



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Mathews Associates, Inc.

File: B-270210

Date: February 20, 1996

Daniel W. Perreault for the protester.

Joshua A. Kranzberg, Esq., and Thomas D. Carroll, Esq., Department of the Army, for the agency.

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DIGEST

Agency reasonably considered and evaluated the characteristics of offered rechargeable batteries in selecting the higher priced, technically superior proposal for award.

DECISION

Mathews Associates, Inc. protests the Department of the Army's award of a contract to Bren-Tronics, Inc. under request for proposals (RFP) No. DAAB07-95-R-G305. Mathews asserts that the technical evaluation was unreasonable and that the resulting source selection was improper.

We deny the protest.

The agency issued the RFP on January 9, 1995, seeking proposals for a fixed-price, indefinite quantity, 4-year contract to provide quantities of five specified portable rechargeable battery systems. The statement of work (SOW) attached to the solicitation included a description of a portion of the battery requirement as "BB-503/TAS, BB-516/U, BB-588/U and BB-590/U military rechargeable Nickel-Cadmium batteries or their replacement by rechargeable batteries of alternate design offering better value to the government." The SOW required the contractor to produce Nickel Cadmium batteries that would meet the requirements of military specification MIL-B-49436 revision B, or batteries of alternate design that would meet or exceed requirements proposed by the contractor and accepted by the government.¹ The SOW also listed certain minimum requirements that proposed alternate batteries must meet.

¹MIL-B-49436 revision B is a performance specification currently used by the Army to purchase Nickel Cadmium rechargeable batteries.

The RFP stated that award would be made to the responsible offeror whose proposal represented the best value to the government, taking into consideration technical, cost, and performance risk. The technical factors were said to be more important than cost, and significantly more important than performance risk. The RFP listed the following six most heavily weighted evaluation factors, in descending order of importance: (1) the BB-590/U, (2) the BB-X847/U, (3) the BB-588/U, and (4) the BB-516/U rechargeable battery systems, (5) the state of charge option for each battery, and (6) the BB-503/TAS rechargeable battery system. The RFP also specifically provided that the BB-590/U evaluation factor was of far greater weight than any of the remaining factors.

The RFP stated that each rechargeable battery system would be evaluated to determine the degree to which it met or exceeded the minimum technical requirements identified in the SOW. The RFP explicitly noted that in some instances the minimum technical requirements in the SOW were less than the requirements in the applicable military specification.

A deficiency was defined in the RFP as the failure of a proposed battery to meet a minimum technical requirement identified in the SOW, and a disadvantage as the failure of a proposed battery to meet a minimum technical requirement identified in the applicable military specification, but where the battery met or exceeded a minimum technical requirement identified in the SOW. An advantage was defined as an instance in which a proposed battery met or exceeded both the minimum technical requirements identified in the SOW and the corresponding military specification.

The degree to which these ratings affected the final rating was determined by the relative importance of the performance characteristic at issue. In this regard, the solicitation included a Desired Performance Matrix, which listed various performance requirements, such as capacity and weight, and their corresponding importance in the evaluation. For example, while capacity was weighted as a highly important performance requirement, cycle life was of low importance.² The RFP also included a section titled "Enhanced Performance (Desired)," which instructed all offerors to provide sufficient information to allow the agency to assess the degree to which the proposal enhanced the performance of each system above the minimum requirements.

²Capacity is the measure of the service life of the battery before it has to be recharged. Cycle life refers to the number of times that a particular battery can effectively be recharged.

Two offerors submitted proposals. Mathews offered MIL SPEC Nickel Cadmium model batteries for four of the five specified batteries, and a Lithium Ion model battery for the BB-X847/U. Bren-Tronics also offered a Lithium Ion battery for the BB-X847/U, MIL SPEC Nickel Cadmium model batteries for the BB-516/U and BB-503/TAS, and Nickel Metal Hydride model batteries for the BB-590/U and BB-588/U. Each offeror included with its proposal the required bid samples for the alternate design batteries being proposed.³ After evaluation, both proposals were included in the competitive range. The agency conducted written and oral discussions with both offerors.

The Army received best and final offers (BAFO) on September 15. Bren-Tronics's proposal received an "outstanding" rating for its proposed Nickel Metal Hydride batteries (the first and third most heavily weighted evaluation factors), primarily because they demonstrated a 60 percent increase in capacity over the existing MIL SPEC Nickel Cadmium battery. In contrast, Mathews's proposed MIL SPEC Nickel Cadmium BB-588 and BB-590 batteries offered no improvement in performance over the applicable military specification, and its proposal was given an "acceptable" rating for these factors. The agency noted that capacity was a highly rated performance requirement because increased capacity, *i.e.*, a longer service life for the battery before it has to be recharged, allows a soldier to carry fewer batteries. Bren-Tronics also received an "outstanding" rating, in contrast to Mathews's "good" rating, for its BB-X847 Lithium Ion battery due to its contractual commitment to deliver a BB-X847 battery which achieves a higher level of performance than required by the RFP. Bren-Tronics's BAFO received an overall technical rating of outstanding, with a low risk, and an evaluated price of \$15,234,539. Mathews's BAFO received an overall technical rating of acceptable, with a moderate risk, and an evaluated price of \$10,778,688. The agency determined that Bren-Tronics's proposal offered the best value to the government and made award to that firm on September 29, whereupon Mathews filed this protest.⁴

Mathews challenges the evaluation of both its own and the awardee's proposal. The protester contends that the awardee's Nickel Metal Hydride batteries failed to meet the temperature extreme requirements contained in the military specification and

³No samples were required where the offeror was proposing a battery in accordance with the applicable military specification because the agency already knew the performance capabilities of the Nickel Cadmium batteries.

⁴In its protest letter, which was based upon information obtained at the debriefing, Mathews protested the evaluation of its proposed portable charger and its "moderate" risk rating. The agency addressed these allegations in its protest report and Mathews failed to respond to the agency's position. Accordingly, we view these issues as abandoned. *See Monfort, Inc.*, B-256706, July 5, 1994, 94-2 CPD ¶ 2.

that the agency failed to consider the fact that these batteries may vent hydrogen. Mathews also argues that its proposal was unfairly downgraded because it did not agree to higher performance requirements than what was listed in its proposal for a Lithium Ion battery for BB-X847.⁵

The evaluation of technical proposals is a matter within the discretion of the contracting agency since that agency is responsible for defining its needs and the best method of accommodating them. Mesa, Inc., B-254730, Jan. 10, 1994, 94-1 CPD ¶ 62. In reviewing an agency's technical evaluation, we will not reevaluate the proposal; instead, we will examine the record to ensure that the evaluation was reasonable and consistent with the RFP evaluation criteria. Id. A protester's disagreement with the agency's judgment, standing alone, is not sufficient to establish that the agency acted unreasonably. Ionsep Corp., Inc., B-255122, Feb. 10, 1994, 94-1 CPD ¶ 97.

Mathews first argues that Bren-Tronics's proposed Nickel Metal Hydride batteries, which were rated outstanding, do not meet the temperature extreme requirements for storage and operation contained in military specification MIL-B-49436 revision B. In our view, the evaluation of the Nickel Metal Hydride battery's temperature performance was both reasonable and consistent with the RFP. Contrary to Mathews's position, the RFP simply did not require that the alternate batteries meet each of the requirements contained in MIL-B-49436 revision B, which is a performance specification used to purchase Nickel Cadmium rechargeable batteries like those offered by the protester. Rather, the SOW listed certain minimum requirements that alternate batteries proposed under this solicitation must meet.

⁵Mathews also apparently complains that the agency may have tested Bren-Tronics's BB-390/A Nickel Metal Hydride battery before this solicitation was issued, and that the agency and the awardee therefore may have colluded to assure Bren-Tronics's of award. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of a protest, Section 21.1 (c)(4), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(c)(4)), and that the grounds stated be legally sufficient. Section 21.1 (e), 60 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.1(e)). Mathews's argument regarding collusion is solely based upon the fact that Bren-Tronics made specific reference to a BB-390 battery in a document dated after the solicitation was issued, but before award. In light of the fact that the awardee proposed a rechargeable Nickel Metal Hydride battery, it does not seem unreasonable for Bren-Tronics to refer to its battery using the applicable military nomenclature, BB-390, rather than the nomenclature for rechargeable Nickel Cadmium batteries, which is BB-590. In any event, this inference is inadequate to form a basis of protest and we therefore dismiss the allegation of collusion. Medical Serv. Corp. Int'l, B-252801, Apr. 19, 1993, 93-1 CPD ¶ 335.

The agency responds, and the protester does not dispute, that the awardee's proposed Nickel Metal Hydride batteries meet the temperature requirements contained in the SOW,⁶ and the agency states that the awardee's Nickel Metal Hydride batteries are suitable for their intended use in training exercises.

Next, Mathews argues that the agency failed to consider that the awardee's Nickel Metal Hydride batteries may vent (release) hydrogen under certain circumstances. The record shows that the agency explicitly considered that Nickel Metal Hydride batteries may vent hydrogen under conditions of overcharge, high temperature, or abuse.⁷ However, the agency determined that the fact the batteries would only be used in training would minimize the possibility that the batteries would be subjected to abuse. The agency also points out that the Bren-Tronics Nickel Metal Hydride batteries are designed with safety features to minimize the risk of venting. For example, the Bren-Tronics Nickel Metal Hydride batteries include temperature sensors that relay the internal battery temperature back to the charger, and will terminate the charging cycle if a predetermined heating limit is exceeded. In the event that the Nickel Metal Hydride battery does vent, it is designed with two waterproof breathers to allow for the release of the hydrogen into the surroundings, to prevent the pressure from the released gas from building within the battery. The record shows that the agency considered the fact that the awardee's alternate batteries may vent hydrogen under certain conditions, but determined that adequate safeguards were designed into Bren-Tronics's Nickel Metal Hydride batteries which minimized any possible associated risks.

In sum, the record shows that the agency considered the temperature extremes performance of Bren-Tronics's Nickel Metal Hydride batteries and that they may vent hydrogen, in evaluating the BB-590/U and BB-588/U battery factors, and reasonably concluded that, notwithstanding these considerations, the significant

⁶To the extent that Mathews argues that the temperature requirements in the SOW "essentially circumvent" the temperature requirements in the MIL-B-49436 revision B, this aspect of its protest is untimely. The minimum temperature requirements for alternate batteries were contained in the RFP; the RFP also specifically noted that in some instances the minimum technical requirements in the SOW were less than the requirements in the applicable military specification. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of initial proposal must be filed prior to that closing time. Section 21.2 (a)(1), 60 Fed. Reg. *supra* (to be codified at 4 C.F.R. § 21.2(a)(1)); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324.

⁷Venting consists of the opening of the battery's vent mechanism which occurs when the battery's internal pressure increases above normal operating parameters.

advantages of Bren-Tronics's offered alternate Nickel Metal Hydride batteries, in particular their 60-percent increase in capacity, warranted an outstanding rating.

Next, Mathews argues that it was unfairly downgraded for its failure to agree to higher performance requirements than what was required under the RFP. As discussed above, both Mathews and Bren-Tronics proposed a Lithium Ion model battery for the BB-X847. In fact, for this battery, both offerors proposed using packages of Lithium Ion cells from the same cell manufacturer, Moli, Inc. Mathews and Bren-Tronics submitted samples of this battery, the testing of which produced identical test results in excess of the required levels of performance. Neither offeror was given the actual test results to review, but both were given the bottom line test results by the agency, and given an additional week to consider whether they would contractually agree to deliver Lithium Ion batteries that would achieve higher levels of performance than required in the RFP. Bren-Tronics committed to deliver a battery that would meet a higher level of performance, and Mathews declined to do so.

We see nothing unreasonable in the agency's evaluation of the Lithium Ion BB-X847 battery. The protester was on notice from the solicitation that the agency desired enhanced performance, and that the agency intended to evaluate the degree to which the proposed batteries could operate at higher levels of performance above the minimum technical requirements. Both offerors had from March, when bid samples were submitted, to August, when they were asked to contractually agree to a higher level of performance, to assess the performance capabilities of their proposed batteries. Under these circumstances, it was reasonable for the agency to give Bren-Tronics, which agreed to commit to the higher level of performance, a higher technical rating for the BB-X847 battery.

Finally, Mathews challenges the propriety of the agency's decision to award to a higher-priced offeror which assertedly proposed technically nonconforming battery systems. While Mathews alleges that the agency improperly evaluated Bren-Tronics's proposal, as detailed above, the record reasonably supports the agency's rating of Bren-Tronics's proposal. Award may be made to a higher rated, higher-priced offeror where the decision is consistent with the evaluation factors and the agency reasonably determines that the technical superiority of the higher priced offer outweighs the price difference. General Serv. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Based on our review of the record, we conclude that the selection of Bren-Tronics's significantly technically superior offer for award was

reasonable and consistent with the RFP, which gave greatest weight to technical considerations. Ameriko Maintenance Co., B-250786, Feb. 16, 1993, 93-1 CPD ¶ 145.

The protest is denied.

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