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Decision

Matter of: Laboratory Corporation of America

File: B-414896.3; B-414896.4

Date: July 13, 2018

William M. Jack, Esq., Elizabeth C. Johnson, Esq., and Amba M. Datta, Esq., Kelley Drye & Warren LLP, for the protester.
Merle DeLancey, Esq., Justin A. Chiarodo, Esq., and Sara N. Gerber, Esq., Blank Rome LLP, for Quest Diagnostics, Inc., the intervenor.
Donald C. Mobly, Esq., and Deborah K. Morrell, Esq., Department of Veterans Affairs, for the agency.
Robert T. Wu, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably evaluated proposals under the non-price factors is denied where the record shows that the evaluation was reasonable and in accordance with the stated evaluation criteria.
 2. Protest that the agency engaged in disparate treatment of proposals and improperly relaxed certain requirements for the awardee is denied where the record shows that the agency reasonably evaluated proposals.
 3. Protest that the agency conducted a flawed price evaluation is denied where the record shows that the protester was not prejudiced by any potential error in the agency's conduct of the price realism analysis.
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DECISION

Laboratory Corporation of America (LabCorp), of Raritan, New Jersey, protests the award of a contract to Quest Diagnostics, Inc., of Madison, New Jersey, by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. VA241-17-R-0030 for reference laboratory testing services. LabCorp challenges the agency's evaluation of proposals under the technical, past performance and price factors, as well as the agency's best-value tradeoff decision.

We deny the protest.

BACKGROUND

The RFP, issued on June 2, 2017, sought proposals to provide reference laboratory testing services, courier services, and patient service draw centers to the agency's Veterans Integrated Service Network (VISN) 1 VA New England Healthcare System (VANEHS). Agency Report (AR), Tab 2, RFP, at 6; Memorandum of Law (MOL) at 1. The RFP contemplated the award of one indefinite-delivery, indefinite-quantity (IDIQ) contract to the successful offeror for a 12-month base period and four option years. RFP at 1, 29. Proposals were to be evaluated on a best-value tradeoff basis, considering the following four factors, listed in descending order of importance: technical, past performance, veterans involvement, and price. Id. at 54. The non-price factors, when combined, were significantly more important than price. Id.

Under the technical factor, proposals were to be evaluated for understanding of the problem, feasibility of approach, and completeness. Id. The technical factor included four equally weighted subfactors: organizational structure/management, management approach, quality assurance and quality control, and licenses and insurance. Id. at 56-57. As relevant here, under the organizational structure/management subfactor, offerors were required to provide detailed information regarding their ability to provide specimen collection and specimen processing services within four miles of the VA community based outpatient centers (CBOC) listed in Attachment C of the RFP. Id. at 56.

The evaluation of past performance was to assess the relative risks associated with an offeror's likelihood of success in fulfilling the solicitation's requirements as indicated by the offeror's record of performance on prior contracts. Id. at 55. The agency was to conduct a performance risk assessment based on the quality, relevancy, and recency of the offeror's past performance. Id. The veterans involvement factor was to be used to assess and award a potential price credit for offerors who were service-disabled veteran-owned small businesses (SDVOSB) or veteran-owned small businesses (VOSB), or for non-SDVOSB/VOSB offerors whose subcontracting plans evidenced use of SDVOSB/VOSB subcontractors. Id. at 59.

Price was to be evaluated for reasonableness, balance, and realism. Id. at 55. The RFP included several pricing tools, including a section requiring a total price for each base year and option period (RFP at 26-27), and three additional pricing schedules and a requirement for a basis of estimate (narrative description found at RFP at 58). These schedules, in particular, will be discussed in greater detail below, but were intended to be evaluated as part of the agency's price review. Id.

Three proposals were received in response to the solicitation, including those from Quest and LabCorp. Contracting Officer's Statement (COS) at 1. After evaluation of proposals, award was made to Quest, which LabCorp protested to our Office on January 19, 2018. In response to the protest, the agency proposed to reevaluate the proposals and issue a new award decision. We dismissed the protest accordingly on

February 8. Laboratory Corporation of America, B-414896.2, Feb. 8, 2018 (unpublished decision). The relevant results from the agency's reevaluation are as follows:

	Quest	LabCorp
Technical	Exceptional	Acceptable
Past Performance	Low Risk	Moderate Risk
Veterans Involvement	Not Evaluated ¹	Not Evaluated
Total Evaluated Price	\$18,446,768	\$16,219,231

AR, Tab 14, SSEB Consensus Rep. at 1; AR Tab 16, SSDD, at 4-8.

In conducting his tradeoff analysis and affirming the prior award decision, the source selection authority (SSA) determined that Quest offered an exceptional technical proposal with low performance risk and concluded that Quest's higher price was "more than offset by the added benefits they provide." AR Tab 16, SSDD, at 9. Based on this determination, the agency decided to award the contract to Quest. Id. After a debriefing, this protest followed.

DISCUSSION

LabCorp challenges the evaluation of its proposal under the technical, past performance and price factors. The protester also argues that the agency unreasonably relaxed certain requirements for Quest, and engaged in improper disparate treatment when evaluating proposals under the technical and past performance factors. We have considered all of LabCorp's arguments, and while we do not address every argument in detail, we find none provide a basis to sustain the protest.²

¹ The record indicates that the agency did not evaluate veterans involvement for Quest or LabCorp because they are both large businesses. AR, Tab 16, Source Selection Decision Document (SSDD), at 8. The protester has not challenged this portion of the evaluation.

² For example, LabCorp argues that the agency disparately evaluated proposals where its proposal received a weakness for only proposing to meet the requirement for "point to point" specimen tracking with [DELETED], and not for all specimens, as required by the performance work statement (PWS). LabCorp contends that Quest's proposal should also have been assessed a weakness because Quest's proposal did not provide for individual specimen tracking, but instead only tracked bags that held each specimen. Supp. Protest at 9; RFP at 21; AR, Tab 16, SSDD, at 8. The agency responds, pointing to various aspects of each firm's approach, and asserts that LabCorp was assessed a weakness because it proposed an inferior approach for point to point specimen tracking and reconciliation. Supp. MOL at 4-5; AR, Tab 14, SSEB Report, at 8; Tab 16, SSDD, at 8. We have reviewed this allegation and conclude that it provides no basis to sustain the protest.

Technical Evaluation

LabCorp protests the agency's assignment of a weakness to the firm's proposal under the technical factor because LabCorp does not have patient service centers (PSC) within four miles of various CBOCs. Protest at 11-13. The protester argues that the weakness was unreasonable because the agency "expressly informed offerors during the solicitation process that this requirement could be fulfilled by the placement of an IOP [in-office phlebotomists] within a CBOC (where the CBOC had the space to accommodate an IOP), and by draw agreements with local hospitals within the 4-mile radius of a CBOC." Protest at 12 citing RFP, Amendment 00001, at 2-3. LabCorp asserts that it met the solicitation requirement by proposing alternatives that were approved by the agency. Protest at 11.

In reviewing a protest challenging an agency's evaluation, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 3. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. We will not sustain a protest where the agency's evaluation is reasonable, and the protester's challenges amount to disagreement with the agency's considered technical judgments regarding the specific elements of an offeror's proposal. BNL, Inc., B-409450, B-409450.3, May 1, 2014, 2014 CPD ¶ 138 at 5.

Here, the PWS required offerors to locate each PSC within four miles of the outpatient center it will serve. RFP at 10. Moreover, the organizational structure/management subfactor required offerors to provide detailed information regarding their ability to provide specimen collection and specimen processing services within four miles of the CBOCs listed in the RFP. Id. at 56. The agency later amended the solicitation to include responses to offeror questions including, as relevant to this protest, the following:

- [Q:] Will VANEHS consider phlebotomist's to be located in the CBOC's?
[A:] If the CBOC has adequate space, we would consider a phlebotomist to be located in the CBOCs. However, space is tight in many of the CBOCs.
[Q:] For more remote locations, would the VANEHS consider using Draw Agreements with local hospitals for the phlebotomy needs?
[A:] Yes, the VA would consider Draw Agreement[s] with local hospitals as along as it doesn't impact Veterans. Draw sites would need to be in close proximity to the CBOC location in accordance with the Performance Work Statement.

RFP, Amendment 00001, at 2-3.

The agency responds that the source selection evaluation board (SSEB) reasonably determined that the alternatives to the PSC requirement proposed by LabCorp should be assessed weaknesses because they presented higher risks to the government. MOL at 5. The agency explains, for instance, that LabCorp “minimized” the impact the proposed IOP alternative would have on a “CBOC footprint” and failed to “identify the appropriate equipment that would be needed in order for an IOP to be considered a viable alternative, if space allowed.”³ Contracting Officer’s Statement (COS) at 2; see AR, Tab 14, SSEB Report, at 7-8. The agency asserts that LabCorp’s proposed alternative “demonstrated their lack of understanding of the PSC requirement,” and that the protester proposed a solution that was “not feasible to meet the VA need based on their offered approach.” COS at 2.

With respect to the second proposed alternative--use of hospital draw agreements--the agency contends that LabCorp’s proposed solution “poses a higher technical risk and could potentially jeopardize patient care.” Id. at 3; see AR, Tab 14, SSEB Report, at 8. In this regard, the agency notes some of the reasons for this assessment: the inability of the VA to enforce agency rules, processes and procedures at a private hospital; heightened security risks to patient specimens; and issues with patients scheduling appointments when the private hospitals have their own patients. Id.

Here, the agency informed offerors that it would consider alternatives to PSCs being located within four miles of serviced CBOCs, and the record shows that it considered LabCorp’s proposal in this regard. The record also shows that the agency reasonably articulated various risks with LabCorp’s proposed use of IOPs and draw agreements, which are amply supported and explained in the record. Based on those articulated risks, we are provided no basis to question the agency’s treatment of this aspect of LabCorp’s proposal as a weakness.⁴ BNL, Inc., supra.

³ In this regard, the agency found, “LabCorp’s assertion that only a [DELETED] would be needed in order for an IOP to meet this need was contrary to the technical evaluation board members’ knowledge[,]” noting that the evaluators were “all SMEs [subject matter experts] in phlebotomy processes and have expert knowledge in this domain.” COS at 2. Moreover, the evaluators noted that “in order for the LabCorp IOP to meet the VA need for draw services, LabCorp would also need space for a phlebotomy chair, centrifuge, refrigerator, and ancillary supplies to collect and prepare specimens for transport.” Id.; see AR, Tab 14, SSEB Report, at 7-8.

⁴ LabCorp argues that the agency failed to credit its proposal with a strength for its proposed use of IOP’s, which LabCorp asserts should have been evaluated as a strength instead of a weakness. Protest at 14-15. Since we conclude that the agency reasonably treated this aspect of the firm’s proposal as a weakness, we do not address this argument further. LabCorp also argued that it should have received strengths for proposing a [DELETED] and having International Organization for Standardization (ISO) 15189 certification. Protest at 14-15. In response, the agency provided a substantive rebuttal in its agency report. MOL at 7-12. LabCorp’s comments failed to address the agency’s responses. Consequently, we consider the protester to have abandoned

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LabCorp also argues that the agency's evaluation of Quest's proposal demonstrates disparate treatment because the agency assigned an exceptional rating to the awardee's proposal, yet one of the PSCs proposed by Quest was not located within four miles of the serviced CBOC. Supp. Protest at 8. According to the protester, Quest's proposal did not meet all of the requirements of the PWS, and should have been ineligible for an exceptional technical rating. Id. at 9.

The evaluation of proposals and assignment of adjectival ratings are reasonably based on a qualitative assessment of the proposals consistent with the evaluation scheme. Epsilon Sys. Solutions, Inc., B-409720, B-409720.2, July 21, 2014, 2014 CPD ¶ 230 at 6. As our Office has consistently recognized, ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. One Largo Metro LLC, et al., B-404896 et al., June 20, 2011, 2011 CPD ¶ 128 at 14. Thus, where the evaluation and source selection decision reasonably consider the underlying basis for the ratings, the protester's disagreement over the actual adjectival ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. Epsilon Sys. Solutions, Inc., supra.

While the protester argues that Quest's proposal should not have received an exceptional rating under the technical factor because its proposal did not, in one instance, meet the four-mile requirement set forth in the PWS, the relevant inquiry is the underlying evaluation. In this regard, the record shows that, with respect to Quest's proposal, the SSEB found that the firm operated more than 200 PSCs throughout New England, and that they currently "have all but one PSC within the required 4-mile proximity to CBOCs," noting with respect to the one CBOC, "it was serviced by a . . . PSC that is 8.9 miles away." AR, Tab 14, SSEB Report, at 2. The SSA specifically considered this finding in his source selection decision and concluded that Quest's proposal meets the agency's needs, the PWS requirements, and is the most advantageous to the government. AR, Tab 16, SSDD, at 4. Thus, regardless of LabCorp's challenge to the adjectival rating assigned, the record supports that the SSA reasonably considered the relative merits of both proposals, and we are provided no basis to question the agency's judgment in this regard.

Past Performance Evaluation

LabCorp next challenges the evaluation of its proposal under the past performance factor. In this regard, the protester argues, in essence, that the assignment of a moderate risk instead of a low risk adjectival rating was unreasonable because the initial evaluation of its past performance was more favorable than the reevaluation following LabCorp's first protest. See Protest at 15-17. For instance, LabCorp

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these arguments, and will not consider them further. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

questions why the agency only found one of its past performance references to be relevant in the final evaluation, while finding all four to be relevant in size and scope in the prior evaluation. Id. at 5-6. Additionally, the protester argues that “[a]n agency cannot downgrade an offeror’s past performance rating simply because of a deficiency in the past performance questionnaire.” Id. at 6.

Generally, we will examine an agency’s evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors’ proposals are primarily matters within the contracting agency’s discretion. Advanced Env’tl. Solutions, Inc., B-401654, Oct. 27, 2009, 2010 CPD ¶ 7 at 5. Our Office will not question an agency’s determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

The agency explains that as a result of the reevaluation of proposals, a second review of LabCorp’s past performance references was conducted. According to the agency, during the review, it was clear that only one of the firm’s references met the RFP’s relevancy requirements. MOL at 13. In this regard, the agency asserts that a review of the firm’s past performance proposal volume revealed that LabCorp provided none of the details for any of its contracts that would have supported a relevancy determination. Id. at 14. Moreover, the agency asserts that the protester’s Contractor Performance Assessment Reporting System (CPARS) records only showed information for only one contact reference. Id. at 13. The agency concludes that, despite the contracting officer’s review, “there was no information the [contracting officer] could use to identify these references as similar in type, scope and size to the current requirement.” Id. at 14.

Here, offerors were required to identify three or more contracts of similar type, scope, size, and complexity, using past performance questionnaires (PPQ) that were to be sent to all references. RFP at 57. In submitting past performance information, offerors were required to “highlight experience in Reference Laboratory Testing Services with Courier Services and Patient Service Draw Stations.” Id. Offerors were also to provide “details of contracts of similar nature and similar size, particularly in regards to hospitals.” Id. The RFP informed offerors that the agency would review data available in the Past Performance Information Retrieval System (PPIRS); that the agency reserved the right to obtain past performance information from any available source; and that the agency may contact customers other than those identified by the offeror when evaluating past performance. Id. at 48. Offerors were cautioned, however, that since the agency “may not necessarily interview all of the sources provided” by the offerors, it was incumbent upon offerors “to explain the relevance of the data provided.” Id. at 55. Further, the RFP instructed offerors “that the burden of proving lower performance risk rests with the [o]fferors.” Id.

Our review of the record confirms the reasonableness of the agency’s evaluation. In this regard, while the RFP instructed offerors to provide details of contracts of similar nature and similar size, a review of LabCorp’s proposal shows that the firm’s past

performance volume consists of one page that provides contact information for four references. AR, Tab 7, LabCorp Proposal, at Vol. III. There is no information contained within the past performance volume providing any details with respect to the firm's submitted past performance references. Id. Moreover, the past performance information available to the agency for LabCorp, to include received PPQs and information contained in PPIRS, was limited. See generally AR, Tab 9, LabCorp Past Performance Records.

While LabCorp argues that it provided contact information, including telephone numbers and email addresses, the agency was under no obligation to utilize the contact information provided by LabCorp, and could reasonably limit its inquiry to those sources articulated in the RFP, which our review of the record confirms that it did. This is consistent with the stated evaluation scheme and the discretion that rests with agencies in determining the scope of performance history to be considered when evaluating offerors' past performance. See Hygeia Solutions Partners, LLC; STG, Inc., B-411459 et al., July 30, 2015, 2015 CPD ¶ 244 at 13 (finding agency's decision to limit its evaluation to documented sources of past performance information to be unobjectionable).⁵

LabCorp also argues that the past performance evaluation record demonstrates that the agency treated the protester and awardee disparately. Supp. Protest at 11. In this regard, the protester argues that Quest submitted even less information than did LabCorp, but was nevertheless evaluated favorably under the past performance factor. Id. The agency responds that the technical evaluation board found that: Quest's past performance survey provided details that permitted a meaningful review of two of the firm's submitted references; the third reference was for a contract supporting another VISN region; and Quest's PPIRS information included 178 records with only one marginal rating. Supp. MOL at 4-5; see AR, Tab 12, Quest Past Performance Records. Our review of the record provides a sufficient basis to support the agency's conclusions

⁵ The protester highlights that three of its references were for VA contracts and relate to contracts for the same services with the same contracting activity. Thus, the protester argues that the agency either had an obligation to review this information, or should have been aware of the information. See Orbital Scis. Corp., B-414603, B-414603.2, July 26, 2017, 2017 CPD ¶ 249 at 10. While the references identified by LabCorp in its proposal were with the same agency, the record shows that they were not from the same contracting activity. Thus, we are aware of no obligation on the agency to ascertain and consider such information. Instead, it was incumbent upon the protester to submit sufficient information to support the required evaluation of its past performance, which the record confirms, it did not. See Hallmark Capital Grp. LLC, B-408661.3 et al., Mar. 31, 2014, 2014 CPD ¶ 115 at 9 (finding offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency).

in this regard.⁶ Therefore, we see no basis to conclude that the agency's evaluation was unreasonable.

Price Evaluation

LabCorp next challenges what it terms the agency's "adjustment" of the firm's fixed price. Protest at 6. In this regard, the protester argues that the agency improperly adjusted its price for phlebotomy and courier services, and that the agency included fees listed in the proposal that were not included in the pricing attachments, in violation of the terms of the RFP. Protest at 20. LabCorp also argues that, regardless of whether the agency could make adjustments to price, the agency nevertheless erred because LabCorp's proposal did not show that the fees would be charged. Id. at 23. We are provided no basis to sustain the protest.

The RFP identified both an "evaluation approach" for price, and an "evaluation factor" for price. The evaluation approach for the price factor states, in pertinent part, that the agency, "will evaluate offers by adding the total of all line item prices, including all options." RFP at 55. Under the evaluation factor, price proposals were to be evaluated for "the reasonableness of the price of each acceptable offer in relation to the offeror's relative capability. Additionally, all offers with separately priced line items will be analyzed for unbalanced pricing." Id. at 58. As stated above, offerors were provided with three attachments to provide pricing information: Attachment A was used to price lab testing services; Attachment B was used to price phlebotomy draw stations; and Attachment C was used for pricing related to CBOC locations and courier services. Id. The pricing spreadsheet at Attachment B provided a column next to the identified services that included the agency's estimated quantities based on historical data, and required offerors to provide unit pricing for various tests and services. Id.

The record reveals that the agency amended the solicitation, issued a revised Attachment B, and instructed offerors that "[p]ricing for both the Patient Draw Centers and Courier Services shall be provided in this attachment. Formulas have been added to Attachment B to clarify both phlebotomy and courier service pricing." RFP, Amendment 00003, at 2. A review of Attachment B shows that the agency provided estimated quantities for phlebotomy services for each of the CBOC locations. RFP at Attachment B. However, consistent with the agency's review, the record shows that

⁶ For example, a review of Quest's past performance information shows that the firm provided services to all locations within VISN 8, with positive reviews of the firm's performance. AR, Tab 12, Quest Past Performance at 1-3. The information also provides detailed comments on the firm's performance of a contract that was previously performed by LabCorp. Id. at 5-8. Finally, a CPARS report details the firm's performance on a VA contract, which includes information such as dollar amount, contract description and qualitative information. Id. at 10-15. In short, there is sufficient information to support the agency's evaluation conclusions about Quest's past performance. Advanced Envtl. Solutions, Inc., supra.

the protester modified the RFP's estimated quantities, and instead inserted only half of the estimated quantities stated in the RFP when calculating its extended pricing for the items on Attachment B. AR, Tab 7, LabCorp Proposal, at Attachment B; AR, Tab 15, Abstract of Proposals, at 2 (noting that LabCorp's proposal divided PSC services in half).

The record also shows that the agency rejected the protester's reduced estimated quantity numbers and restored the higher quantities listed in the pricing spreadsheet at Attachment B in order to provide a common basis for evaluating price. In restoring the solicitation's quantity numbers, LabCorp's pricing increased for all the items proposed by LabCorp on the Attachment B pricing spreadsheet. AR, Tab 15, Abstract of Proposals, at 2; Tab 16, SSDD, at 6; MOL at 17. The protester does not dispute that it purposely reduced the estimated quantities provided in the RFP. See generally Protester's Comments. The record also confirms that offerors were notified that, in pricing the phlebotomy and courier services, they were to use the estimated quantities stated in the RFP. RFP, Amendment 00003, at 2.

The protester argues, in effect, that the agency's rejection of its estimated quantity numbers resulted in an improper adjustment to its proposed price. As the protester notes, the Federal Acquisition Regulation (FAR) does not permit an agency to adjust an offeror's proposed fixed prices as part of a price realism evaluation. FAR § 15.404-1(d)(3); IBM Corp., B-299504, B299504.2, June 4, 2007, 2008 CPD ¶ 64 at 11.

We recognize that the agency's rejection of the protester's revision to the estimated quantities of Attachment B had the effect of adjusting the protester's proposed price. The agency's evaluation of the protester's proposal for Attachment B reflects a rejection of the protester's unilateral attempt to modify the quantities that offerors were required to use for calculation of their proposed prices. AR, Tab 14, SSEB Consensus Rep. at 9; AR Tab 16, SSDD, at 7-8. This evaluation appears similar to an improper adjustment to a fixed price based on a price realism evaluation to the extent the agency concluded that the proposed price was inconsistent with the proposed technical approach, i.e., the estimated quantity of work to be performed.

We nonetheless conclude that, even if the protester were correct that this adjustment was improper under the FAR, there is no basis to conclude that the protest should be sustained. In this regard, even if the protester were to prevail on its contention that the agency's adjustment was improper, the result would be that the protester's proposal deviates from the estimated quantities set forth in Attachment B. This deviation constituted a material exception to the terms of the solicitation. Under such circumstances, the protester's proposal could not be accepted. See Kratos Defense & Rocket Support Servs., Inc., B-413143.2, Aug. 23, 2016, 2016 CPD ¶ 227 at 5 (concluding that a proposal that takes exception to a solicitation's material terms and conditions, such as price, quantity, quality, or delivery of goods, must be considered unacceptable for award). Moreover, accepting the protester's price as proposed would be unreasonable because the proposals would not be priced on a common basis. Unlike LabCorp, the awardee used the stated quantities set forth in Attachment B. The

protester elected to unilaterally modify those quantities to its detriment. AR, Tab 14, SSEB Consensus Rep. at 9; AR Tab 16, SSDD, at 6-8

To the extent that LabCorp believed the RFP permitted it to deviate from the stated estimated quantities in pricing these services, such an interpretation is unreasonable. See Crew Training Int'l, Inc., B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4 (denying protest where protester's interpretation of the solicitation was unreasonable). Nothing in the terms of the solicitation permitted offerors to revise the estimated quantities set forth in Attachment B. RFP, Amendment 00003, at 2; see generally RFP. Moreover, while LabCorp now protests the agency's decision to evaluate its price using the estimated quantities stated in the RFP, this challenge amounts to an untimely challenge to the terms of the solicitation. See 4 C.F.R. § 21.2(a)(1); see CI Filing Sys., LLC, B-411012, Apr. 17, 2015, 2015 CPD ¶ 131 at 4-5.

In sum, we find no basis to sustain the protest because accepting the protester's argument that its proposal should have been evaluated using the modified quantities it included in Attachment B would have resulted in evaluating an unacceptable proposal. We therefore conclude that the protester cannot demonstrate any potential prejudice stemming from the alleged error in the agency's attempt to correct the protester's revision of the estimated quantities set forth in the solicitation.⁷ See Glock, Inc., B-414401, June 5, 2017, 2017 CPD ¶ 180 at 11-12 (finding no prejudice despite identified evaluation error).

The protester also complains that the agency improperly adjusted its price to account for certain fees that LabCorp argues were not included as part of its total price. Protest at 20. In this regard, LabCorp challenges the agency's inclusion of an additional \$130,075 to account for a \$[DELETED] fee for specialized testing included in the firm's proposal. The protester also challenges the inclusion of \$174,565 to account for a \$[DELETED] fee included in LabCorp's proposal for other identified services. Protest at 20.

The record indicates that the agency amended the solicitation in response to a question (asking where to enter a fee on one of the pricing spreadsheets) to require pricing for "cost per test" (CPT) item codes identified on Attachment A. RFP, Amendment 00003, at 2. The record also shows that the agency notified offerors that handling fees for referred test services were to be included in the narrative portion of offerors' proposals, but did not state how those fees would be evaluated. RFP, Amendment 00006, at 2. A review of LabCorp's proposal confirms that LabCorp provided a price for both of these items as part of Attachment A, but did not provide any quantities for these items. AR, Tab 7, Attachment A.

⁷ As discussed above, FAR § 15.404-1(d)(3) prohibits the adjustment of a proposed fixed price for purposes of a price realism evaluation. Nothing in our decision here changes our longstanding interpretation of this FAR provision. See, e.g., IBM Corp. supra.

Our review of the record shows that the RFP was patently ambiguous as to how these required fees were to be evaluated. Because the ambiguity was patent, to the extent that LabCorp now challenges the agency's decision to consider an estimate of the amount of these fees in assessing the company's evaluated price, such a challenge is untimely.⁸ In any event, we conclude that the protester was not prejudiced by the agency's review of prices for these indefinite quantity services given the stated evaluation scheme, Quest's evaluated superiority under the two most important factors, and the fact that the agency made similar adjustments to Quest's proposal. See Bannum, Inc., B-408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 4 (finding prejudice is an essential element of any protest).⁹

Best-Value Determination

Finally, the protester contends that the agency's best-value decision was based on an unreasonable and flawed evaluation. Based on our review of the record, and as discussed above, we find no merit to this argument. Glacier Tech. Solutions, LLC, B-412990.3, Mar. 15, 2017, 2017 CPD ¶ 91 at 9 (denying challenge to agency's best value tradeoff decision where protester's argument was premised entirely on allegations that had been discussed earlier and denied). The record also demonstrates that the SSA provided a well-reasoned basis for a tradeoff, which identified discriminators between the proposals and justified the agency's decision to award the contract to Quest.¹⁰ Ultimately, since we deny all of the protester's arguments, we are provided no

⁸ Where a patent ambiguity is not challenged prior to the submission of proposals, we will dismiss as untimely any subsequent challenge to the meaning of the term. 4 C.F.R. § 21.2(a)(1); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10.

⁹ LabCorp also contends that the random sampling analysis performed by the agency on CPT pricing inaccurately minimized the price differences between LabCorp and Quest. Supp. Protest at 18. The RFP stated that the "Government will evaluate the reasonableness of the CPT pricing by analyzing a random sampling of CPT tests with discounted pricing for the base and option years." RFP at 58. LabCorp's complaint that the sampling was improper because the agency focused on the 148 highest volume tests, rather than a random sample, provides no basis to conclude that the agency's assessment was unfair, or that LabCorp was prejudiced by the analysis. As set forth above, the RFP clearly advised that random sampling was to be used as part of the price reasonableness analysis, and not to evaluate the price differential between proposals.

¹⁰ For example, the agency found that Quest's proposal offered a broad test menu of over [DELETED] orderable tests, ability to perform [DELETED] percent of lab testing within network, specimen tracking at point to point using [DELETED], and existence of all but one PSC within the required 4-mile radius. The Quest proposal included all tests needed by VISN 1. AR, Tab 16, SSDD, at 8. In contrast, the agency found that alternatives offered in LabCorp's proposal for meeting the required 4-mile geographic

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basis to question the agency's best-value tradeoff decision. In spite of LabCorp's lower-priced proposal, the SSA decided to award the contract to Quest based on Quest's much higher ratings under the technical and past performance factors. In light of the solicitation's evaluation scheme, which made non-price factors, when combined, significantly more important than price, we find the agency's award decision to be reasonable. See Id.

The protest is denied.

Thomas H. Armstrong
General Counsel

(...continued)

proximity to the CBOCs requirement increased risk to veterans care and might hinder the VA's ability to obtain these important laboratory testing services without interruption. Id. The agency also found that the firm's proposal only met the requirement for point-to-point specimen tracking with [DELETED] for some, and not all specimens as required by the PWS. Id.