



# Decision

**Matter of:** Laboratory Systems Services, Inc.

**File:** B-256323

**Date:** June 10, 1994

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## DIGEST

Agency properly excluded the protester's proposal from the competitive range where the protester had no reasonable chance of award because the protester's prior experience and personnel were inadequate and because of the proposal's informational deficiencies.

## DECISION

Laboratory Systems Services, Inc. (LSSI) protests the United States Geological Survey's (USGS) exclusion of its proposal from the competitive range under request for proposals (RFP) No. 4-4770. LSSI contends that its proposal was improperly evaluated, resulting in the agency's determination that the proposal was technically unacceptable. The protester also contends that USGS was required to hold discussions with LSSI but failed to do so. We deny the protest.

The solicitation was issued on August 2, 1993, and sought offers for preventive and remedial maintenance services for certain types of Hewlett Packard laboratory equipment. The RFP contemplated the award of a firm, fixed-price contract for a base year and two 1-year option periods. Offerors were instructed to submit their proposals in three separate parts: a technical proposal, a price proposal, and business management information. The RFP was sent to potential offerors with a cover letter that stressed the importance of clearly demonstrating in their technical proposal that they have the capability, experience, and necessary personnel

required to be in complete compliance with all of the RFP's specifications. The RFP provided detailed instructions for preparing proposals, directing offerors to the areas that "should be discussed in detail to the maximum extent possible." Technical proposals were to be evaluated under five evaluation factors, listed in declining order of importance in the RFP as corporate experience, quality and availability of personnel, repair parts stockage, field service equipment, and telephone support service.

LSSI submitted a timely proposal, which was reviewed by the agency's technical evaluation committee. After all offerors' references were checked, the narrative evaluation report and technical evaluation of proposals were revised. LSSI's proposal received a technical score that was within the lowest quarter of the evaluation scale. The contracting officer reviewed the evaluations, and concurred in the evaluators' determination that LSSI's proposal was technically unacceptable. The contracting officer then notified the protester of its exclusion in a letter that included information about the agency's evaluation of LSSI's proposal under each of the technical evaluation criteria. This protest followed.

LSSI argues, in essence, that its low technical score was more the result of the firm's failure to provide supporting documentation in its proposal than the result of any underlying unacceptability. The protester contends that its proposal was susceptible of being made acceptable through discussions, and that its proposal should therefore have been retained in the competitive range.

The evaluation of proposals and the resulting determination of whether an offer is in the competitive range is a matter within the discretion of the contracting agency, since that agency is responsible for defining its needs and the best method of accommodating them. Everite Mach. Prods. Co., B-250026, Dec. 9, 1992, 92-2 CPD ¶ 402. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but instead will examine the agency's evaluation to ensure that it was not arbitrary or in violation of the procurement laws and regulations. Id. Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, the agency is not required to include the proposal in the competitive range. See DBA Sys., Inc., B-241048, Jan. 15, 1991, 91-1 CPD ¶ 36.

While the protester challenges the evaluation of its proposal under each of the evaluation criteria we find that it was reasonable for the agency to view the proposal as technically unacceptable and not include it in the competitive range.

For example, under the first (and most heavily weighted) evaluation factor, "Corporate Experience," offerors were instructed to "substantiate capability to provide preventive/remedial maintenance on similar scientific laboratory equipment, citing past or present contracts (Government or commercial), and instrumentations on which services were performed." The evaluators concluded from LSSI's proposal and the agency's contact with the references the firm had provided that the protester had not had enough experience to have a meaningful track record for a broad range of repairs, relative to the breadth and complexity of all the equipment listed in the RFP. LSSI objects to USGS' method of analysis, arguing that because this factor referred to "capability" to provide maintenance instead of "experience," it was improper for the agency to evaluate on the basis of the experience. LSSI argues that the agency was applying an undisclosed evaluation subfactor when it considered the firm's past experience. We disagree. The RFP specifically instructed offerors to "cite past or present contracts" to demonstrate capability under the "Corporate Experience" evaluation factor. It should have been obvious to the protester that experience was exactly what the agency would evaluate to determine capability. Moreover, LSSI does not assert that it has adequately demonstrated a technically acceptable level of corporate experience in its proposal, but asserts only that the agency's consideration of the firm's "track record" to evaluate its "capability" to perform the required work was improper.

Under the second evaluation factor, "Quality and Availability of Personnel," the RFP advised that the agency would examine the experience and training of various specified categories of personnel, and would consider the availability and number of service engineers within the specified regions to judge the response time that could be anticipated. More specifically, the RFP stated that "the ability to maintain the appropriate instrumentation also requires evidence that the bidder demonstrates a working knowledge of the instrument software operating systems." The evaluators considered LSSI's employees' actual field experience on certain types of equipment (as listed in LSSI's proposal) to be limited, and found this to be substantiated by customer references. LSSI argues that this evaluation criterion "simply does not contain a requirement for particular software experience" but required only the more general "working knowledge of instrument software operating systems." LSSI again characterizes the agency's approach as the application of an undisclosed evaluation criterion. Again, we disagree. We think the clear meaning of the RFP's language is to require offerors to demonstrate in their proposals that their proposed personnel have knowledge of the particular instrument software operating

systems that would be required to be maintained under the contract, and not "software operating systems" in general. Accordingly, we think that USGS' analysis was consistent with the evaluation scheme advertised in the solicitation. We also note that LSSI does not rebut the agency's determination that the firm failed to demonstrate such knowledge or its assertion that the provided references tended to confirm this conclusion, or otherwise affirmatively contend that it demonstrated the requisite level of specific knowledge in its proposal. Rather, LSSI essentially acknowledges that it did not provide the required information, contending that the information was not actually required by the RFP--a position with which we disagree.

Under the third evaluation criterion, "Repair Parts Stockage," offerors were advised that the "quality of replacement parts, inventory, and shipment method" would be the basis for evaluation. In the RFP section that provided instructions for preparing technical proposals, offerors were directed to "provide a listing of your current inventory, by quantity and type, applicable to the equipment listed herein," as well as other detailed information about the inventory, such as the manner in which it would be restocked and maintained. LSSI did not provide an itemized inventory, providing instead the dollar amounts at which it valued its spare parts inventory and its computer parts inventory. The agency found this unsatisfactory, since it could not determine what level of availability was being offered for the various parts. In addition, the evaluators found that the protester's references expressed dissatisfaction with both the firm's past ability to provide needed parts quickly and the quality of the parts when they were provided.

LSSI argues that the agency's method of evaluation elevates the "instruction" to provide an inventory list to the level of an evaluation criterion, and apparently also objects to any reliance on the experience described by the firm's references. However, we see no impropriety in evaluating proposals on the basis of whether information that was specifically requested was provided. The "instructions" section of the RFP should not be viewed as somehow separate or inconsistent with the evaluation criteria, as the protester suggests, but as specific guidance to offerors about what type of information they need to submit with their proposals, and in what format, to allow a proper evaluation under the criteria established in the RFP. In this particular case, the "Technical Proposal Instructions" section cautioned offerors that technical proposals would be an important consideration in the award of a contract, and therefore should be specific and complete, discussing in detail the areas described "to the maximum extent possible."

Again, LSSI does not rebut the substance of the evaluation, but only challenges the agency's method of analysis. Thus, the protester does not assert that its proposal demonstrated a technically acceptable level of spare parts inventory, but argues only that it was improper for the agency to "assume that there was insufficient spare part inventory" based on the absence of the requisite inventory list in LSSI's proposal. We do not see any inconsistency between the agency's analysis and the evaluation criteria in the RFP.

In addition to its challenges to the agency's application of the various evaluation criteria, LSSI's protest contends that it was generally improper for the agency to evaluate proposals on the basis of "informational deficiencies," stating for example that "the contracting officer has not determined [LSSI] to be unacceptable; rather, she determined the quality of the information to be insufficient." However, an offeror in a negotiated procurement must demonstrate within the four corners of its proposal that it is capable of performing the work upon terms advantageous to the government. ImageMatrix, Inc., B-243367, July 16, 1991, 91-2 CPD ¶ 61. Where, as here, the solicitation specifically cautions offerors to clearly demonstrate their capabilities in their technical proposals, we think that any offeror failing to provide the specific information that was listed in the instructions did so at its peril, and had no basis to necessarily expect an opportunity to explain its omissions during discussions. Based on our review of the record, we agree with the agency's conclusion that LSSI's proposal failed to provide the level of specific information required by the RFP.

LSSI also argues generally that the agency should not have relied on information that was provided by firms the protester had listed as references, without permitting LSSI an opportunity to discuss the references' comments. However, the RFP clearly stated that references might be contacted and that their statements would be used in the evaluation under any and all applicable evaluation factors. Moreover, while the RFP provided that the agency might contact other sources, the contracting officer relied only on references that LSSI itself had provided in its proposal.

Having concluded that the evaluation was not based on undisclosed evaluation criteria, but was consistent with the evaluation scheme that was established in the RFP, we also conclude that it was reasonable for the agency to exclude the protester's proposal from the competitive range. Where a proposal is technically unacceptable and has no reasonable chance of being selected for award, the agency is not required to include the proposal in the competitive range for discussions. See Federal Acquisition Regulation § 15.609(a); DBA Sys., Inc., supra. Here, as discussed

above, the agency concluded that LSSI's corporate experience and personnel were inadequate. In light of that conclusion, as well as the substantial informational deficiencies in LSSI's proposal, we think the agency reasonably concluded that the proposal could not be meaningfully improved through discussions. Thus the agency properly excluded LSSI's proposal from the competitive range.

The protest is denied.

/s/ Ronald Berger  
for Robert P. Murphy  
Acting General Counsel