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**Comptroller General
of the United States**

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

Decision

Matter of: Data Matrix Solutions, Inc.

File: B-412520

Date: March 14, 2016

Mario Gonzales for the protester.

Wade L. Brown, Esq., Department of the Army, for the agency.

Gary R. Allen, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging an agency's evaluation of a protester's proposal as technically unacceptable is denied where the agency reasonably concluded that the proposal failed to comply with mandatory requirements for key personnel.
2. Protest that an agency improperly failed to conduct discussions is denied where award without discussions was contemplated by the solicitation and at least one technically acceptable proposal was received.
3. Protest alleging bias on the part of an agency evaluator is denied where protester does not support its allegations with convincing proof, and the record does not otherwise reflect bias.

DECISION

Data Matrix Solutions, Inc., of Herndon, Virginia, protests the award of a contract to Survive Engineering Company, of Dumfries, Virginia, under request for proposals (RFP) No. W911QX-15-R-0004, issued by the Department of the Army for professional scientific, engineering and technical assistance support to various Army research laboratories throughout the United States. Data Matrix alleges that the agency improperly found its proposal unacceptable and ineligible for award, based on deficiencies identified under one technical subfactor; that the agency improperly failed to conduct discussions with Data Matrix; and that the agency's evaluation was tainted by bias.

We deny the protest.

BACKGROUND

The RFP, issued on June 8, 2015, was set aside for small business concerns (under North American Industry Classification System 541712-R&D in the Physical, Engineering, and Life Sciences) for the provision of a broad range of professional scientific, engineering and technical assistance support to various Army research laboratories throughout the United States. RFP at 2. The solicitation contemplated the award of a single cost-plus-fixed-fee, indefinite-delivery/indefinite-quantity contract under which task orders could be issued for a period of 3 years, with a total ceiling amount of \$49,855,123.57. Id. Included in the RFP was a basic performance work statement (PWS) for all possible task orders as well as a PWS for the initial task order. Id.

Proposals were to be evaluated and awards made without discussions, although the RFP provided for establishing a competitive range and conducting discussions if necessary. RFP at 2. Award was to be made on a best-value basis, considering the following factors in descending order of importance: technical, past performance, and cost. Id. at 136-37. The RFP stated that in order to be eligible for award, a technical proposal was required to have received an adjectival rating of no less than acceptable, “to include all subfactors,” and a past performance rating of at least satisfactory confidence. Id. at 136.

The technical factor included three subfactors, also listed in descending order of importance: personnel, management approach, and understanding of the work to be accomplished. Id. at 137. In addition, each of the subfactors included various evaluation elements. As relevant here, the personnel subfactor identified four elements: recruitment plan, retention plan, recentness of experience, and availability.¹ As also relevant here, the recentness of experience element required that proposed personnel, including key personnel, have the current knowledge, skills, certification, education, and experience in the technical disciplines required by the basic PWS and the first task order PWS. Id. at 138. More specifically, the RFP specified the qualifications required for a proposed program manager, as one of an offeror’s key personnel. The PWS required that the proposed program manager have an active Program Management Institute-Program Management Professional (PMI-PMP) certification at time of award. RFP at 15. The PWS also identified several acceptable alternatives to PMI-PMP certification. Id. One of these alternatives was that the proposed program manager have a Master of Business

¹ The management approach subfactor also identified four elements: corporate management and approach, communications, internal controls, and adequacy of workforce. Finally, the understanding of work to be accomplished subfactor identified three elements: completeness and accuracy, clarity, and soundness of approach. Id. at 138-39.

Administration (MBA) or Master of Science degree with nine graduate credit hours in program or project management, or 35 hours of project management education. Id.

Under the technical factor and its subfactors, proposals were to be assigned adjectival ratings of outstanding, good, acceptable, marginal or unacceptable.² RFP at 139. These ratings were to be based on assessments of each of the subfactor's elements for significant strengths, strengths, significant weaknesses, weaknesses, deficiencies, risks, and uncertainties. Id.

For past performance, the RFP stated that the agency would consider relevancy and performance confidence.³ RFP at 141. The RFP provided that the agency would assess the quality of an offeror's past performance on contracts determined to be relevant, and arrive at a single consensus performance confidence rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral).⁴ Id. at 141-42.

The Army received six proposals in response to the RFP, including those from Data Matrix and Survive. Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2. A source selection board (SSEB) evaluated the proposals, identifying strengths, weaknesses, and deficiencies, and assigned ratings under each factor and subfactor. The technical subfactor-level and past performance ratings for Data Matrix's and Survive's proposals, together with their total evaluated costs, are shown in the table below:

² As relevant here, "unacceptable" was defined as follows: "Proposal does not meet requirements and contains one or more deficiencies. Proposal is unawardable." RFP at 140.

³ The RFP also required offerors to identify prior contracts awarded or performed within the past 3 years. RFP at 141.

⁴ As relevant here, "unknown confidence (neutral)" was defined as follows: "No recent/relevant performance record is available or the offeror's performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned." RFP at 142.

| | Data Matrix | Survive |
|-------------------------------|--------------------|------------------------|
| Technical | Unacceptable | Good |
| Personnel | Unacceptable | Good |
| Management | Acceptable | Good |
| Understanding the Work | Unacceptable | Acceptable |
| Past Performance | Unknown (neutral) | Substantial Confidence |
| Cost | \$1,792,015 | \$3,583,944 |

Agency Report (AR), Tab G, SSEB Eval. Report at 48; Tab H, Source Selection Decision Document (SSDD) at 10.

The SSEB report shows that Data Matrix’s unacceptable rating for the personnel subfactor, referenced above, was based on two deficiencies. AR, Tab G, SSEB Eval. Report, at 33. One deficiency reflected the SSEB’s determination that Data Matrix’s proposed program manager lacked qualifications that were required by the solicitation. Id. at 32-33. More specifically, the evaluators found that the proposed program manager did not hold the required PMI-PMP certificate or one of the acceptable alternatives. Id. In addition, the SSEB found that, among the five resumes Data Matrix submitted for its task order personnel, none met the required qualifications in terms of specific experience required. The SSEB concluded that the cumulative effect of these weaknesses was a deficiency, and represented a material failure of the proposal to meet the government’s requirements, thereby increasing the risk of unsuccessful contract performance to an unacceptable level. Id. at 31-33.

The SSEB concluded that Survive’s proposal offered the best value, and recommended that Survive receive the award. Id. at 48. After reviewing the SSEB’s report, the source selection authority selected Survive for award. AR, Tab H, Source Selection Decision Document (SSDD), at 30. Following a debriefing, Data Matrix filed this protest with our Office.

DISCUSSION

Data Matrix challenges the deficiencies that were identified in its proposal and, with regard to the impact of those deficiencies, argues that the agency improperly evaluated the technical subfactors on a “pass/fail” basis—an approach that the protester claims was inconsistent with the terms of the RFP. Protest at 2. The basis for the latter argument is the protester’s apparent belief that a deficiency in one element under one subfactor should not render an entire proposal unacceptable. We address these arguments in turn, below.

In reviewing protests challenging an agency’s evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency’s evaluation to ensure that it is consistent with the terms of the solicitation and

applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. We have long held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3.

Regarding the first identified deficiency, the assessed lack of qualifications for Data Matrix's proposed project manager, the resume that the protester submitted for this position did not include the required PMI-PMP certification, although it stated that the proposed project manager had an MBA degree and was a member of PMI. AR, Tab J, Data Matrix Technical Proposal, attach 1, Resumes, at 3. The protester's proposal also included a chart to show how the proposed program manager's experience met the RFP requirements, which listed the MBA degree; membership in PMI; and the notation, "currently studying for certification exam." Data Matrix Technical Proposal, at 10. However, neither the proposal nor the resume addressed whether the proposed individual had completed any graduate credit hours in program management or any hours in project management education. Id. at 1-4. In its supplemental comments, Data Matrix describes various graduate courses that the program manager had taken while working toward his MBA degree, asserting that these courses should have been understood to satisfy one of the acceptable substitute qualifications. Supp. Comments at 5. However, the protester's proposal did not include any of this information.

An offeror has the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably when it fails to do so. Hughes Group, LLC, B-410354.2, July 23, 2015, 2015 CPD ¶ 267 at 4. Here, because the resume submitted with Data Matrix's proposal did not show that the proposed program manager met the minimum education requirement in any of the acceptable ways, we find no basis to question the agency's identification of this deficiency in the protester's proposal.

With respect to the weight that the agency gave to this (or any other) deficiency, the protester's understanding of the RFP's evaluation scheme is inaccurate. As discussed above, the RFP stated that if an offeror's proposal contained one or more deficiencies, the proposal itself would be unacceptable and ineligible for award. RFP at 140. We conclude that the weight that was given to this deficiency in the agency's evaluation of Data Matrix's proposal--rendering it unacceptable overall and ineligible for award--was consistent with the terms of the RFP.⁵

⁵ Given our conclusion that the proposal was unawardable, we do not address the remainder of Data Matrix's numerous arguments concerning the agency's evaluation of its proposal.

Data Matrix also contends that the agency erred by not conducting discussions, and that Data Matrix could have easily corrected its deficiencies if the agency had given it the opportunity to do so. As discussed above, the RFP specifically stated that the government intended to evaluate proposals and make award without discussions. RFP at 2. There generally is no obligation for an agency to conduct discussions where, as here, the solicitation specifically instructs offerors that award may be made on the basis of initial proposals. Federal Acquisition Regulation § 15.306(a)(3); Colmek Sys. Eng'g, B-291931.2, July 9, 2003, 2003 CPD ¶ 123 at 7. Further, an agency is not precluded from making award on the basis of initial proposals merely because an unacceptable lower-priced offer might be made acceptable through discussions. Integration Techs. Group, Inc., B-274288.5, June 13, 1997, 97-1 CPD ¶ 214 at 6.

Finally, Data Matrix asserts that the SSEB chair was biased against the protester's proposed program manager. Protest at 6. The protester states in this regard that, two months prior to the issuance of the RFP, two of its officers were in a meeting with the SSEB chair when she expressed a negative opinion of Data Matrix's proposed program manager. Id. The protester asserts that it believes this bias is the basis for the deficiency identified with respect to the program manager's qualifications.

Government officials are presumed to act in good faith, and a protester's contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on mere inference, supposition, or unsupported speculation. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8; Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6.

In a post-protest affidavit, the referenced SSEB chair states that she did not express any opinion of her own about the program manager because she had not had any contact with him at that time. AR, Tab F, SSEB Chair's Affidavit, at 1. She acknowledges that, when asked how the government viewed the proposed program manager's performance, she informed Data Matrix's representatives that others had expressed negative opinions to her about this individual; but that all proposals would be evaluated in accordance with the solicitation evaluation criteria. The SSEB member also states that she never directed Data Matrix to either include or not include proposed program manager in its proposal. Id.

In its comments on the agency report, Data Matrix included affidavits from its chief executive officer and program manager. See Comments at 10-11. These two affidavits, using identical language, aver that the Data Matrix representatives heard the SSEB chair state that this program manager had a bad reputation and that his resume would be viewed negatively. Id. The protester contends that the comments ascribed to the SSEB chair "show a clear, intentional, and negative bias" against Data Matrix and its chosen program manager." Id. at 7. We disagree.

Reading the statements submitted by the SSEB chair and the protester's representatives together, we do not find the parties' accounts of the meeting to conflict materially, although the parties clearly disagree with respect to the meaning that should be drawn from what was said. Taking the protester's assertions at face value, we think a comment of this sort--concerning the employee's reputation and how his resume might be viewed in the evaluation--could reflect an intent to provide information or guidance to a prospective offeror, just as easily as it could be perceived to reflect bias. In short, we do not find that these affidavits, or the inference Data Matrix draws from the SSEB member's alleged statement, amount to convincing proof of bias or bad faith, and we will not attribute bias in the evaluation of proposals on this basis. Career Innovations, LLC, supra.; Shinwha Elecs, supra.

In any event, notwithstanding the allegation of bias, and as discussed above, the record here establishes the propriety of the agency's evaluation of Data Matrix's proposal--based on the objective standard of whether the program manager's resume demonstrated his compliance with the RFP's minimum requirements--as technically unacceptable and ineligible for award. In sum, we find no basis to conclude that the procurement was tainted by bias or conducted in bad faith.

The protest is denied.⁶

Susan A. Poling
General Counsel

⁶ Although we do not address all of the protester's arguments, we have reviewed each issue raised and find that none provides a basis to sustain the protest.