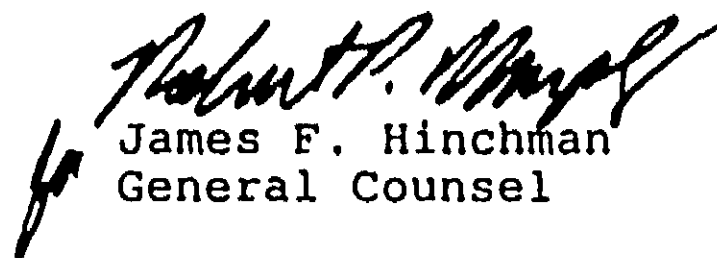
⁵Delany asserts that its personnel would be able to perform the investigations sought by DOC in an average of 80 hours per investigation as opposed to the 155 hours on which DOC's estimates were based; however, Delany has not provided any documentary support for this assertion nor explained how it derived that estimate. To the extent Delany is protesting the estimate of the hours contained in the solicitation, its protest is untimely. See 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). Further, we previously found it reasonable for DOC to establish a "baseline" against which offerors' proposed rates could be considered based on DOC's experience with these contract requirements during the preceding 4 years. See Danoff & Donnelly; Kensington Assocs., B-243368; B-243368.2, July 26, 1991, 91-2 CPD ¶ 95.

each⁶--that is, more than 15 percent higher than the \$2,800 which Delany now asserts would be its average cost per investigation under the protested contract. Delany has not identified any unique or unusual expenses incurred in performing investigations under the federal supply schedule contract that it would not incur under performance of the protested contract. Further, although Delany asserts generally that its personnel are capable of great efficiency, it has not identified any particular attribute or qualification of its proposed personnel which the agency failed to properly consider.

We have reviewed the resumes submitted by both offerors and find no basis to take exception to the agency's determination that the personnel proposed by Delany offered no greater capacity for efficiency than the personnel proposed by Grimes. In fact, based on our review of the proposals, the personnel proposed by Grimes have equal or greater experience in conducting discrimination complaint investigations, thus, DOC reasonably could have concluded that the personnel proposed by Grimes were likely to be equally or more efficient than those proposed by Delany.

Delany also protests that, in negotiating delivery orders with the agency, Grimes intends to artificially inflate the amount of time necessary to perform the investigations. Delany offers no support for this allegation and appears to be speculating that the agency will fail to properly administer the contract. In this regard, the agency's negotiation of delivery orders and other matters of contract administration are not for review by our Office. See 4 C.F.R. § 21.3(m)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991).

The protest is denied.


James F. Hinchman
General Counsel

⁶The costs of Delany's investigations ranged from approximately \$2,400 to approximately \$6,000.