



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

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

**File:** B-258221.2; B-258221.3

**Date:** July 10, 1995

Stephen S. Kaye, Esq., and Regina V. Kunkle, Esq., Bryan Cave, for the protester.  
David B. Dempsey, Esq., Sheila C. Stark, Esq., and Andrew R. Miller, Esq., Akin, Gump, Strauss, Hauer & Feld, for Grant Communications, an interested party.  
Marie N. Adamson, Esq., General Services Administration, for the agency.  
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Selection of higher-priced, higher-rated proposal is unobjectionable where based on a price/technical tradeoff analysis which is reasonable and consistent with the solicitation evaluation criteria.

### DECISION

Delany, Siegel, Zorn & Associates, Inc. (DSZ) protests the award to Grant Communications of a contract for investigation-related services under request for proposals (RFP) No. FCXS-F5-940001-N, issued by the General Services Administration (GSA). DSZ contends that the award to Grant was the result of improprieties in the evaluation of proposals and in the discussions held with the offerors.

We deny the protest.

GSA issued the RFP on February 14, 1994, to obtain proposals for a single-award contract under the federal supply schedule covering investigations of complaints of equal employment opportunity (EEO) discrimination and the preparation of reports of those investigations. The contract covers a base period from the date of award through October 31, 1995, with four 1-year options. The contract value is estimated at \$1,650,000 annually.

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For each period of performance, offerors were to propose a price for each of nine line items, such as the investigation of an individual case with one issue; the investigation of an additional issue in a case; the investigation of a consolidated case; and the preparation of the conclusion and recommendation in a case. The RFP established three geographic zones, and offerors could propose different prices for each of the nine line items in each zone.<sup>1</sup> The RFP indicated that the agency would award all of the line items for each zone to one offeror, but that different offerors could be awarded a contract for each of the three zones.

The RFP provided that the agency would give more weight to technical quality than to price in selecting the awardees. The components of technical quality were, in descending order of importance, technical capability, plan of accomplishment, and experience/past performance. The RFP stated that technical capability would be evaluated through review of three documents, listed in descending order of importance: an investigation report, a case decision, and a case investigation plan. The investigation report was to be a complete report that the offeror had actually prepared in a case it had investigated. The case decision and investigation plan, in contrast, were based on fictitious documents that the agency created and attached to the solicitation.

Price was considered on the basis of an evaluated price, calculated as a composite investigation price comprised of the prices proposed for various line items. The composite case price was determined by use of a formula set forth in the RFP (that formula assumed, for example, that the individual case would include 3.25 issues).

Seventeen timely proposals were received. After an initial evaluation, the agency established a competitive range of six proposals, including those of Grant and DSZ.<sup>2</sup> The agency raised technical questions with each offeror and identified the amounts that the agency had calculated as the offeror's evaluated price for each zone.

At the conclusion of discussions, the agency requested that offerors submit best and final offers (BAFO), which were due

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<sup>1</sup>Zone 1 covered the eastern United States, as well as some overseas locations; Zone 2 included most of the central United States; and Zone 3 comprised the western United States and certain overseas locations.

<sup>2</sup>The proposals of other offerors are not relevant to this protest, and are therefore not discussed further.

on September 14, 1994. The agency's evaluation of the BAFOs led to the following results for the proposals of the parties to this protest:

	DSZ Price	DSZ Technical Score	Grant Price	Grant Technical Score
Zone 1	\$3,196.37	86.782	\$3,353.20	89.168
Zone 2	\$3,319.60	86.782	\$3,353.20	89.168
Zone 3	\$3,308.38	86.782	\$3,353.20	89.168

Because Grant's technical score was higher than DSZ's, while DSZ's price was lower, the agency performed a price/technical tradeoff for each of the three zones. The trade-off analysis was slightly different for each zone, since DSZ's prices varied by zone.<sup>3</sup> The contracting officer, who was the source selection official, reviewed the proposals and the evaluation record, with the focus on the three components of the technical capability factor (the most heavily weighted factor): the offerors' sample report and their decision and investigation plan.

In reviewing the offerors' sample report, the contracting officer noted that, notwithstanding the "very good" rating assigned to this aspect of DSZ's proposal (which was the same rating assigned to Grant's), the evaluators had identified certain omissions in DSZ's report which could require government personnel to devote time to complete and correct the record. Specifically, the evaluators noted that DSZ's report included incomplete and inconsistent information about whether the disability at issue in that report could be accommodated in the workplace and why the complainant had filed for disability retirement.

In the judgment of the technical evaluators, government personnel would need to spend between 2 and 4 hours per report clarifying the record; based on the average salary of the EEO specialists who would perform that work, the contracting officer determined that the need for government personnel to devote that amount of time meant that DSZ's proposal would cost the government an additional \$66.42 for each investigation. Because adding approximately \$66 per investigation raised DSZ's evaluated price above Grant's for Zones 2 and 3, the contracting officer determined that DSZ's proposal could actually represent a higher cost to the

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<sup>3</sup>The technical scores for the two proposals did not vary by zone, since the offerors' technical capability, plan of accomplishment, and experience were the same for every zone.

government than Grant's for those two zones. As to Zone 1, DSZ's significantly lower price led the contracting officer to conclude that Grant's technical superiority was not worth the associated premium for that zone. Accordingly, the agency selected DSZ for award of Zone 1 and Grant for award of Zones 2 and 3. Award was made on October 12, 1994.

DSZ's protest challenges the reasonableness of the agency's price/technical tradeoff decision. In making such decisions, agency officials have broad discretion, and the extent to which technical quality may be sacrificed for price, or vice versa, is limited only by the requirement that the trade-off decision be rational and consistent with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

In this procurement, the contracting officer needed to choose between DSZ's slightly lower-priced, lower-rated proposal for Zones 2 and 3, and Grant's slightly higher-priced, higher-rated one. Appropriately, the contracting officer focused on whether Grant's higher technical rating justified payment of the associated price premium. Consistent with the weighting of evaluation criteria set forth in the solicitation, the contracting officer paid particular attention to the sample reports, which were the basis for the evaluation under the most heavily weighted technical subfactor. He reviewed the evaluators' report and determined that, notwithstanding the fact that both proposals received scores of "very good" for their sample reports, DSZ's report might be of lesser value to the agency than Grant's, because Grant's report was clearer and more complete, while DSZ's report could require further work by government personnel. Considering the prices offered by the two offerors for the three zones, the contracting officer determined that the technical superiority of Grant's proposal was worth the small premiums in Zone 2 and 3 prices, but not the considerably larger premium associated with the prices for Zone 1.<sup>4</sup> Nothing in the record suggests that determination was unreasonable.

DSZ argues that the problem in its report may have been simply the result of a lack of clarity in language, and thus easily correctable, rather than a faulty investigation. In

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<sup>4</sup>While the agency attempted to quantify that superiority in terms of the dollar value to the agency of the technical superiority of Grant's proposal, such conversion of technical superiority into dollar terms is not required. Picker Int'l, Inc., B-249699.3; B-249699.3, Mar. 30, 1993, 93-1 CPD ¶ 275. The requirement is, rather, as noted above, that the agency exercise judgment in a way which is reasonable and consistent with the solicitation criteria.

our view, it was reasonable for the contracting officer to view the lower quality of DSZ's report as lowering the value to the agency of DSZ's proposal, regardless of whether the problem was caused by inadequate investigation or unclear report writing, since investigations and reports were both being procured in this acquisition. Whether the burden on the agency would entail only clarifying discussions with the contractor (as DSZ argues) or the agency would actually need to conduct a supplemental investigation (as the agency found might be the case), the agency's judgment that avoiding such an additional burden was worth the slight premium associated with Grant's prices for Zones 2 and 3 is unobjectionable.

DSZ further contends that, if the weakness in its sample report was so significant as to be the discriminator in the price/technical tradeoff, the agency had an obligation to raise the matter during discussions.<sup>5</sup> GSA had no such obligation here. The record demonstrates that the agency did not view this issue as a significant weakness in DSZ's sample report, which was considered "very good" notwithstanding this concern, and that this otherwise minor issue became a discriminator only in the context of a close competition. More importantly, the RFP provided that the sample reports would serve as the primary basis for evaluating the offerors' technical capability. The lack of clarity in DSZ's report led GSA to have concern, albeit limited, about DSZ's ability to provide the services being procured (whether the problem was with DSZ's investigative or report-writing services is, as noted above, immaterial here). Raising this concern during discussions would have defeated the purpose of the evaluation since a significant aspect of the agency's assessment was determining whether the offerors would be capable, without assistance from the agency, of preparing and submitting a complete, clear

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<sup>5</sup>DSZ raises this point in the form of an allegation that the agency unfairly "coached" Grant by pointing out weaknesses and deficiencies in its proposal. Contracting agencies have wide discretion in determining the nature and scope of negotiations, and our Office will not question the exercise of that discretion unless it is shown to lack a rational basis. Textron Marine Sys., B-255580.3, Aug. 2, 1994, 94-2 CPD ¶ 63. There is certainly nothing improper in an agency's advising an offeror during discussions of weaknesses and deficiencies in its proposal, as GSA did with Grant here. Id. We understand DSZ's actual concern to be that the agency treated the offerors unequally by telling Grant about perceived problems in its proposal, while failing to advise DSZ of the agency's concern about the lack of clarity in its sample report.

investigation report.<sup>6</sup> See Booz-Allen & Hamilton Inc., B-246919, Apr. 14, 1992, 92-1 CPD ¶ 368; NDI Eng'g Co., B-245796, Jan. 27, 1992, 92-1 CPD ¶ 113. For these reasons, GSA was not required to advise DSZ during discussions of the lack of clarity in its report.

Finally, DSZ contends that the agency made computational errors in the evaluation of proposals, and that these errors rendered the price/technical tradeoff unreasonable. The agency concedes that it made one minor error in the calculation of technical scores, and the parties concur that correcting that error would raise DSZ's technical score by 0.066 points. We agree with the agency that this error is de minimis and does not call into question the reasonableness of the price/technical tradeoff analysis.

DSZ alleges two further errors. First, relying on the price negotiation memorandum, DSZ claims that the evaluators and the contracting officer agreed that Grant's proposal deserved a "very good" rating for a particular subfactor, but that the final spread sheet improperly reflected a higher ("excellent") score for that subfactor. The agency points out that the price negotiation memorandum goes on to explain that, in its BAFO, Grant improved this part of its proposal, and that its score was therefore increased to "excellent." Our review confirms the accuracy of the agency's contention; hence, the protester's assertion of error is without factual basis.

Second, the protester complains that the evaluators read a handwritten "1" in DSZ's BAFO as a "7," which (once the formula for calculating the evaluated price is applied) improperly increased DSZ's price by \$19.51. We have reviewed DSZ's BAFO, and we find that the misreading of DSZ's entry was understandable, because the handwritten

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<sup>6</sup>While the protester argues that the agency did raise a discussion question about the structure of Grant's sample report, thus giving that firm the opportunity to revise its report, the contemporaneous record confirms that the agency simply advised Grant that its report was in the inappropriate format. It appears that the format Grant used was appropriate at the time the report was actually submitted, but that the required format had changed by the time the RFP was issued, and the agency wanted offerors to reformat reports which had originally been prepared with the earlier format. The agency reasonably found that the formatting question did not reflect on the offeror's technical capability, while the lack of clarity in DSZ's report did.

number is not clear.<sup>7</sup> In any case, we agree with the agency that, even if DSZ's evaluated price is reduced, arguendo, by \$19.51 and its technical score raised by 0.066 points, the combined change remains so limited as not to raise any question about the reasonableness of the price/technical tradeoff and the resulting selection of Grant for award of Zones 2 and 3.

The protest is denied.

  
Robert P. Murphy  
General Counsel

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<sup>7</sup>DSZ appears to have changed the entry prior to submission of its BAFO.