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**Comptroller General
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Decision

Matter of: L-3 STRATIS

File: B-404865

Date: June 8, 2011

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William L. Walsh, Jr., Esq., J. Scott Hommer III, Esq., James Y. Boland, Esq., Brendan M. Lill, Esq., Paul A. Debolt, Esq., and Justin J. Wortman, Esq., Venable LLP, for Perot Systems Government Services, an intervenor.

Robin A. Baum, Esq., and Michael L. Norris, Esq., Nuclear Regulatory Commission, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency evaluation is denied where protester fails to demonstrate that evaluation was unreasonable.

DECISION

L-3 STRATIS, a Division of L-3 Services, Inc., of Reston, Virginia, protests the award of a contract to Perot Systems Government Services, of Fairfax, Virginia, under request for proposals (RFP) No. 33-11-325, issued by the Nuclear Regulatory Commission (NRC) for information technology (IT) infrastructure services and support. The protester argues that the agency's evaluation of its proposal was unreasonable.

We deny the protest.

BACKGROUND

The RFP, which was issued on March 24, 2010, contemplated the award of a 6-year indefinite-delivery/indefinite-quantity contract to the offeror whose proposal represented the best value to the government, with technical factors considered significantly more important than price in determining best value. The technical factors (and their corresponding weights) were as follows: (1) technical approach-

25 points; (2) technical qualifications of key personnel and technical staff-15 points; (3) corporate experience and past performance-20 points (10 points each for corporate experience and past performance); (4) program management-20 points; and (5) subcontracting-20 points.

Eight proposals were received prior to the May 24, 2010 closing date. The agency evaluated the proposals and established a competitive range of three, which included L-3 and Perot. NRC conducted two rounds of discussions with the competitive range offerors.

After evaluating the final proposals, the source evaluation panel (SEP) furnished the source selection official (SSO) with a report summarizing the proposals' strengths and weaknesses. The SEP assigned L-3 and Perot's final proposals the following ratings:

FACTOR	L-3	Perot
Technical Approach	19	21
Technical Qualifications	13	14
Corporate Experience	10	10
Past Performance	8	10
Program Management	16	20
Subcontracting	18	20
TOTAL	85	95
Evaluated Price	\$218,737,580	\$252,075,339

Debriefing Slides at 26-27. After reviewing the SEP's findings, the SSO determined that Perot's proposal represented the best value to the government.

In his source selection determination, the SSO explained that while L-3's proposal had demonstrated a number of strengths, one of which was the protester's innovative plan [deleted] for delivering IT infrastructure services to agency users, the proposal's strengths were offset by several concerns. The SSO's first concern was that the protester's timeline for implementation of [deleted] was unclear, which called into question the value of the benefits associated with L-3's [deleted] approach. In the foregoing connection, the SSO explained:

In discussions, L-3 clarified that [deleted]. However, L-3 did not give a timeline for the transition process. It is unclear from their proposal whether a full transition [deleted] would take one year or several. While the notion of transferring the NRC [deleted] offers several potential benefits [deleted], the benefits are undercut in this case by concerns over when [deleted] would be fully and successfully implemented. Delays in the implementation of [deleted] could significantly reduce its value to the agency. For example, there are significant potential costs associated with [deleted]. Uncertainty over

what would be a wholesale change to the manner in which the agency delivers IT infrastructure services introduces a level of risk I feel is too high for an award of this size and in light of its mission critical nature.

Source Selection Decision (SSD), Feb. 15, 2011, at 8-9. The SSO went on to explain that he considered the lesser degree of uncertainty associated with Perot's more clearly defined timeline to be worth a price premium:

By contrast, [Perot's] proposal is much more straightforward, as it focuses on traditional network infrastructure that can modernize the NRC infrastructure while still leveraging existing legacy systems. [Perot's] proposal sets forth a very specific timeline for improvements to the IT infrastructure that is broken up into defined phases for updating specific systems. While not as innovative as L-3's [deleted] solution, [Perot's] proposal provides a feasible and measurable path forward for IT infrastructure modernization. Since [Perot's] approach is so well detailed, it provides a degree of confidence for the agency going forward—we know better what to expect and therefore can allocate resources more strategically. That greater ability to strategically plan is worth paying a higher cost/price to the agency.

Id. at 9.

The second concern noted by the SSO was L-3's failure to demonstrate its ability to effectively implement Information Technology Infrastructure Library version 3 (ITIL v3) at the NRC. (Implementation of ITIL v3, which furnishes guidance on best practices for the provision of quality IT services, was one of the agency's objectives for the contract.) In the foregoing connection, the SSO found "worrisome" the following aspects of L-3's proposal: the lack of demonstrated real life experience among the majority of proposed key personnel in implementing ITIL v3 in an organization; the lack of detail regarding the information concerning assets to be recorded and stored in the protester's Configuration Management Database; and the lack of detail about how L-3 would introduce its Knowledge Management System into the NRC environment for effective problem resolution. Id. at 9.

The final concern noted by the SSO was that L-3 had failed to explain what work would be performed by its proposed small business subcontractors, and thus the SEP had been unable to assess the feasibility of the protester's subcontracting plan. The SSO found that Perot, in contrast, had been very specific about the services its small business subcontractors would provide; according to the SSO, Perot's more detailed response provided greater confidence that it would meet the 20 percent small business set-aside requirement established by the RFP.

The SSO concluded that the uncertainty regarding L-3's [deleted] transition timeframe and its ability to implement ITIL v3, along with the vagueness concerning

its use of subcontractors, was not mitigated by its lower price. The SSO further concluded that the advantages of Perot's proposal in terms of a clear path forward, solid ITIL v3 grounding, and a defined small business subcontracting plan were worth a price premium of approximately 15 percent *vis-à-vis* L-3's proposal. On February 18, the agency notified L-3 that it had selected Perot for award. The protester timely requested a debriefing, which was held on March 4. On March 9, L-3 protested to our Office.

DISCUSSION

L-3 challenges the agency's evaluation of its proposal.¹ The protester argues that the agency's evaluation relied on unstated factors, that the agency ignored information contained in its proposal, and that the agency failed to conduct meaningful discussions. The protester maintains that these errors resulted in an unsupported best value tradeoff determination.²

In reviewing protests objecting to an agency's technical evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation. *CMI Mgmt., Inc.*, B-402172, B-402172.2, Jan. 26, 2010, 2010 CPD ¶ 65 at 2. As explained below, based on our review of the record here, we think that the agency's evaluation was reasonable.

¹ L-3 also objected to the agency's evaluation of Perot's proposal under one factor, arguing that the proposal did not merit a perfect score for corporate experience/past performance because Perot lacked experience in implementing ITIL v.3 with a government customer. We dismiss this argument as legally insufficient. Bid Protest Regulations, 4 C.F.R. § 21.5(f) (2011). To be legally sufficient, a protest argument must allege facts that, if shown to be true, would demonstrate an impropriety. The facts alleged by the protester in support of its argument here, even if shown to be true, would not support a finding that the rating of Perot's proposal under the experience/past performance factor was unreasonable because the solicitation did not require that an offeror have experience in implementing ITIL v.3 for government customers to receive the highest rating.

² In addition to the arguments addressed below, the protester raised several arguments in its initial protest that it subsequently abandoned—*i.e.*, that the agency unreasonably determined that the majority of its proposed key personnel lacked real life experience in implementing ITIL v.3; failed to furnish detail on how it would introduce its Knowledge Management System into the NRC environment for effective problem resolution; failed to explain how new tools would be introduced into the NRC environment; and did not adequately explain how applications would be accessed securely and easily through the agency's Lightweight Access Directory Protocol. The protester did not rebut the agency's response to these issues and confirmed in a May 4, 2011 e-mail that it had abandoned these issues.

L-3 argues first that the agency improperly downgraded its proposal for offering an innovative approach to delivering the IT services (i.e., [deleted]), while crediting Perot's proposal for offering a "straightforward" approach based on a traditional network infrastructure. The protester maintains that this was inconsistent with the RFP's Statement of Work, which encouraged offerors to pursue innovative approaches, but did not mention straightforwardness as a basis for evaluation.

It is apparent from the SSO's explanation quoted above that the protester's proposal was not downgraded for offering an innovative approach--indeed, the SSO explicitly recognized that there were benefits associated with L-3's innovative approach. See SSD at 8 ("While the notion of transferring the network over to a [deleted] solution offers several potential benefits . . ."). Rather, the protester's proposal was downgraded because the protester failed to furnish a clear timeline for implementation of its innovative [deleted] approach, which left the agency unable to determine when the benefits associated with [deleted] would be realized.

In support of its argument, L-3 points to the final sentence of the SSO's explanatory paragraph--"[u]ncertainty over what would be a wholesale change to the manner in which the agency delivers IT infrastructure services introduces a level of risk I feel is too high . . .", which, taken by itself, might suggest that the agency considered the innovativeness of L-3's approach risky. When that sentence is read in the context of the SSO's overall decision, however, the SSO's reference to "uncertainty" addressed uncertainty regarding L-3's schedule for implementation of its approach, which reflected a major change, as opposed to uncertainty regarding the [deleted] technology per se. Likewise, it is apparent from the SSO's decision that it was the straightforward nature of Perot's timeline for updating NRC's infrastructure--and not, as the protester contends, the straightforward nature of the underlying technology--that the SSO regarded as an advantage. In our view, it was reasonable and consistent with the terms of the RFP for the SSO to consider and compare the relative clarity and detail of the offerors' proposed timelines for implementation of their proposed solutions.

L-3 further argues that the SSO unreasonably determined that it had failed to furnish a timeline for implementation of its [deleted] solution. The protester contends that it did furnish a timeline in its initial proposal; in this connection, L-3 cites the following passage from its proposal:

[deleted]

Protester's Proposal at 11. L-3 maintains that the SSO ignored this information in finding that it had failed to furnish an implementation timeline and instead focused exclusively on its response to a discussion question that asked a narrower question, *i.e.*, how L-3 intended to implement the [deleted] within the initial 180-day transition period. In the alternative, the protester argues that the agency failed to conduct meaningful discussions by failing to advise that it had not furnished an adequately detailed timeline for implementation of its [deleted] solution.

In response, the agency maintains that L-3's proposal did not include sufficient clarity regarding its implementation timeline. We find the agency's position reasonable. While it is true that L-3 mentioned several milestones in its initial proposal (*i.e.*, [deleted]), the proposal was vague as to when it would complete the transition of network applications to [deleted]. In this connection, the proposal provided that [deleted] *id.*, emphasis added, which clearly implies that [deleted]. Further, while the protester's discussion question responses furnished additional detail regarding the steps it would take to implement [deleted], L-3 did not specify when the implementation process would be complete.

To the extent the agency believed that L-3's proposal failed to provide sufficient detail regarding its timeline for implementation, L-3 argues that the agency should have raised the matter during the various rounds of discussions it held with the offerors. Having failed to do so, L-3 argues the discussions conducted by the agency were inadequate. Although discussions must address at least deficiencies and significant weaknesses identified in proposals, the scope and extent of discussions are largely a matter of the contracting officer's judgment. In this regard, we review the adequacy of discussions to ensure that agencies point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. An agency is not required to afford offerors all encompassing discussions, or to discuss every aspect of a proposal that receives less than the maximum score, and is not required to advise an offeror of a weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. Northrop Grumman Info. Tech., Inc., B-290080 et al., June 10, 2002, 2002 CPD ¶ 136 at 6; see Federal Acquisition Regulation § 15.306(d).

The record reflects that information furnished by L-3 in response to a question in the first round of discussions led the evaluators to conclude that L-3's timeline for

completion of the implementation process was unclear.³ According to L-3, the agency should have raised its timeline concerns in the subsequent round of discussions.⁴ As noted above, however, when an agency conducts discussions, it is only required to advise offerors of their significant weaknesses and deficiencies. Consistent with this obligation, during the second round of discussions, the agency asked L-3 to address four discrete areas that were considered to be “significant weaknesses.”⁵ AR, Tab 13, L-3 Second Round of Discussions at 1. While the weakness at issue may have served as a discriminator for the purpose of the SSO’s award decision, as previously indicated, the mere fact that a weakness becomes a determinative factor in choosing between two closely ranked proposals, does not mean that the agency was required to raise the issue during discussions. Northrop Grumman Info. Tech., Inc., B-290080 *et al.*, *supra*. Since the record does not reflect that the particular weakness at issue was characterized as “significant” or reflected a deficiency, there is no basis to conclude that the agency’s discussions were improper.⁶

³ In one of its discussion questions, the agency cited language from the Executive Summary section of the protester’s proposal, which indicated that the protester intended [deleted] that would be “in place and functional during the 180-day transition period,” Agency Discussion Questions, Oct. 2, 2010, at Question 16, citing Protester’s Proposal at 3, and asked the protester to provide “more details on L-3’s approach for implementing this change during the proposed time period.” *Id.* The protester responded by clarifying that it was [deleted] that it intended to implement during the initial 180-day period. The evaluators found that this response clarified the protester’s intent for the initial 180 day timeframe, but that it “begged another question,” *i.e.*, “if the 180 day timeframe [was] meant only to establish [deleted], what [was] a realistic timeframe within which to expect the outcomes that this [deleted] could achieve”? Final Evaluation Report at 20.

⁴ Citing our decision in Al Long Ford, B-297807, Apr. 12, 2006, 2006 CPD ¶ 68, L-3 argues that the weakness should have been raised in the first round of discussions since it concerns a weakness that was apparent from its initial proposal. The principle articulated in Al Long Ford, however, does not apply here because the agency’s concerns did not pertain to L-3’s proposal as it was prior to the initial round of discussions—rather, they pertained to the proposal as it was after L-3 clarified (in its initial discussions response) that it did not intend to implement a fully functional [deleted] during the 180-day transition period.

⁵ The second round of discussions with L-3 were in marked contrast with the first round, where the agency held extensive discussions on 47 issues.

⁶ In reaching this conclusion we note that L-3 received 19 out of 25 possible points under the relevant technical approach factor and the weakness at issue was but 1 of 10 weaknesses assigned L-3 under this factor.

Next, L-3 argues that the agency's discussions were inadequate because they failed to advise the protester that it had not provided sufficient detail regarding the asset identification information to be recorded and stored in its configuration management database. In this connection, the SOW instructed offerors to "provide, configure, populate, and manage a Configuration Management Database (CMDB)" identifying all assets supporting NRC services. The SOW further instructed that offerors should

Minimize the discrepancy between assets/inventory recorded in the CMDB and actual NRC assets/inventory. This includes ensuring minimally the following information for each unit:

- Asset Tag
- Serial Number
- User Location (PCs and related peripherals only)
- Configuration (OS, loaded software, etc.)
- Asset Status
- Responsible Owner
- Host Name (Servers only)
- IP Address (Servers only)
- Business Function/Application (Servers only)
- Business Owner (Servers only)
- Make/Model
- Physical Location (Non-mobile units)
- Warranty Info/Maintenance Certificate Number (Servers only)

SOW § C.5.2.3.3.2(5).

During the initial round of discussions, the agency instructed the protester to address the requirement to "minimize the discrepancy between assets/inventory recorded in CMDB and actual NRC assets/inventory. (PSOW C.5.2.3.3.2(5), p. 61)," since L-3 had not addressed this requirement in its initial proposal. AR, Tab 11c, Discussion Questions for L-3 at 1. In its response, L-3 failed to describe how it would ensure that the specific information identified in SOW § C.5.2.3.3.2(5) (i.e., asset tag, serial number, etc.) was recorded in the CMDB. In his source selection determination, the SSO found the lack of detail regarding the information concerning assets to be recorded and stored in the protester's CMDB to be a "worrisome" aspect of L-3's proposal.

The protester argues that the agency's discussion question failed to furnish it with adequate notice of the weakness in its proposal because it cited only the first sentence of SOW § C.5.2.3.3.2(5)—that is, according to the protester, while the agency notified L-3 that it had failed to address the requirement to minimize the discrepancy between assets/inventory recorded in the CMDB and actual NRC assets/inventory, the agency did not also indicate that its failure to address the recording of the asset tag, serial number, etc., was also considered to be a weakness.

We find the protester's argument to be without merit. Agencies are not required to "spoon-feed" offerors during discussions, but rather need only lead offerors into the areas of their proposals that require amplification or revision. Martin Elecs., Inc.; AMTEC Corp., B-404197 et al., Jan. 19, 2011, 2011 CPD ¶ 25 at 6. The agency's discussion question here specifically informed the protester that it had not adequately addressed the requirement set forth in SOW § C.5.2.3.3.2(5) to minimize the discrepancy between actual and recorded assets/inventory. Moreover, the clear

terms of SOW § C.5.2.3.3.2(5) furnished notice that minimizing the discrepancy required that, at a minimum, information such as the asset tag and serial number be recorded in the CMDB. In our view, the foregoing was more than sufficient to lead the protester into the area of its proposal that required amplification. Having sufficiently led L-3 to the area of concern in the first round of discussions, NRC was not required to raise the matter again in any subsequent round of discussions, even where it continued to be considered a concern by the agency. U.S. Filter Operating Serv's., Inc., B-293215, Feb. 10, 2004, 2004 CPD ¶ 64 at 3.

Finally, L-3 takes issue with the agency's attribution of a weakness to its proposal under the subcontracting factor for failing to explain what work would be performed by its proposed small business subcontractors.⁷ In this connection, the agency assigned the following weakness to the protester's proposal:

L-3's initial proposal lacked detail about what work their proposed small business subcontractors would be performing for the [information technology infrastructure services and support] contract, and therefore the SEP was unable to assess the feasibility of that work. Upon request of the NRC, L-3 provided some additional information about their small business subcontractors during discussions (. . .), but no further explanation of the work they would be performing or how they will be integrated or managed into the program.

⁷ The RFP instructed that "[a]ll offerors (except small businesses) [were] required to submit subcontracting plans and to meet the small business subcontracting percentage [of 20%] as well as provide a discussion of their plan for utilization of all categories of small businesses." RFP at E21-E22. The solicitation further instructed that, at a minimum, the narrative should discuss: overall subcontracting goals and individual subcontracting goals by small business category "in sufficient detail to allow NRC evaluators to determine that these goals are realistic, justifiable, positive, and in accordance with the government's policy to maximize opportunities for these business types"; the extent to which all categories of small businesses have been identified for participation; and the offeror's present and past commitment to providing subcontracting opportunities to all categories of small businesses. Id. at E21.

Debriefing at 25.

L-3 maintains that (1) it did furnish an explanation of how its proposed subcontractors would be integrated into the program and managed; (2) the weakness assigned was inconsistent with a strength identified in its proposal for establishing a dedicated Small Business Program Office, and identifying and matching appropriate small business concerns with specific NRC requirements, which, according to the evaluators, significantly increased the feasibility of the protester's proposed subcontracting objectives; and (3) the agency effectively required offerors to identify specific subcontractors and the work that each would perform, which was not required by the RFP.

Regarding the first argument, L-3 highlights the fact that it identified its proposed subcontractors; furnished information about how it would allocate work among them (*i.e.*, [deleted]); and explained how it would monitor its adherence to its subcontracting goals. We are not persuaded, however, that the agency's evaluation was unreasonable given that L-3 has not challenged the agency's finding that L-3 failed to identify the work that the small business subcontractors would be performing, which is what gave rise to the agency's concerns. Without any information as to the types of services to be subcontracted, the agency reasonably concluded that it could not determine whether the protester's small business goals were realistic.

The protester's second argument, that the weakness was inconsistent with the finding of a strength under the same factor, is without merit. As noted above, the agency found that L-3 had not furnished enough information regarding the categories of work to be subcontracted for the agency to assess the feasibility of its small business subcontracting goals. This assessment is fundamentally different from the finding that L-3 had other mechanisms in place that would increase the likelihood of its meeting those goals. The protester's third argument is also without merit. In this regard, the agency maintains that it did not require the identification of specific subcontractors to perform specific tasks. Rather, the agency merely questioned the feasibility of L-3's approach where its proposal failed to identify any of the work that it intended to subcontract to small business. As the agency explains, there is other information that L-3 could have included in its proposal that would have demonstrated the feasibility of its plan. Based on this record we have no basis to

conclude that the agency's evaluation of L-3's proposal under the small business factor was either unreasonable or otherwise improper.⁸

The protest is denied.

Lynn H. Gibson
General Counsel

⁸ In addition to the foregoing arguments, L-3 protested the agency's assignment of a less than perfect score to its proposal under the past performance factor. The record shows that the SSO gave no weight to the slight difference in the two offerors' past performance scores in his best value tradeoff determination; accordingly, the protester suffered no prejudice as a result of the challenged score. See Advanced Tech. Sys., Inc., B-296493.5, Sept. 26, 2006, 2006 CPD ¶ 147 at 1. Given the absence of prejudice with regard to this issue, we do not address it in this decision. See TCBA Watson Rice, LLP, B-402086.6, B-402086.7, Sept. 8, 2010, 2010 CPD ¶ 229 at 7, n.3. Similarly, we do not address the protester's complaints that the agency unreasonably attributed weaknesses to its proposal for failing to describe adequately its backup solution and for failing to address adequately requirements pertaining to database support and system administration. These weaknesses were not considered by the SSO in his best value tradeoff determination; thus, the protester suffered no prejudice as a result of them.