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Decision

Matter of: Quest Diagnostics, Inc.

File: B-405081.5

Date: December 19, 2012

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Maj. John C. Dohn II, Department of the Army, 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

1. Protest arguing that agency failed to give protester's proposal sufficient credit for advantages associated with protester's status as incumbent is denied where protester fails to demonstrate that agency's evaluation was unreasonable.
 2. Source Selection Authority reasonably selected lower-rated, lower-priced proposal for award where he determined that slight advantage to higher-rated offeror's proposal was not worth the price premium associated with its proposal.
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DECISION

Quest Diagnostics, Inc., of Madison, New Jersey, protests the award of a contract to Laboratory Corporation of America, Inc. (LabCorp), of Burlington, North Carolina, under request for proposals (RFP) No. W81K04-10-R-0005, issued by the Department of the Army for laboratory testing services. The protester challenges the agency's evaluation of proposals and its best value tradeoff determination.

We deny the protest.

BACKGROUND

The RFP, which was issued on August 20, 2010, sought a contractor to provide clinical reference laboratory services in support of the U.S. Armed Forces. The solicitation contemplated the award of an indefinite-quantity contract for a 6-month

transition period, 1-year base period, and four 1-year options to the offeror whose proposal was determined “most beneficial” to the government. Proposals were to be evaluated on the basis of price and the following three non-price factors (in descending order of importance): (1) technical capability; (2) past and present performance; and (3) small and small disadvantaged business participation. The three non-price factors, when combined, were of significantly greater importance than price. The technical capability factor was comprised of the following five equally-weighted subfactors: (1) technical approach; (2) laboratory information system (LIS) and interface; (3) transition plan; (4) quality control plan; and (5) management capability and experience.

Under the technical capability factor and its subfactors, proposals were to be rated as excellent, good, satisfactory, marginal, or unsatisfactory; under the past/present performance factor, they were to be rated as exceptional, very good, satisfactory, marginal, unsatisfactory, or unknown; and under the small business participation factor, they were to be rated as either satisfactory or unsatisfactory. To be rated excellent under the technical capability factor/subfactors, a proposal had to demonstrate “a superior understanding of the requirements” and an approach “that significantly exceed[ed] performance or capability standards;” in addition, the proposal had to demonstrate “several exceptional strengths that will significantly benefit the government” and “no weaknesses or deficiencies.” A rating of good was to be assigned if the proposal demonstrated “a considerable understanding of the requirements” and an approach “that exceed[ed] performance or capability standards,” had one or more strengths of benefit to the government, and had no deficiencies or more than minimal weaknesses. A rating of satisfactory was to be assigned if the proposal demonstrated “an adequate understanding of the requirements” and an approach meeting all performance and capability standards, had no strengths that exceeded the requirement, and had no material weaknesses or deficiencies. RFP at 89-90.

Three offerors submitted proposals prior to the October 25, 2010 closing date. The agency established a competitive range consisting of Quest and LabCorp, and conducted discussions with both. On April 22, 2011, the agency awarded a contract to Quest, whereupon LabCorp protested to our Office. After the cognizant GAO attorney conducted outcome prediction ADR, the agency notified our Office that it intended to take corrective action in response to the protest by amending the RFP, soliciting and evaluating revised price proposals, and making a new source selection decision. We subsequently dismissed the protest as academic. Laboratory Corporation of America, B-405081, July 19, 2011.

Over the course of the next 10 months, the agency issued a series of amendments to the RFP. Both offerors submitted revised proposals, which the agency evaluated. On June 1, 2012, the agency notified both offerors that it had selected LabCorp for award. Quest filed a timely protest of the award with our Office. In response, the agency advised that it intended to take corrective action for a second

time to include reviewing proposals and making a new source selection decision. By decision of June 21, 2012, we dismissed Quest's protest as academic. Quest Diagnostics, Inc., B-405081.4, June 21, 2012.

The source selection evaluation board (SSEB) subsequently reconvened and assigned the proposals the following ratings:

	<u>Quest</u>	<u>LabCorp</u>
<u>Overall Technical Capability</u>	Good	Good
Technical Approach	Good	Good
LIS and Interface	Excellent	Good
Transition Plan	Satisfactory	Satisfactory
Quality Control Plan	Good	Good
Management Capability and Experience	Good	Excellent
<u>Past/Present Performance</u>	Exceptional	Very Good
<u>Small Business Participation</u>	Satisfactory	Satisfactory
<u>Total Evaluated Price</u>	\$137,960,124	\$125,143,183

AR, Tab 26, Second Amendment to Price Negotiation Memorandum, Sept. 11, 2012, at 4.

The source selection authority (SSA) found that the two proposals represented equal value under the technical capability factor, and that while Quest had a higher rating under the past/present performance factor, its slight advantage in this area did not justify the payment of a price differential of approximately \$13 million over the life of the contract. Id. at 5. Accordingly, the SSA selected LabCorp's proposal as representing the best value to the government.

On September 12, the agency notified Quest that it had selected LabCorp for award. Quest promptly requested a debriefing, which was held on September 20. On September 25, Quest protested to our Office.

DISCUSSION

Quest challenges several aspects of the agency's technical evaluation, arguing that it should have received higher than a good rating under the technical capability

factor; it should have been rated better than satisfactory under the transition plan subfactor; the agency evaluated proposals unequally under the management capability/experience subfactor; and LabCorp's proposal should not have been rated good under the LIS and interface subfactor. Quest further challenges the agency's price evaluation and tradeoff decision. As discussed below, we have no basis to sustain Quest's protest.

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. KBS, Inc., B-402365.3, Feb. 2, 2011, 2011 CPD ¶ 37 at 5. A protester's mere disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

Quest argues that the agency acted unreasonably when it assigned its proposal a rating of merely good under the technical capability factor given its "underlying strengths as the incumbent" and the absence of any identified weaknesses or deficiencies in its proposal. Protest at 13. Quest contends in this connection that the evaluators improperly failed to consider advantages associated with its incumbency. In support of its argument, the protester points to 41 references in its proposal to its status as the incumbent, such as the following two examples:

As the sole source vendor on MEDCOM's national reference laboratory agreement for the past ten years, Quest Diagnostics has gained valuable first-hand experience and has learned important lessons about how to work effectively with MEDCOM and how best to satisfy the reference testing needs of the Department of Defense.

As the current vendor contracted with MEDCOM to provide clinical reference laboratory services to the government, Quest Diagnostics currently services over 103 Medical Treatment Facilities and many associate clinics for a total of 178 Department of Defense facilities. Therefore, we are already knowledgeable about MEDCOM's expectations as well as the specific service needs of each individual Submitting Activity purchasing services under the current agreement-- a key component of a seamless transition to the new contract.

Protester's Comments, Nov. 7, 2012, at 5, citing the Protester's Proposal at 265, 267.

In response, the agency explains that Quest's proposal did not receive a technical capability rating of excellent because it did not demonstrate the superior

understanding and exceptional strengths required for such a rating.¹ In the foregoing connection, the contracting officer (who served as the SSA) noted as follows:

Instead of adequately describing its understanding of the requirements of the performance work statement and describing its technical approach for performing the required services in a manner that would justify a higher adjectival rating under the solicitation, Quest mainly referred to its status as the incumbent. Since the technical proposal submitted by Quest only met the definition of “Good” in the solicitation, I rated its technical proposal as “Good” and did not use my personal beliefs concerning the technical capabilities of Quest to increase the technical rating. . . . Quest did not receive an “Excellent” rating for Factor 1 because its technical proposal did not demonstrate a superior understanding of the requirement listed in the solicitation and its technical proposal did not have several exceptional strengths that would significantly benefit the government.

Contracting Officer’s Statement, Oct. 25, 2012, at 7.

Although Quest argues at length that the information in its proposal concerning its status as the incumbent should have been viewed more favorably, and resulted in a higher rating under the technical capability factor, Quest’s arguments in this regard reflect nothing more than disagreement with the agency’s judgment that its proposal warranted a rating of good rather than excellent. Accordingly, we have no basis to find the agency’s evaluation in this regard unreasonable.² Entz Aerodyne, Inc., supra.

¹ The contracting officer/SSA contends in this connection that while he did not make note of it until his review of the protest here, the assignment to the protester’s proposal of a rating of excellent under the LIS and interface subfactor was, in fact, in error because the evaluators did not identify exceptional strengths in the protester’s approach to satisfying the LIS and interface requirements.

² Quest repeatedly cites Johnson Controls Security Sys., B-296490, B-296490.2, Aug. 29, 2005, 2007 CPD ¶ 102, and Systems Research and Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 as authority for the proposition that an agency’s evaluation is inherently unreasonable where it fails to recognize the benefits associated with incumbency. Johnson Controls, however, stands for the proposition that where an agency identifies strengths associated with incumbency, it is improper for the agency to fail to consider those strengths in its comparison of proposals--it does not stand for the proposition that the agency is required to identify strengths associated with incumbency in the first place. Likewise, contrary to the protester’s position, Systems Research does not stand for the proposition that we will sustain a protest

(continued...)

In a similar manner, Quest challenges its satisfactory rating under the transition plan subfactor, again arguing that the evaluators failed to reasonably appreciate the “compelling advantages” associated with its incumbency in evaluating its approach to transition.

Under the transition plan subfactor, the solicitation provided that proposals would be evaluated to ensure the offeror’s understanding of the criticality of transition and the soundness of the offeror’s methodology for meeting the government’s requirements. The evaluators rated the protester’s proposal as merely satisfactory under the subfactor because “[b]ased upon review of Quest’s proposal, the SSEB found that Quest demonstrated an adequate understanding of the requirements, but it discerned no strengths that exceeded the requirements to the government’s benefit.” AR at 17. Quest has not pointed to instances in which its approach in fact exceeded the agency’s requirements; thus, it has not demonstrated the agency’s evaluation unreasonable. Moreover, with regard to the protester’s argument that the evaluators, in their final evaluation, unreasonably deleted a finding of strength pertaining to Quest’s capability to implement a timely, effective transition--it was not unreasonable for the evaluators to conclude that the protester had described an approach that met, but did not exceed the solicitation’s requirements enough to be described as a strength, and on that basis deleted the finding.³

(...continued)

where an agency fails to assess the real advantages attributable to an offeror’s incumbency; it stands for the proposition that we will sustain a protest where the record fails to demonstrate that the source selection officials reasonably considered identified differences between proposals.

³ The finding of strength that was deleted was as follows:

The offeror’s proposal provides a detailed implementation plan describing their strategy to provide timely, effective transition to the contract requirements. As the incumbent contractor most of the personnel are trained and the SA’s have the necessary supplies on hand. Additional or refresher training will be provided as needed. [Strength] Benefit: demonstrates the offeror’s current capability to meet the training and start up transition requirement and will not delay start of the contract if the offeror is awarded the contract.

AR, Tab 17, Consolidated Technical Evaluation Rating Record for Quest, March 14, 2012, at 6. In their final evaluation, the evaluators determined that the protester had demonstrated the capability to meet the training and start-up transition requirement in a timely manner. This was not considered to be a strength since it merely reflected Quest’s ability to meet the agency’s requirements.

Next, Quest argues that it was unreasonable and unequal for the evaluators to assign its proposal a rating of good under the management capability and experience subfactor, while assigning LabCorp's proposal a rating of excellent. In this connection, the protester argues that its proposal shared, but did not receive credit for, one of the exceptional strengths assigned LabCorp's proposal and that one of the exceptional strengths attributed to LabCorp's proposal was undeserved. As explained below, while we agree with the protester that there were some flaws in the agency's attribution of exceptional strengths under the subfactor, we nonetheless conclude that the record demonstrates a reasonable basis for the ratings assigned.

The record reflects that the evaluators rated LabCorp's proposal as excellent under the management capability/experience subfactor based on the following five identified exceptional strengths:

- LabCorp's thorough description of its management structure and experience with managing existing large contracts.
- Personnel filling key positions are clearly qualified and with vast experience to successfully perform/provide services.
- Establishing a [deleted] is of great benefit to the government and demonstrates a dedicated approach.
- Their commitment to [deleted] is of great benefit to the government as it will allow [deleted] which most of the time becomes a hindrance when conducting business.
- LabCorp's plan to make a [deleted] available to each medical testing facility, as needed, will help expedite problem resolution.

AR, Tab 26, Consolidated Technical Evaluation Rating Record for LabCorp, Aug. 1, 2012, at 7. The evaluators rated Quest's proposal as good under the subfactor finding that it contained a single strength, which was not identified as exceptional.

Regarding the third exceptional strength noted above, Quest argues that the evaluation was unequal. According to Quest, to the extent the agency gave LabCorp an exceptional strength for establishing the position of [deleted], Quest should also have received an exceptional strength for proposing a [deleted]. Protester's Proposal at 314. We disagree.

The record reflects that LabCorp furnished a detailed description of the particular functions to be performed by [deleted]. LabCorp Proposal at 52. Quest's proposal, in contrast, furnished no detail as to the specific functions to be performed by [deleted]. Given the relative difference in terms of the level of detail provided, we have no basis to question the agency's evaluation.

Quest also challenges the first exceptional strength noted above with respect to LabCorp's proposal. The underlying evaluation record indicates that this strength

was based on LabCorp's detailed description of its management structure to be utilized in performance of the contract as well as its experience in managing multiple existing large contracts. The protester takes issue with the agency's determination that LabCorp's proposal reflected experience managing multiple large contracts, asserting that such a conclusion was based on an incorrect reading of LabCorp's proposal, which discussed its experience with the management of only one contract.

The record appears to support the protester's position; that is, in describing its management capability and experience, LabCorp's proposal described its experience with the management of a single contract. See LabCorp's Proposal at 53. Accordingly, we agree with Quest that the attribution of an exceptional strength to LabCorp's proposal on the basis that it was performing two large contracts was unfounded. It is not apparent, however, that deletion of this aspect of the exceptional strength at issue would have had any impact on LabCorp's overall rating under the subfactor, or the overall selection decision, given the remaining four exceptional strengths associated with its proposal. Competitive prejudice must be established before we will sustain a protest; where the record does not demonstrate that the protester would have had a reasonable chance of receiving the award but for the agency's actions, we will not sustain a protest, even if deficiencies in the procurement process are found. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.

Quest further argues that the evaluators unreasonably assigned LabCorp's proposal a rating of good for the LIS and interface subfactor. The protester raises two arguments in this connection: (1) the agency improperly permitted LabCorp to revise the section of its proposal addressing the requirement for an LIS; and (2) the evaluators raised LabCorp's rating under the subfactor based on their incorrect understanding that LabCorp's LIS interface was both 100% developed and 100% tested, when site acceptance testing had not, in fact, been fully completed.

By way of background, prior to the agency's initial corrective action, the evaluators rated LabCorp's proposal as satisfactory under the LIS and interface subfactor, finding several strengths and the following weakness:

The vendor's current status of 75% completion with its interface capability may interfere with current operations if not complete by the time of award. They are currently targeting completion of this capability by 1st Quarter FY11. Although this is listed as a weakness, continued effort toward completion goal should result in a system Strength.

AR, Tab 17, Consolidated Technical Evaluation Rating Record for LabCorp, Mar. 14, 2012, at 5.

As part of its efforts to implement the first round of corrective action, the agency issued Amendment 0012 on December 8, 2011. Among other things, Amendment 0012 substantially revised the basis for the price evaluation, and, in relevant part instructed that “[i]f any changes identified by this amendment cause a revision to other than the pricing of your proposal, please submit same in the number of copies and format as your original submission.” RFP, Amend. No. 0012 at 1. Thereafter the agency issued several more amendments, obtained revised proposals, held discussions, and on March 2, sought final proposals, which were due March 9.

In their March 14, 2012 reevaluation, the evaluators noted that they raised LabCorp’s rating for the factor from satisfactory to good “because [LabCorp] states their interface is 100% developed and tested as of 1st Qtr 2012 and will be ready to deploy in early 2nd Qtr 2012.” AR, Tab 17, Consolidated Technical Evaluation Rating Record for LabCorp, Mar. 14, 2012, at 5. Quest, however, complains that LabCorp impermissibly introduced the above change when it submitted its revised proposal in response to Amendment 0012, arguing that it was improper for LabCorp to include the updated information pertaining to the status of its LIS interface since this change did not directly stem from the changes effected by Amendment 0012. This argument is without merit.

Unless an agency restricts the scope of the revisions offerors may make to their proposals in responding to solicitation amendments issued by the agency as part of corrective action, offerors may revise any aspect of their proposals, including those that were not the subject of the amendment(s). See Power Connector, Inc., B-404916.2, Aug. 15, 2011, 2011 CPD ¶ 186 at 3-4. While the protester contends that Amendment 0012 limited offerors to changes “caused” by the changes associated with Amendment 0012, we find this to be an unreasonably narrow interpretation of the amendment. Rather, Amendment 0012 simply recognized that the changes contained in the amendment could also lead offerors to revise aspects of their proposals other than their pricing, and expressly contemplated such changes. It did not, as the protester maintains, expressly limit offerors to changes directly attributable to the changes effected by Amendment 0012. Moreover, we fail to see how the protester was in any way treated unequally, or that LabCorp gained an unfair advantage, where both offerors were provided with a subsequent opportunity to submit final revised proposals, without limitation.⁴

Quest’s argument that the evaluators should not have considered LabCorp to have adequately addressed the weakness pertaining to development of its LIS interface capability is also without merit. As previously indicated, LabCorp’s revised proposal

⁴ We also reject, for the same reasons, a related argument advanced by Quest asserting that the agency in some way held “unequal discussions” by failing to advise LabCorp that its response to Amendment 0012 exceeded the scope of the revisions permitted by Amendment 0012.

indicated that development and regression testing of the interface were 100% complete. While it is true that the proposal further stated that site acceptance testing would be completed “in late Q1,” LabCorp Proposal at 24, we have no basis to conclude that the evaluators acted unreasonably by concluding that completion of development and regression testing was sufficient to overcome the identified weakness.⁵

Quest also challenges the agency’s price evaluation, arguing that the solicitation required the agency to evaluate the reasonableness of the offerors’ unit prices for each of the thousands of individual tests priced by the offerors, and that the agency failed to perform such an evaluation. The short answer to this is that the RFP did not provide for evaluation of offerors’ individual test prices (unit prices) for reasonableness. Rather, the RFP provided that the agency would evaluate offerors’ total proposed prices for reasonableness. Specifically, the RFP advised that the agency intended to use price competition to “determine the price reasonableness of the offeror’s proposed price,” that the agency would “determine price reasonableness by adding the total of each CLIN listed in the solicitation” (the main CLIN items, CLINs 0002AA, 1002AA, 2002AA, 3002AA, and 4002AA, reflected the total price for all required tests, for the base and each option year), and that the agency would “take the total proposed prices against the CLINs . . . to determine the offeror’s total proposed price, which will be used in the final evaluation to determine price reasonableness.” RFP at 92-93. Accordingly, this aspect of Quest’s protest is without a basis.⁶

Finally, the protester argues that the agency deviated from the evaluation scheme set forth in the solicitation, which provided that the non-price factors would be of significantly greater weight than price, in selecting LabCorp’s lower-rated,

⁵ The protester also complains that the evaluators attributed a strength to LabCorp’s proposal under the LIS and interface subfactor for proposing [deleted] despite the fact that LabCorp had eliminated the position in its final proposal revision. While the protester is correct that LabCorp eliminated the position, and thus should not have received credit for it, it is clear from the record that the elimination of this strength would not have changed the rating of LabCorp’s proposal under the subfactor given the various other strengths attributed to LabCorp’s proposal under this subfactor.

⁶ Quest’s argument regarding the scope of the agency’s price evaluation is not based on the solicitation’s stated price evaluation methodology, but rather, the solicitation’s instructions for the submission of proposals. Contrary to the interpretation advanced by Quest, these instructions, when read in the context of the solicitation’s stated price evaluation methodology, establish that the agency will determine the reasonableness of test prices as part of its evaluation of the reasonableness of offerors’ overall total prices, not that the agency would evaluate each of the many thousands of unit prices for reasonableness.

lower-priced proposal for award. This argument is also without merit. Even where price is the least important evaluation criterion, an agency may properly award to a lower-rated, lower-priced offeror if the agency reasonably determines that the premium involved in awarding to a higher-rated, higher-priced offeror is not justified. Global Solutions Network, Inc., B-298682.3, B-298682.4, June 23, 2008, 2008 CPD ¶ 131 at 12. Here, as noted in the background section of this decision, the SSA reasonably explained that the two proposals represented equal value under the technical capability factor, and that Quest's slight advantage under the past/present performance factor did not justify the payment of a price differential of approximately \$13 million over the life of the contract.

The protest is denied.

Susan A. Poling
General Counsel