



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: National Health Laboratories, Inc.

File: B-261706

Date: October 18, 1995

Thomas G. Scarvie, Esq., and Eric R. Burris, Esq., Keleher & McLeod, P.A., for the protester.

Michael Colvin, Department of Health and Human Services, for the agency.

Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award to offeror submitting technically superior, higher-priced proposal was reasonable where it was consistent with the solicitation's evaluation scheme, and the agency reasonably determined that the technical advantages warranted payment of the associated price premium.

DECISION

National Health Laboratories, Inc. (NHL) protests the award of a contract to Nichols Institute Laboratories under request for proposals (RFP) No. 94-04/VZ, issued by the Indian Health Service, Department of Health and Human Services (HHS), for laboratory and pathology consultant services. NHL argues that the agency improperly evaluated its proposal and unreasonably selected Nichols for award despite Nichols's higher price.

We deny the protest.

The RFP, issued on July 22, 1994, contemplated the award of a firm, fixed-price contract for a base year, with 4 option years, to provide laboratory and pathology services such as cytology, serology, and microbiology. Offerors were instructed to submit separate technical and price proposals. The RFP stated that the award was to be made to the responsible offeror whose proposal, conforming to the requirements of the RFP, was deemed most advantageous (*i.e.*, the best value) to the government, technical quality and price considered. The solicitation also provided that technical factors were more important than price. The most important technical factor was "federal regulations compliance," which included accreditation and staffing as subfactors.

Three offerors, including NHL and Nichols, submitted initial proposals, all of which were evaluated as unacceptable, but capable of being made acceptable; all three

were included in the competitive range. The agency conducted written discussions, and subsequently requested best and final offers (BAFO). Nichols's BAFO received the maximum possible score of 100 points, and its total price (with options) was \$4,054,754. NHL's BAFO received a technical score of 83 points and its total price was \$2,212,322.

The agency considered the difference in technical scores and price and determined that the difference in technical scores was significant and outweighed the price differential. The agency concluded that award to Nichols would be most advantageous to the government and made award to Nichols on May 1. This protest followed.

NHL challenges the evaluation of its own proposal and Nichols's proposal on various grounds. NHL maintains that it should have received the award because it is a well-qualified offeror which submitted the lowest-priced proposal. The record shows, however, that although NHL improved the technical score of its proposal significantly through discussions, the agency concluded that several weaknesses, primarily relating to the staffing subfactor, remained and prevented it from being highly rated. The record further shows that the evaluation was reasonable and consistent with the solicitation evaluation criteria.

For example, the protester argues that the agency improperly downgraded its proposal on the ground that it submitted outdated resumes for its proposed staff. NHL contends that the RFP did not specify that the resumes of proposed personnel had to be updated to a particular date. In this regard, the agency noted that the resumes of NHL's proposed testing personnel were not current and reflected continuing education up to only 1987, and in some instances 1983. In contrast, the TEB noted that the continuing education of the testing staff proposed by Nichols was more current. Where detailed technical proposals are sought and technical evaluation criteria are used to enable the agency to make comparative judgments about the relative merits of competing proposals, offerors are on notice that qualitative distinctions among competing proposals will be made under the various evaluation factors. FMS Corp., B-255191, Feb. 8, 1994, 94-1 CPD ¶ 182.¹ In making

¹According to NHL, it was informed during the debriefing by the contracting officer that NHL's BAFO had cured the problem of its outdated resumes. To the extent NHL argues that its debriefing was inaccurate and misleading, we will not consider this allegation. The purpose of a debriefing is to assist offerors in submitting acceptable proposals on future procurements and, thus, NHL's debriefing had no legal effect on the validity of the underlying evaluation or selection decision. Sletten Constr. Co., B-242615, May 24, 1991, 91-1 CPD ¶ 506. We do note that, in fact, NHL's BAFO did add current resumes for recently hired personnel, but did not update numerous other resumes.

such distinctions, moreover, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. MetaMetrics, Inc., B-248603.2, Oct. 30, 1992, 92-2 CPD ¶ 306. The record shows that the agency reasonably found Nichols's proposal to be significantly superior to the proposal of NHL's in this area.

Next, the agency determined that a significant number of NHL's proposed testing personnel lacked the HHS certification required by the RFP. The RFP required that offerors provide proof of employees' HHS certification along with their proposals. Initially, NHL failed to include resumes for its testing personnel. HHS requested these resumes during discussions, and upon review of the resumes submitted by NHL, the agency found that approximately 40 percent of the medical laboratory technicians proposed lacked the required certification. In contrast, all of the medical laboratory technologists proposed by Nichols were appropriately certified. In addition, several of Nichols's proposed medical laboratory technicians have subspecialty certifications in specialized areas of the clinical laboratory, such as microbiology, hematology, and clinical chemistry. In sum, the record shows that the agency reasonably found Nichols's proposal to be significantly superior to NHL's in this area.

Next, NHL contends that while its proposal was downgraded because not all of its employees possessed the requisite degrees, Nichols failed to provide any information regarding the major of any of its employees who have completed 4-year degrees. The RFP called for proposed staff to possess a bachelor's degree in medical technology, or bachelor's degree with a major in medical technology, chemistry, or biology, or a combination of credit hours in certain subjects and additional education or experience. In fact, many of the staff proposed by NHL lack the requisite degree and a review of the resumes submitted with Nichols's proposal reflect that a substantial majority of its proposed testing staff possess a bachelor of science degree in medical technology or in biology. NHL's assertion is simply factually misplaced, and the record provides no basis to question this aspect of the evaluation.

Finally, the protester argues that in making its award decision, the agency ignored the price advantage that its proposal offered. The argument is actually based on the presumption that the proposals should have been evaluated as technically equal, in which case price would have become determinative. In fact, as discussed, the agency reasonably evaluated Nichols's technical proposal as substantially superior to NHL's. The record shows that the agency was fully cognizant of the protester's lower price, and specifically concluded that Nichols's significantly better technical proposal demonstrated a substantially greater ability to meet HHS' needs, and warranted payment of the associated price premium. Where an RFP does not provide for award on the basis of the lowest-priced, technically acceptable proposal, an agency has the discretion to make award to an offeror with a higher technical

score and a higher price where, as here, it reasonably determines that the price premium is justified considering the technical superiority of the awardee's proposal, and the result is consistent with the evaluation criteria. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44.

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 without a reasonable basis or inconsistent with the evaluation criteria listed in the RFP. Pemco Aeroplex Inc., B-239672.5, Apr. 12, 1991, 91-1 CPD ¶ 367. There is no such showing here. Accordingly, the protest is denied.

Comptroller General
of the United States