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## Decision

**Matter of:** Laboratory Corporation of America

**File:** B-407108

**Date:** November 5, 2012

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### DIGEST

1. Under solicitation contemplating establishment of fixed-price blanket purchase agreement, protest objecting to agency's failure to perform realism analysis of successful vendor's pricing for individual items is denied where the contracting officer reasonably evaluated the awardee's lower price.
  2. Protester's challenge to technical evaluation is denied where the weaknesses attributed to the protester's technical submission were reasonably based.
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### DECISION

Laboratory Corporation of America (LabCorp), of Burlington, North Carolina, protests the establishment of a blanket purchase agreement (BPA) with Quest Diagnostics Nichols Institute (Quest), of Chantilly, Virginia, under request for quotations (RFQ) No. VA-246-11-RQ-0321, issued by the Department of Veterans Affairs for laboratory testing services for Veterans Integrated Service Network (VISN) 6. The protester argues the agency failed to conduct an adequate analysis of the realism of Quest's proposed pricing. LabCorp also argues that the evaluation of its own technical proposal was unreasonable.<sup>1</sup>

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<sup>1</sup> While the solicitation was issued as a RFQ, it referred to vendor submissions as "proposals" and the vendors themselves as "offerors."

We deny the protest.

## BACKGROUND

The RFQ contemplated the establishment of a fixed-price BPA against the successful vendor's Federal Supply Schedule (FSS) contract for a base period of one year and four 1-year options. Services to be provided include specimen processing, transportation of specimens from the VISN 6 primary VA medical facilities to the contractor's laboratory/laboratories, performance of testing, and reporting of results. The solicitation also included a "courier pick-up option" for the transportation of specimens, reports, and supplies between VA's smaller Community Based Outpatient Centers (CBOCs) and the primary VA medical facilities.

Proposals were to be evaluated on the basis of technical, past performance, and price factors, with technical and past performance, when combined, of significantly greater importance than price. Under technical, proposals were to be evaluated on the basis of the following 10 factors (in descending order of importance): specimen testing, sample processing, specimen processor, transportation services, reporting of results, customer service, specimen storage, performance improvement activities, utilization reports, and value added characteristics.<sup>2</sup> The RFQ included a detailed chart summarizing the technical factors and their subfactors, the evaluation standard for determining whether a subfactor had been met, and information pertaining to the subfactor that offerors should include in their proposals.<sup>3</sup> RFQ at 24-28.

Under the price factor, the solicitation included a pricing schedule, which contained two tabs. Tab 1 (Lab Testing) contained a list of 1,235 tests with estimated quantities. The 64 tests with the highest estimated quantities were identified as

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<sup>2</sup> There were 3 subfactors under the specimen testing factor, 2 subfactors under sample processing; 4 subfactors under specimen processor; 8 subfactors under transportation services; 5 subfactors under reporting of results; and 1 subfactor under each of the remaining factors.

<sup>3</sup> The solicitation provided that a proposal would be assigned a technical rating of blue/excellent if the proposal demonstrated that the offeror met or exceeded all of the government's requirements for the technical factor/subfactor; a rating of green/satisfactory if the offeror met most of the government's requirements for the technical factor; a rating of yellow/marginal if the offeror met some of the government's requirements for the technical factor; and a rating of red/unsatisfactory if the offeror did not meet the government's requirements. RFQ at 29.

“core tests.” The solicitation provided that the pricing on core tests would “be used as a tool for quick comparison,” but that “all test pricing [would] be analyzed.” RFQ, amend. 0002, at 3. Tab 2 (Courier Pick up Option Pricing for CBOCs) listed 23 CBOCs and their associated VA Medical Centers. Offerors were to furnish a “proposed annual cost” for courier service between each CBOC and its parent medical center. The RFQ provided that the agency would evaluate each offeror’s “total price” to determine whether it reflected an understanding of the project and the ability to perform successfully, was adequately supported and realistic in terms of the offeror’s proposed technical approach, and was reasonable. RFQ at 30.

The VA received three proposals prior to the September 23, 2011 closing date. A technical evaluation panel (TEP) met in November, 2011 to assign consensus ratings to the proposals. LabCorp’s proposal was rated as green/satisfactory under each of the technical factors, with the exception of performance improvement activities (for which it received a rating of yellow/marginal); overall, the VA rated the protester’s technical proposal as green/satisfactory. Quest’s proposal received ratings of blue/excellent under seven of the technical factors and ratings of green/satisfactory under the other three; overall, the VA rated Quest’s technical proposal as blue/excellent.<sup>4</sup> The third offeror’s proposal received an overall technical rating of yellow/marginal. A subgroup of the TEP evaluated past performance and assigned all three offerors ratings of excellent in that area.

LabCorp’s annual price for both the core tests and all tests was lower than Quest’s-- [deleted] vs. [deleted] for the former, and [deleted] vs. [deleted] for the latter. Contracting Officer’s Statement at 3. Quest’s total annual price for the courier pickup option was considerably lower than the protester’s, however--i.e., [deleted] vs. [deleted]. When overall totals for all tests, plus the courier pickup option were calculated, Quest’s total annual price (\$3,767,798) was lower than LabCorp’s (\$4,107,712).<sup>5</sup> Id. at 5.

Because Quest’s proposal had both the highest technical rating and the lowest evaluated price, by decision of June 19, 2012, the contracting officer determined that Quest’s proposal represented the best value to the Government.

The agency notified the protester of its decision in a letter dated July 23. The protester requested, and, on July 26, was furnished with a written debriefing. The debriefing letter identified the following “marginal technical findings” in the protester’s proposal:

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<sup>4</sup> Factors under which Quest received ratings of green were sample processing, reporting of results, and customer service.

<sup>5</sup> The third offeror’s prices for the testing and the courier services were higher than both LabCorp’s and Quest’s.

- LabCorp will repeat a test within 5 days if the provider questions the results but the test must be performed by [LabCorp].<sup>6</sup>
- LabCorp will provide a STAT test within 4 hours but there is an additional charge of [deleted] for STAT testing.
- If LabCorp's normal specimen processor is not available, the facility will have to provide their own specimen processor if LabCorp cannot find a replacement.
- LabCorp will remove the specimen processor with a 60 day notice if there is a drop in the testing volume.
- LabCorp will change their courier routes at any time at their sole discretion which will change the facilities pickup schedule.
- LabCorp charges for a STAT pickup of a sample.
- LabCorp will provide a weekly report for test delays whereas competitor will provide a daily fax.
- LabCorp saves specimens for 5-7 days which is the least for all offerors.
- LabCorp's response to Quality Assurance Plan/Performance Improvement Activities was weak compared to responses from the other 2 offerors. LabCorp's proposal did not provide much detail on [its] Quality Improvement and Quality Assurance activities. For example, listing of quality improvement monitors, outlining quality indicators, and the reporting and auditing process in reference to quality measurements.

Debriefing Letter, July 26, 2012, at 1. LabCorp protested to our Office on August 1.

## DISCUSSION

LabCorp argues that Quest's courier pick-up prices are unrealistically low and that the agency had an obligation to confirm them to ensure they did not reflect a misunderstanding of the solicitation's requirements on Quest's part. The protester further argues that Quest's courier service pricing for some of the CBOCs is below market, which is contrary to the terms of the RFQ. In addition, LabCorp challenges all but one of the agency's "marginal technical findings," arguing that they lacked a reasonable basis. For the reasons discussed below, we conclude that the protest is without merit.

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<sup>6</sup> The actual agency finding referenced repeat tests being performed by Quest. The agency acknowledged that this reference to Quest was in error and that the reference was supposed to be to LabCorp.

## Price Evaluation

In challenging Quest's courier pick-up prices as unrealistically low, the protester highlights the language in the RFQ indicating that the agency would evaluate prices to determine, in part, whether they reflected the offerors' "understanding of the project", and whether they were "realistic" in terms of their proposed technical approaches. As a general matter, when awarding a fixed-price contract, an agency is only required to determine whether offered prices are fair and reasonable. Federal Acquisition Regulation (FAR) § 15.402(a). An agency's concern in making a price reasonableness determination focuses primarily on whether the offered prices are too high, as opposed to too low, because it is the contractor and not the government that bears the risk that an offeror's low price will not be adequate to meet the costs of performance. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3.

While price realism need not be considered in evaluating proposals for the award of a fixed-price contract, an agency may include in a solicitation a provision that provides for a price realism evaluation for the purpose of assessing whether an offeror's low price reflects on its understanding of the contract requirements. General Dynamics One Source, LLC; Unisys Corp., B-400340.5, B-400340.6, Jan. 20, 2010, 2010 CPD ¶ 45 at 9. Where a solicitation provides for a price realism evaluation, the depth of an agency's evaluation in this regard is a matter within the sound exercise of the agency's discretion. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 4-5. In reviewing protests challenging price realism evaluations, our focus is on whether the agency acted reasonably and in a manner consistent with the solicitation's requirements. General Dynamics One Source, LLC; Unisys Corp., supra.

Here, to the extent the solicitation provided for a price realism evaluation, it indicated that "total price" would be evaluated, and the record reflects that the agency considered Quest's overall total evaluated price realistic where it was close to LabCorp's total price and the government estimate. Contracting Officer's Statement at 12. Moreover, the record reflects that the VA investigated the one element of Quest's pricing--the courier services pricing--which was significantly lower than the pricing proposed by the other offerors. Best Value Determination, at 5. In response to an inquiry by the contracting officer, Quest provided the basis for its courier pricing, which was consistent with the other offerors' courier services. Id. Although LabCorp argues that Quest's low courier pricing reflects an inherent lack of understanding of the agency's courier requirements and that the agency should have conducted further inquiry regarding the matter, its arguments in this regard amount to little more than disagreement with the agency's exercise of its discretion in evaluating Quest's pricing, which does not provide a basis for our Office to conclude that the agency's evaluation was improper or otherwise unreasonable.

See Flight Safety Servs. Corp., B-403831, B-403831.2, Dec. 9, 2010, 2010 CPD ¶ 294 at 6-7.

LabCorp also contends that Quest's courier service pricing for some of the CBOCs is below market, in contravention of the terms of Attachment B. As previously explained, the RFQ included an option for courier services between many of the CBOCs located within VISN 6 and their associated primary VA medical centers, and Tab 2 of the solicitation's pricing schedule asked offerors to provide a "proposed annual cost" for the services. In connection with the courier pick-up option, Attachment B to the RFQ provided as follows:

b. During the term of this agreement, contractor agrees at the request of a VISN 6 Primary Facility to provide courier services for the facility Monday – Friday excluding holidays (. . .) on behalf of its customers which are located along the contractor's Laboratory Courier Routes. . . . It is specifically understood that the facility and its customers shall be responsible for delivery of such reports and supplies to the contractor in a timely fashion and in a timely manner sufficient for contractor to include them in contractor's normal courier routines. . . .

c. In consideration for the Services, the designated Facility agrees to pay monthly and the contractor agrees to accept sums specifically defined for referenced routes listed in Attachment A. The parties agree that such fees payable hereunder shall not be less than "fair market value" of the services being provided, meaning the value in arms length transaction, consistent with general market price. While billed separately, consistent pricing for services should be reflected for all facilities.

RFQ, Att. B, at 2.

The record reflects that the VA is agreeing to pay Quest the amounts that Quest itself proposed for courier service between the various CBOCs and their parent medical centers. Since Quest proposed the amounts, they represent not less than what Quest regards as the fair market value of the services to be rendered. Under such circumstances, we have no basis to object to the amounts proposed.

#### Technical Evaluation

The protester also challenges the agency's evaluation of its technical proposal, arguing that several of the agency's "marginal technical findings" lacked a

reasonable basis.<sup>7</sup> We have reviewed all of the protester's challenges in this regard and, as illustrated by the examples discussed below, we find them to be without merit.<sup>8</sup>

As a general matter, where an agency conducts a formal competition for the establishment of a BPA, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the solicitation and applicable procurement statutes and regulations. OfficeMax, Inc., B-299340.2, July 19, 2007, 2007 CPD ¶ 158 at 5.

LabCorp argues that the agency acted unreasonably by assigning its proposal weaknesses based on LabCorp's indication that if its normal specimen processor is not available, and it is unable to provide a substitute, the agency will have to provide its own specimen processor, as well as LabCorp's indication that it would remove the specimen processor with a 60 day notice if there is a drop in the testing volume.

The solicitation required the contractor to provide personnel on-site at the primary VA facilities to process specimens for testing and to record test results. The RFQ further required the contractor "to provide uninterrupted specimen processor support." RFQ at 11.

In its response to the RFQ, LabCorp proposed as follows:

In the event the assigned specimen processor is unable to provide Specimen Processing Services, LabCorp shall make reasonable efforts to provide a substitute specimen processor or if no such substitute is available, make reasonable efforts to secure such specimen processor coverage. LabCorp shall not be considered in breach of this Agreement in the event the aforementioned coverage cannot be obtained due to circumstances beyond LabCorp's control. Notwithstanding, if for any reason LabCorp is unable to provide Specimen Processing Services during such regularly scheduled

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<sup>7</sup> The protester did not challenge the findings pertaining to additional charges for STAT testing (although it did point out that the finding that it charged for a STAT pick-up of a sample was repetitive of the finding that there was an additional charge of [deleted] for STAT testing.)

<sup>8</sup> We do agree with the protester with regard to one of its complaints--that is, we are not persuaded that it was reasonable for the evaluators to attribute a weakness to the proposal for LabCorp's reservation to itself of the discretion to change its courier routes. It does not appear, however, that elimination of this weakness would alter the rating assigned the protester's proposal under the transportation services factor.

hours, CLIENT agrees to provide its own Specimen Processing Services.

LabCorp's Proposal at 4. The proposal further stated that "[i]f at any time during the term of the executed agreement, should specimen volume drop to a level that does not support the placement of the processor, LabCorp reserves the right to remove the processor upon sixty (60) days notice to CLIENT." Id. at 5.

With regard to the weakness pertaining to coverage during the regular processor's absences, the protester argues that the conditions under which its proposal requires the agency to furnish a processor are unlikely to occur. In this connection, LabCorp notes that during the past five years, it is, in fact, aware of only a single isolated incident in which a VA facility was required to provide its own specimen processor for any amount of time. Similarly, with regard to its reservation of the right to remove a specimen processor, the protester points out that it reserved the right to do so only in the event that specimen volume drops to a level that does not support the placement of the processor. According to LabCorp, this is an event, which to its knowledge, has never occurred during its performance under the predecessor contract.

We find the protester's position to be unavailing. LabCorp's proposal failed to demonstrate full compliance with the requirement of the RFQ that the contractor ensure uninterrupted coverage of the specimen processor position. Moreover, while the protester appears to be arguing that it took only very limited exception to the requirement (because the circumstances in which it reserved to itself the right not to comply are unlikely to occur), the very fact that LabCorp included the conditions in its proposal shows that it believed them to have some significance.

The protester further argues that the evaluators unreasonably assigned its proposal a weakness where it proposed to save specimens for only 5-7 days, which the agency noted to be "the least for all offerors." In this regard, LabCorp contends that the agency's evaluation should have factored in LabCorp's "extremely short" turnaround time for many of the tests, which would offset the amount of time that the specimen needs to be stored. LabCorp pointed out, by way of example, that if it stored a specimen only 5 days, but turned around test results in 1 day, "the 4 extra days of storage would be greater than an offeror who stored the specimen 7 days but took 4 days to turn around the test results." Protest at 9-10.

The RFQ required that the contractor store specimens "a minimum of seven days after the test is reported in the event that subsequent action is necessary (i.e. problem solving, add-on test, and/or repeat testing)." RFQ at 16. In its proposal, LabCorp stated that it "retains most specimens for five to seven (5-7) days." LabCorp's Proposal at 30. Thus, there is no question but that the protester failed to demonstrate compliance with the RFQ requirement pertaining to specimen storage.



In sum, the record demonstrates a reasonable basis for the agency's assignment of a technical rating of green/satisfactory to the protester's proposal and for its selection of Quest's higher-rated, lower-priced proposal for award.

The protest is denied.

Lynn H. Gibson  
General Counsel