

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

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Laboratory Corporation  
Of America,

Petitioner, 2013 JAN 18 AM 11 25

v.

State of Florida,  
Department of Health,  
Respondent,  
and

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

DOAH Case No.: 12-3170BID  
DOH ITB No.: DOH12-007  
Rendition No.: 13-0027-FOF-BID

Quest Diagnostics Clinical  
Laboratories, Inc.  
Intervenor

**FINAL ORDER**

This matter is before Florida Department of Health (“Department”) for the entry of a final order following receipt of a Recommended Order issued by an Administrative Law Judge of the Division of Administrative Hearings (“DOAH”). This is a bid protest proceeding initiated by Laboratory Corporation of America, (“Labcorp”) in response to the Department’s intent to award Invitation to Bid No. DOH12-007 to Quest Diagnostic Clinical Laboratories (“Quest”). Having found that the Department’s award to Quest was not erroneous, contrary to competition, arbitrary or capricious, the presiding Administrative Law Judge, Lawrence P. Stevenson (“ALJ”), recommends that the Department dismiss Labcorp’s bid protest. Labcorp has filed exceptions.

**PRELIMINARY STATEMENT**

On July 10, 2012, the Department issued its Invitation to Bid (“ITB”) to solicit competitive bids for the award of a three-year contract to provide clinical laboratory services to the Department and its county health departments. On September 4, 2012, the Department announced its intent to award the contract to Quest. Labcorp served the Department with a

notice of its intent to protest the decision to award the contract to Quest on September 17, 2012, and filed a formal bid protest on October 1, 2012.

On September 24, 2012, Quest filed a Petition for Leave to Intervene in the proceeding. On September 26, 2012, the Department referred this matter to DOAH. By order dated September 27, 2012, the hearing was scheduled for October 24 and 25, 2012, and Quest was granted permission to intervene.

On October 1, 2012, Labcorp filed an unopposed Motion for Leave to File an Amended Petition, which was granted by order dated October 2, 2012. On October 23, 2012, Labcorp filed an unopposed Motion for Leave to File a Second Amended Petition, which was granted by order dated October 23, 2012. The second amended petition raised the single issue of whether the Quest bid should be deemed non-responsive for failing to provide the names of personnel in the staffing plan required to be submitted with the bid. At hearing, Joint Exhibits 1 through 10 were admitted into evidence. Labcorp presented the testimony of Department employees Ms. Susan Renee Gregory and Ms. Regina Taylor.

The one-volume Transcript of the proceedings was filed with DOAH on November 5, 2012. On December 10, 2012, the ALJ issued a Recommended Order to the Department. The Order upheld the Department's decision to award the contract to Quest. On December 20, 2012, Petitioner filed exceptions to the Recommended Order.

**STANDARD FOR REVIEWING THE RECOMMENDED ORDER  
AND EXCEPTIONS TO RECOMMENDED ORDER**

The Administrative Procedure Act contemplates that the Department will adopt an ALJ's Recommended Order as the agency's Final Order in most proceedings. Consequently, the Department has been granted limited authority to reject or modify findings of fact or conclusions of law. In pertinent part, Section 120.57(1)(l), Florida Statutes states:

Rejection or modification of conclusions of law may not form the basis of rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

Absent a demonstration that the underlying proceeding departed from the essential requirements of law, “[a]n ALJ’s findings cannot be rejected unless there is not competent substantial evidence from which the findings could reasonably be inferred.” *Prysi v. Dep’t of Health*, 823 So. 2d 823 (Fla. 1st DCA 2002). Additionally, in determining whether challenged findings are supported by the record in accordance with the above standard, the Department may not reweigh the evidence or judge the credibility of witnesses. Both of these responsibilities are within the sole province of the Administrative Law Judge as the finder of fact. *Heifetz v. Dep’t of Bus. Regulation*, 475 So. 2d 1277 (Fla. 1st DCA 1985).

The Administrative Procedure Act also specifies the manner in which the Department is to address conclusions of law in a Recommended Order. Section 120.57(1)(I), Florida Statutes, states, in pertinent part:

The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

*See also, Barfield v. Dep’t of Health, Bd. of Dentistry*, 805 So. 2d 1008 (Fla. 1st DCA 2002);

*DeWitt v. Sch. Bd. of Sarasota County*, 799 So. 2d 322 (Fla.2d DCA 2001).

In considering the exceptions to an ALJ’s findings of fact the general rule of deference is that an agency may reject a finding of fact only if a challenged finding is not supported by

competent, substantial evidence. In contrast to the ALJ's fact finding, an agency need not defer to an ALJ's interpretation of statutes or administrative rules over which the agency has substantive jurisdiction.

## **PETITIONER'S EXCEPTIONS**

### ***PETITIONER'S EXCEPTION PARAGRAPH II***

In paragraph II of the exceptions the Petitioner takes exception to the findings and related conclusions in paragraphs 19., 22., 23., 25., 26., 29., 31., 42., 43., 45., and 46. of the Recommended Order. The basis for these exceptions is that the ALJ's interpretations of the ITB terms are erroneous as a matter of law and render bidding in this case contrary to competition in violation of section 120.57 (3) (f), Florida Statutes. These exceptions are rejected. The ALJ's finding that the ITB did not require staffing personnel to be identified by name is a reasonable interpretation of the ITB terms. Upon a complete review of the record in this proceeding, the Department finds that the findings of fact in paragraphs 19., 22., 23., 25., 26., 29., and 31., of the Recommended Order are supported by competent substantial evidence. As such, rejection of the findings of fact would be erroneous. To the extent that any of these conclusions might be considered conclusions of law, they are reasonable and proper interpretations of the ITB terms and are not contrary to law.

The exceptions to the conclusions of law in paragraphs 42., and 45., of the Recommended Order are also rejected. The conclusions of law in these paragraphs are reasonable, and are proper interpretations of law and the ITB terms. As to paragraphs 42. and 45., the ITB does not contain an express requirement or any direction for a responsive bidder to specify the names of personnel to be used in performing the proposed contract for providing laboratory test services

for a set fee. Paragraph 46 is discussed below in response to Petitioner's Exception Paragraph III. There is no paragraph 43., in the Recommended Order.

Because the Petitioner has organized the exceptions in a manner that discusses and singles out the "minor irregularity" finding of paragraph 31., of the Recommended Order in Petitioner's Exception Paragraph III., no part of this order concerning exceptions to Paragraph II is applicable to that issue. That issue is addressed below as part of the analysis of Petitioner's Exception Paragraph III.

### ***PETITIONER'S EXCEPTION PARAGRAPH III***

In Petitioner's exception paragraph III, the Petitioner takes exception to the findings in paragraphs 24., 25., 26., 27., 28., 29., 30., 31., and 46. of the Recommended Order. The basis for this exception is Petitioner's assertion that the Department cannot ignore a "mandatory requirement" for a responsive Bid based on a finding that the alleged deficiency in the Bid is a "minor irregularity". However, paragraph 31. of the Recommended Order is a finding of fact that is supported in its entirety by competent substantial evidence in the record and cannot properly be rejected. *See (Joint Exhibit 1; Hearing Transcript at p. 38, l. 9-14; p. 42, l. 1-12; p. 43, l. 12 – p. 44, l. 2; p. 44, l. 6-8; p. 45, l. 6-9 and l. 12-14; p. 50, l. 3-10; p. 50, l. 11 – p. 51, l. 1; p. 52, l. 25 – p. 53, l. 8).* It is a reasonable interpretation of the ITB terms and is not contrary to law. The exceptions to the Recommended Order paragraphs 24., 25., 26., 27., 28., 29., 30., and 31. listed above under exceptions paragraph III. are rejected because these paragraphs contain findings of fact that are supported by competent substantial evidence. *See (Id.)*. The Petitioner's exception to conclusions of law in paragraph 46. of the Recommended Order is rejected, as it is a reasonable interpretation of the ITB terms and is not contrary to law. Concerning paragraph 46., it was reasonable for the Respondent to conclude and the ALJ to find that both LabCorp and

Quest provided adequate assurances of their capacity to perform the contract for the prices they quoted. The “minor irregularities” clause in section 6.8 of the ITB is required to be in the solicitation by law. Florida Department of Management Services form PUR 1001, paragraph 16., contains the clause and is applicable to this solicitation as a matter of law as it is adopted by and incorporated into section 60A-1.002 Florida Administrative Code. The Petitioner’s attack on the applicability of this clause where it is included in the “Special Conditions” section of the ITB rather than in the “Special Instructions to Respondents” section as described in Section 60A-1.002 Florida Administrative Code appears to be an untimely challenge to a bid specification and must be rejected for this reason as well. *See, Capeletti Bros., Inc., v. Dept. of Transp., 499 So. 2d 855 (Fla. 1st DCA 1987).*

***PETITIONER’S EXCEPTION PARAGRAPH IV.a THROUGH IV.s.***

Petitioner’s exception IV. a., directed to paragraph 10. of the Recommended Order is rejected. This finding of fact is supported by competent substantial evidence in the record. *See (Joint Exhibit 1; Hearing Transcript p. 37, l. 12 – p. 38, l. 14).*

Petitioner’s exception IV. b., directed to paragraph 22. of the Recommended Order is rejected. This finding of fact is supported by competent substantial evidence in the record. *See (Joint Exhibit 1; Hearing Transcript p. 42, l. 7-12; p. 43, l. 15-24).*

Petitioner’s exceptions IV. c., d. and e., directed to paragraph 23. of the Recommended Order are rejected. These findings of fact are supported by competent substantial evidence in the record. *See (Hearing Transcript p. 38, l. 9-14; p. 43, l. 18 – p. 44, l. 2; p. 45, l. 6-10; p. 53, l. 6-8).*

Petitioner's exception IV. f., directed to paragraph 24. of the Recommended Order is rejected. This finding of fact is supported by competent substantial evidence in the record. *See (Joint Exhibit 1; Hearing Transcript p. 43, l. 22 – p. 44, l. 2; p. 53, l. 6-8).*

Petitioner's exceptions IV. g., h., i., and j., directed to paragraph 25. of the Recommended Order are rejected. These findings of fact are supported by competent substantial evidence in the record. *See (Hearing Transcript p. 42, l. 7-12 and 21-14; p. 43, l. 18 – p. 44, l. 2).*

Petitioner's exception IV. k., directed to paragraph 26. of the Recommended Order is rejected. This finding of fact is supported by competent substantial evidence in the record. *See (Joint Exhibit 1; Hearing Transcript p. 42, l. 20-24; p. 44, l. 6-8; p. 50, l. 15 – p. 51, l. 1).*

Petitioner's exceptions IV. l. and m., directed to paragraph 27. of the Recommended Order are rejected. These findings of fact are supported by competent substantial evidence in the record. *See (Joint Exhibit 1; Joint Exhibit 6; Hearing Transcript p. 44, l. 6-8).*

Petitioner's exceptions IV. n. and o., directed to paragraph 28. of the Recommended Order are rejected. The quote of the recommended order language in paragraph n. is a paraphrased version of the actual language. These findings of fact are supported by competent substantial evidence in the record. *See (Joint Exhibit 6; Hearing Transcript p. 44, l. 6-8).*

Petitioner's exception IV. p., directed to paragraph 29. of the Recommended Order is rejected. This finding of fact is supported by competent substantial evidence in the record. *See (Joint Exhibit 1).*

Petitioner's exception IV. q., directed to paragraph 30. of the Recommended Order is rejected. This finding of fact is supported by competent substantial evidence in the record. *See (Id.).*

Petitioner's exception IV. r., directed to paragraph 31. of the Recommended Order is rejected. As discussed above in this Order, this finding of fact is supported by competent substantial evidence in the record. *See (Joint Exhibit 1; Hearing Transcript p. 45, l. 6-10; p. 52, l. 25 – p. 53, l. 8).*

Petitioner's exception IV. s., apparently directed to paragraph 31. of the Recommended Order, is rejected. The findings of fact in this paragraph, as stated above, are supported by competent substantial evidence in the record. *See (Id.)*. To the extent that these findings are conclusions of law, they are reasonable interpretations of the ITB terms and are not contrary to law.

Petitioner's Exception IV. s. contains a footnote 3., that reiterates its exceptions to the conclusions of law in paragraphs 42., 44., 45., and 46. of the Recommended Order. For the reasons discussed supra, Petitioner's exceptions above concerning these paragraphs the exceptions to paragraphs 42., 45., and 46. are rejected.

The Petitioner's exception to the findings in paragraph 44. of the Recommended Order is rejected. The factual findings in paragraph 44. are supported by competent substantial evidence. *See (Joint Exhibit 1)*. Whether or not properly designated as conclusions of law, the paragraph 44. conclusions are reasonable interpretations of the ITB terms and are not contrary to law.

Having carefully reviewed the Recommended Order, I conclude that the ALJ clearly explained his weighing of the evidence in this case and how he reached his ultimate finding and recommendation that Labcorp's bid protest be dismissed. As the Department has no authority to alter the findings of fact and no reason to alter the conclusions of law, the Petitioner's exceptions are denied.



## FINDINGS OF FACT

A thorough review of the entire record of this matter reveals that the findings of fact contained in the recommended order are based on competent, substantial evidence in the record, and the proceedings on which the findings were based complied with the essential requirements of law. The Department hereby adopts and incorporates by reference the Findings of Fact as set forth in the Recommended Order.

## CONCLUSIONS OF LAW


A thorough review of the entire record in this matter indicates that the Conclusions of Law contained in the Recommended Order are reasonable and correct interpretations of the law based on the Findings of Fact. The Department hereby adopts and incorporates by reference the Conclusions of Law as set forth in the Recommended Order.

The Recommended Order entered in this proceeding on December 10, 2012, is adopted and incorporated by reference.

Based on the foregoing, Labcorp's bid protest is dismissed. The Contract for Bid No. DOH 12-007 is awarded to Quest Diagnostics Clinical Laboratories, Inc.

**DONE and ORDERED** this 16<sup>th</sup> day of January, 2013 in Tallahassee, Leon County, Florida.

## FLORIDA DEPARTMENT OF HEALTH

  
\_\_\_\_\_  
Kim E. Barnhill, MS, MPH  
Chief of Staff

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing FINAL ORDER has been served by mail via the United States Postal Service, inter-office mail, electronic transmission, or by hand delivery to:

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on this 17<sup>th</sup> day of January, 2013.



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Telephone: (850) 245-4005

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

**A PARTY ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. A REVIEW PROCEEDING IS GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. A REVIEW PROCEEDING IS INITIATED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE FILING DATE OF THIS FINAL ORDER.**