

**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

# Decision

**Matter of:** Roche Diagnostics Corporation

**File:** B-419510; B-419510.2

**Date:** April 16, 2021

---

Jonathan Aronie, Esq., and Nikole Snyder, Esq., Sheppard Mullin Richter & Hampton LLP, for the protester.

Alexis J. Bernstein, Esq., Colonel Patricia S. Wiegman-Lenz, Josephine R. Farinelli, Esq., and Major Nicholas C. Frommelt, Department of the Air Force, for the agency. Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

1. Protest challenging, as unduly restrictive of competition, the combination of laboratory analyzer requirements into a single solicitation is denied where the record shows that the combination of requirements is reasonably necessary to meet the agency's legitimate needs.
  2. Protest challenging agency's interpretation of the solicitation as permitting the use of subcontractors to satisfy solicitation requirements is dismissed as untimely where the protester raised this argument in a piecemeal fashion.
- 

## DECISION

Roche Diagnostics Corporation, located in Indianapolis, Indiana, protests the terms of request for quotations (RFQ) No. FA4427-21-R-0007, issued by the Department of the Air Force for a complete core laboratory solution for chemistry laboratory analyzers for the medical treatment facility at the David Grant Medical Center (DGMC) at Travis Air Force Base Fairfield, California. The protester contends that the solicitation is unduly restrictive of competition and that the agency improperly converted the procurement from one seeking a single vendor to one that permits multi-vendor solutions.

We deny the protest.

## BACKGROUND

The solicitation at issue arises from a recurring requirement for a complete core laboratory solution for DGMC. Agency Report (AR), Tab 1, Contracting Officer's

Statement (COS) at 2. The requirement is for chemistry/immune-chemistry, coagulation, and urinalysis analyzers, as well as associated services and supplies such as reagents for patient testing. *Id.* These analyzers make up an automation line that includes a specimen storage module and three centrifuges, which assure the continual centrifugation of specimens for the clinical laboratory located at DGMC. *Id.*

Prior to issuing the RFQ, the Air Force conducted initial market research using commercial and government databases, including the System for Award Management website, the Federal Procurement Data System-Next Generation website, and the Dynamic Small Business Search website. AR, Tab 11, Air Force Market Research Report.

Secondary research was conducted by the General Services Administration (GSA) via a posted request for information (RFI) on GSA's e-buy website on December 18, 2020. AR, Tab 12, RFI. GSA received responses from seven interested parties, including Roche. AR, Tab 13, GSA Market Research Report at 2. In a series of questions, the RFI asked each respondent to identify whether it could meet the requirements of each of the six technical factors, which were as follows: (1) the analyzer platform; (2) the chemistry and immunochemistry analyzer requirements; (3) the coagulation analyzer requirements; (4) the urinalysis analyzer requirements; (5) the automation line and sample storage; and (6) the data management system. AR, Tab 12, RFI at 4-7. No single company indicated it could meet all six technical factors. AR, Tab 13, GSA Market Research Report at 2-8.

On December 18, the Air Force released the RFQ on GSA's e-buy site. COS at 5. The RFQ anticipated the award of a fixed-price contract for chemistry laboratory analyzers, "to include chemistry, immune-chemistry, coagulation, urinalysis, automation line, data management system, and inventory management system for [DGMC]." AR, Tab 14, RFQ at 1. The RFQ was issued in accordance with Federal Acquisition Regulation (FAR) part 8, Required Sources of Supplies and Services, and part 12, Acquisition of Commercial Items. COS at 5. The solicitation was limited to holders of a GSA schedule contract. *Id.*; Agency Summary of April 12 Teleconference at 1; Protester Post-Teleconference Letter at 1.

Prior to the quotation submission deadline, the Air Force responded to written questions from interested vendors, with the answers posted via solicitation amendment. AR, Tab 15, RFQ Amendment 1. In response to a request that the requirement be split into three separate solicitations by line of business, the agency stated that "it is too late in this contract to split it. We will, however, take this into account when we renew the contract in 3 years." AR, Tab 16, Questions and Answers at 1. In response to several questions about whether the agency would accept "or equivalent" and "partial solutions from vendors," the agency stated that "[m]utually agreed upon solutions will be accepted." *Id.* at 2-3.

The deadline for the submission of quotations was January 8, 2021. The agency received four timely quotations: three that included each analyzer requested by the RFQ, and a quotation [DELETED] from Roche. COS at 8.

On January 8, prior to the closing time for quotation submissions, Roche filed this protest.

## DISCUSSION

Roche argues that the RFQ unreasonably restricts competition by grouping several requirements together. The protester contends that the agency should break these requirements into separate solicitations to increase the overall level of competition. The protester also argues that the agency improperly converted the procurement from one seeking a single-vendor solution to one seeking a multi-vendor solution. While we do not address every argument raised by the protester, we have reviewed each issue and find no basis to sustain the protest.

### Bundling of Requirements

The protester challenges the inclusion of three separate types of analyzers under a single solicitation. The protester argues that this “bundling” was not reasonably necessary to meet the agency’s needs, when the Air Force could have increased the level of competition for the requirement by issuing a separate solicitation for each analyzer. Protest at 5. Roche notes that, according to the Air Force’s own market research, no single vendor was capable of providing all three analyzers.

The determination of a contracting agency’s needs and the best method of accommodating them are matters primarily within the agency’s discretion. *Trailboss Enterprises, Inc.*, B-415812.2 *et al.*, May 7, 2018, 2018 CPD ¶ 171 at 4. Where a protester challenges a specification as unduly restrictive, that is, challenges both the restrictive nature of the specification and the agency’s need for the restriction, the agency has the responsibility of establishing that the restrictive specification is reasonably necessary to meet its legitimate needs. *GlobaFone, Inc.*, B-405238, Sept. 12, 2011, 2011 CPD ¶ 178 at 3. The adequacy of the agency’s justification is ascertained through examining whether the explanation is reasonable, and withstands logical scrutiny. *Id.* Where a requirement relates to national defense or human safety, as here, an agency has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest level of reliability and effectiveness. *Vertol Sys. Co.*, B-293644.6 *et al.*, July 29, 2004, 2004 CPD ¶ 146 at 3.

Here, the agency has provided a reasonable explanation for soliciting all three analyzers under one solicitation. In this regard, the Air Force explains that this is not a bundled requirement and has historically always been one requirement because of the need for an integrated and automated solution, combining multiple functions into a single unit, in a single laboratory space. COS at 10. There is a single central loading location for all specimens going to all of the analyzers and limited capacity for storage in the laboratory. *Id.* at 3. Having one vendor providing one integrated solution reduces the storage footprint and is more efficient for providing support and services, as well as integrated training for all parts of the interface. Memorandum of Law (MOL) at 8. In addition, the agency provided an affidavit from a technical evaluator that discussed the key role that laboratory professionals and laboratory testing have with respect to patient

safety, noting that having “[o]ne core lab solution for chemistry, immune-chemistry, coagulation, and urinalysis testing is crucial to the life and safety of the patients at DGMC.” AR, Tab 18, Technical Evaluator Affidavit at 2.

In response to the agency’s rationale, the protester does not question the need for a single core laboratory solution, or the impact of that solution on laboratory space, services and support, and training. The protester nonetheless argues that such an integrated solution could be provided using three solicitations. The protester argues that these solicitations would still allow for the integration of the analyzers into a single platform and automation line, and would still allow one vendor to be the lead for the core laboratory solution.

The agency responds that having one RFQ meets its need to have a single point of accountability for all of its technical requirements with respect to the core laboratory solution. The Air Force notes that the single RFQ would not require that one manufacturer make all three analyzers and instead a vendor could team with other vendors to provide a multi-vendor solution, for example via a subcontracting arrangement. We find this explanation withstands logical scrutiny and is within the agency’s broad discretion, applicable to requirements relating to human safety, to seek a solution that ensures the highest level of reliability and effectiveness. See *Vertol Sys. Co., supra*. We also note that the impact on competition of including the requirements under one solicitation is reduced by the solicitation’s contemplation of multi-vendor arrangements, such as subcontracting arrangements, to meet the solicitation requirements. Accordingly, this argument is denied.

#### Acceptability of a Multi-Vendor Solution

The protester contends that the RFQ did not even suggest the possibility that the agency would accept a multi-vendor solution. In this regard, the protester highlights the use of the singular term “contractor” as indicating that the RFQ sought to award the contract to one vendor rather than multiple vendors via a contractor teaming arrangement (CTA). Roche notes, for example, that the RFQ stated the “[c]ontractor shall provide all labor, parts, materials, tools, supplies, transportation and equipment” and also stated that the “contractor must demonstrate that the proposed [c]ore [l]aboratory solutions meets all the minimum requirements in the [RFQ] instructions and [s]tatement of [w]ork.” Comments & Supp. Protest at 9 (*citing* RFQ at 1, 4) (emphasis omitted). The protester contends that the agency confirmed this interpretation in its supplemental legal memorandum, stating that “the Air Force expects to award to one prime contractor. It does not intend to award to multiple prime contractors.” Supp. MOL at 5.

The agency argues that this protest ground, which was raised after the agency filed its agency report, is an untimely challenge to the terms of the solicitation. In this respect, the Air Force asserts that the RFQ contained numerous references to subcontractors, reflecting that the solicitation anticipated that prime contractors could team with subcontractors or otherwise provide a multi-vendor solution. For example, the

solicitation called for the evaluation of past performance information of “subcontractors that will perform major or critical aspects of the requirement.” RFQ at 6.

In response to this argument, the protester challenges the agency’s interpretation of the RFQ as permitting prime contractors to team with subcontractors to provide technical solutions that the prime contractor would have been unable to provide on its own. The protester contends that this interpretation impermissibly permits a vendor to propose items that are not listed on its GSA schedule since such a prime contractor would be relying on its subcontractor to provide services and items that presumably were not listed on the prime contractor’s schedule. The protester contends that this arrangement would violate GSA’s scheduling rules.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *Armorworks Enters., LLC*, B-400394, B-400394.2, Sept. 23, 2008, 2008 CPD ¶ 176 at 5. Under these rules, a protest based on alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1). In addition, our regulations do not permit the piecemeal presentation of protest issues, where there is no reason the protester could not have earlier raised the contentions. *Synergy Solutions, Inc.*, B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 7.

Here, we find that Roche’s argument challenging the contemplated use of subcontractors amounts to the piecemeal development of protest issues.<sup>1</sup> Roche first raised this argument in its March 1 comments on the supplemental agency report despite being placed on notice of the information providing the basis for the argument on or before February 8. In this regard, the agency’s market research (which was provided as part of the Air Force’s February 8 agency report) showed that no single

---

<sup>1</sup> While the protester did timely challenge the agency’s interpretation of the solicitation as permitting the submission of a CTA, we note that the Air Force has now abandoned this interpretation. In this respect, the agency initially cited FAR subpart 9.6 to argue that it was permitted to issue the federal supply schedule (FSS) order to two or more vendors that had formed a CTA. However, in a subsequent teleconference with our Office, the agency conceded that this provision is inapplicable to solicitations seeking the issuance of orders under a GSA schedule. See Agency Summary of April 12 Teleconference at 1. CTAs under GSA schedule contracts are distinct from acquisitions under FAR subpart 9.6, and instead involve a contractual arrangement where each team member, as a result of its GSA schedule contract, has privity of contract with the government for the goods or services that it is providing. See *Veterans Healthcare Supply Sols., Inc.*, B-409888, Sept. 5, 2014, 2014 CPD ¶ 269 at 4. Here, the agency’s legal memorandum asserts that the Air Force “does not intend to award to multiple prime contractors,” which would rule out issuing a task order to a GSA schedule CTA. Supp. Comments at 8 (*citing* Supp. MOL at 5).

interested vendor could meet the entirety of the technical requirements on its own. Based on this same market research, Roche filed a supplemental protest on February 17 challenging the agency's intention to use a multi-vendor solution. The February 17 supplemental protest was silent regarding the possibility that the agency might permit prime contractors to use subcontractors to fulfill the RFQ requirements, however, and it did not mention the protester's later assertion that this would violate GSA scheduling rules. We note too that the RFQ specifically contemplated the use of subcontractors, stating that the agency would evaluate the past performance information of "subcontractors that will perform major or critical aspects of the requirement." RFQ at 6. It was not until March 1 that the protester challenged the agency's interpretation of the solicitation as permitting subcontractors to provide analyzers that the prime contractor was unable to provide. We find that this amounts to the piecemeal presentation of protest issues, and that the argument is therefore untimely.<sup>2</sup>

The protest is denied.

Thomas H. Armstrong  
General Counsel

---

<sup>2</sup> We also note that, in any event, our decisions have previously concluded that an FSS contractor acting as a prime contractor may use a subcontractor to provide services not included within the prime contractor's FSS contract so long as the services in question are included within the subcontractor's FSS contract. *Altos Fed. Grp., Inc.*, B-294120, July 28, 2004, 2004 CPD ¶ 172 at 4. This is so because the items on the subcontractor's FSS contract, like the items on the prime contractor's FSS contract, were the object of competitive procedures prior to their inclusion on the vendor's schedule contract. *Id.* Here, the agency represents that it will ensure that the services and supplies proposed by vendors are listed on either the prime contractor's or the subcontractor's GSA schedule. Agency Summary of April 12 Teleconference at 2.