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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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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: Mathews Associates, Inc.

File: B-296094

Date: May 26, 2005

William M. Weisberg, Esq., Sullivan & Worcester LLP, for the protester.
Vera Meza, Esq. and John J. Reynolds, Esq., U.S. Army Materiel Command, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of protester's proposal is denied where agency report demonstrates that evaluation was reasonable, and protester has not rebutted agency's position.

DECISION

Mathews Associates, Inc. (MAI) protests the award of contracts to Ultralife Batteries, Inc. and Bren-Tronics, Inc. under request for proposals (RFP) No. W15P7T-05-R-C001, issued by the Department of the Army for BA-5347/U lithium manganese dioxide batteries. MAI challenges the evaluation of its proposal, and also asserts that the award was improper because the batteries submitted by the awardees failed a required capacity test.

We deny the protest.

The RFP contemplated the award, on a "best value" basis, of up to two contracts, and advised offerors that the evaluation would be based on price and two non-price criteria—a technical and a performance risk factor. The technical factor was significantly more important than the performance risk factor, which in turn was slightly more important than price. There were three technical subfactors: battery performance, battery safety and production. Offerors were required to submit battery samples, which were to be subjected to three capacity tests, the results of which were to be considered under the battery performance subfactor. Only proposals receiving at least an acceptable rating under each of the technical subfactors would be considered for award.

Six offerors, including MAI, Ultralife and Bren-Tronics, responded to the RFP. MAI's proposal was evaluated as susceptible of being made acceptable under the battery performance factor, unacceptable under the battery safety and production factors, and moderate for performance risk. While each of the awardees failed one of the battery capacity tests, Ultralife's proposal was rated outstanding for battery performance and production, good for battery safety, and low for performance risk, and Bren-Tronics's was rated good for each factor and moderate for performance risk. The agency awarded contracts to Ultralife and Bren-Tronics.

MAI asserts that the agency improperly evaluated its proposal under the non-price evaluation factors. In response, in its agency report, the Army provided a detailed, point-by-point response, which it believes demonstrates that its evaluation conclusions were supported by the record and reasonable. In its comments responding to the agency's detailed report, MAI merely incorporates its arguments from the protest as submitted, and requests that we decide the protest on the basis of those arguments, without providing any specific rebuttal of the agency's position.

We have reviewed the record with respect to each of MAI's allegations and find no basis for questioning either the agency's evaluation conclusions or its explanation of its findings. For example, under the safety factor, the agency found MAI's proposal deficient for failing to describe the methodology used to validate MAI's ability to meet safety requirements. MAI complains that this downgrading was unreasonable because its proposal did include cell-level test data for its battery. The agency explains in its report, however, that it is not soliciting sources for cells, but for a complete battery design; the agency downgraded MAI's proposal because its cell-level test data did not address the issue of battery safety, and its proposal was otherwise silent on this point. This explanation appears reasonable on its face, and since MAI does not rebut the agency's position, we have no basis to question the evaluation. Where, as here, a protester advances arguments to which the agency responds in detail, and the protester offers no rebuttal, there generally is no basis for our Office to question the agency's evaluation findings. Industrial Prop. Mgmt., B-291336.2, Oct. 17, 2003, 2003 CPD ¶ 205 at 5. Since the protester similarly has not rebutted the agency's detailed responses to the remaining evaluation challenges—and the agency's position appears reasonable—we conclude that there likewise is no basis for questioning those areas of the evaluation.

As for MAI's argument concerning Ultralife's and Bren-Tronics's sample batteries' failure of one of the battery capacity tests, the agency has agreed to require offerors to submit new battery samples, which it will re-test. Based on the results, the agency will reevaluate the proposals. This action renders this basis of protest academic.

The protest is denied.

Anthony H. Gamboa
General Counsel

