

McArthur  
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Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Noise Cancellation Technologies, Inc.  
**File:** B-246476; B-246476.2  
**Date:** March 9, 1992

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John R. Tolle, Esq., Barton, Mountain & Tolle, for the protester.  
Virginia B. Sanaie, Esq., Department of the Navy, for the agency.  
C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest against agency decision to reject proposal submitted under Small Business Innovation Research Program is denied where record shows that evaluation was reasonable and that agency complied with applicable regulations and solicitation provisions.

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### DECISION

Noise Cancellation Technologies, Inc. (NCT) protests the evaluation of its proposal submitted to the Department of the Navy in response to Topic N91-129 under the Department of Defense (DOD) Small Business Innovation Research (SBIR) Program for fiscal year 1991. The protester contends that if the agency had evaluated its proposal in accordance with the selection criteria established for the program, its proposal would have qualified for an award.

We deny the protest in part and dismiss it in part.

The SBIR program was established under the Small Business Innovation Development Act (Innovation Act), 15 U.S.C. § 638 (1988), which requires federal agencies to reserve a portion of their research efforts and authorizes them to award "funding agreements," in the form of contracts, grants, or cooperative agreements, to small businesses based upon evaluation of proposals submitted in response to solicitations issued pursuant to the Innovation Act.

On October 1, 1990, DOD issued program solicitation No. 91.1, with a closing date of January 11, 1991, for proposals in a variety of topic areas specifically

identified by DOD components, for the purpose of encouraging scientific and technical innovation in the identified areas. The program consisted of three phases: phase I, to determine the scientific or technical merit and feasibility of ideas submitted under the program, for a typical period of 6 months; phase II, awarded on the basis of phase I results, to identify the potential for yielding a product or process of continuing interest to DOD; and phase III, involving private capital, to pursue commercial applications of the research or development.

The solicitation included 290 topics submitted by the Navy, among which was topic N91-129, seeking exploratory development, defined as a "systematic study directed specifically toward applying new knowledge to meet a recognized need," in the area of active noise cancellation. The solicitation noted that at present, shipborne noise is coupled into hull mounted sonar sensors and reduced through damping material and isolation mounts (passive). The solicitation cited recent advances in the use of active noise cancellation devices and described the agency's desire for such a system, to replace the passive system, with the object of phase I being to demonstrate the technique in a laboratory environment.

The topic description stated that potential offerors must possess expertise in active noise cancellation and demonstrate an understanding of the noise mechanisms associated with sonar arrays. The solicitation instructed offerors to discuss the specific objective of phase I work, provide an explicit detailed description of the approach, and describe related work in such a way as to persuade reviewers of the proposer's awareness of the state-of-the-art in the specific topic.

Federal Acquisition Regulation § 35.005 provides that in research and development contracts, the work statement should allow contractors freedom to exercise innovation and creativity and stresses the need for a clear description of the areas of exploration or the end objectives rather than a highly structured task-completion approach. Further, the program policy directive issued by the Small Business Administration states that topics should not involve detailed specifications or prescribed solutions but provide only that detail sufficient to guide small firms to submit on-target responses. Clearly an agency is free to consider a broad range of approaches to the identified topics as long as the proposal is otherwise sound and addresses the agency's need.

The solicitation further advised offerors to provide sufficient information to persuade the agency that the proposed work represented an innovative approach to the

investigation of an important scientific or engineering problem and was worthy of support under stated criteria. For phase I proposals, in addition to cost, these criteria were as follows: scientific/technical quality of the proposal and its relevance to the topic, with special emphasis on innovation and originality, worth twice the weight of the other factors; qualifications of the principal investigator, other key staff, and consultants, and the adequacy of instrumentation and facilities; anticipated benefits to the total DOD research and development effort; and adequacy of the proposed effort to show progress toward demonstrating the feasibility of the concept.

The agency received 12 responses and submitted them to its evaluation team; that team scored the proposal submitted by Barron Associates Incorporated higher than the other proposals, 99 of 100 potential points versus 76 points for its nearest competitor. The protester ranked seventh, with 46.7 points. On August 5, having received notice by letter dated July 22 that the agency intended to award a contract to Barron, the protester requested a debriefing, which the agency provided on October 17. This protest followed.

Since an agency has discretion to determine what proposals it will fund, our review in cases such as this is limited to determining whether the agency violated any applicable regulations or solicitation provisions and whether the agency acted fraudulently or in bad faith. Microexpert Sys., Inc., B-233892, Apr. 13, 1989, 89-1 CPD ¶ 378. The protester does not allege that the agency acted fraudulently or in bad faith, nor does the protester identify any regulation that the agency violated in the evaluation of its proposal; rather, the protester argues that the agency failed to interpret and apply the evaluation criteria properly in evaluating its proposal. We find no basis for this contention.

The protester correctly notes that the agency identified four general shortcomings in NCT's proposal: limitation to narrowband wavelengths, limitation of the bandwidth addressed to 0 to 500 Hz, lack of algorithm detail, and the participants' lack of experience in sonar. The protester essentially admits that most of these objections are valid, but argues that Topic N91-129 did not call for broadband analysis. While it is true that the topic did not specifically call for broadband analysis, the agency states that narrowband noise is fairly stable in frequency and is the easiest to cancel. The agency contends that the most significant problems are associated with broadband noise, which is generally transient in nature and which appears as a target in active sonar. The agency states that while an approach limited to reducing narrowband noise might be useful as a research topic, it is not as useful as a

proposal that addresses the more difficult problems of broadband control.<sup>1</sup> The evaluators believed that there was no persuasive showing in the NCT proposal that NCT could expand its approach to broadband. Therefore, in view of the proposal's lack of information concerning broadband technology, the agency simply did not rate this proposal as high as others. We find the agency's evaluation reasonable in this respect, and we cannot find it inconsistent with the solicitation, which emphasized scientific and technical innovation.

Regarding the lack of algorithm detail, the protester contends that no specific algorithms were requested, and that in any event, most of its customers would understand the algorithm references in its proposal and that it assumed the Navy evaluators would have the necessary expertise to understand the references in its proposal as well. The agency states that while it did not specify that algorithms were required, it reasonably expected, as part of a scientific research proposal, some discussion of algorithms to illustrate the offerors technical approach. The agency's position is that such discussion was reasonably related to the evaluation of noise cancellation expertise. The agency states that the protester's proposal referred to a control algorithm for its proposed controller (computer) to measure noises "of the filtered-x LMS type," and that the controller would be based on one of several proprietary algorithms under development. The agency also states that LMS, or "Least Mean Squares," is merely a broad classification of a type of algorithm and from an engineering prospective is not a meaningful description of the protester's technical approach. The protester did not provide any description of broadband or random signal cancellation algorithms in any level of detail, and by failing to meaningfully discuss algorithms in its proposal, the protester failed to persuade the agency of its expertise in noise cancellation. The agency reasonably did not rate the protester's proposal highly in this area.

We find those aspects of the evaluation relating to lack of broadband analysis, and the lack of algorithm detail sufficient to demonstrate the protester's expertise, reasonable and consistent with the solicitation. Given these weaknesses in NCT's proposal, we have no basis to find the evaluation inconsistent with the solicitation criteria. We find it unnecessary to address the protester's contention that the evaluation of its investigators' experience was unreasonable, since the record shows that even with the

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<sup>1</sup>The protester's proposal noted the significance of both narrowband and broadband disturbances.

maximum number of points for experience, the protester's score would be no higher than 51.7 points, well below the score of the Barron proposal and still seventh in ranking among the twelve proposals submitted.

Here, the agency in the exercise of its technical judgment, concluded that, because of deficiencies in the protester's proposal, the protester's proposal offered less potential and expectation of an innovative and viable technology worthy of funding than did the proposals of other offerors. The protester has provided our Office with evidence of its expertise and position in the field of noise cancellation, but that evidence provides no basis for finding the evaluation of its proposal unreasonable, where the protester failed to provide sufficient information in its proposal to demonstrate its expertise and standing to the evaluators. While the protester disagrees with the agency's point of view, it has not demonstrated that the agency's conclusion regarding its proposal as submitted was the result of fraud or bad faith or that the agency violated any regulation or solicitation provision in the evaluation.

The protester has filed a supplemental protest, contending that the technology offered by Barron Associates does not constitute "active noise cancellation" as called for in the solicitation; therefore, the agency must have changed its requirement without informing NCT and giving it the opportunity to compete on the basis of the change. The Navy contends that Barron's proposal was responsive to the solicitation as issued and denies that it changed the requirement. To resolve this dispute our Office would have to consider Barron's response to the solicitation. However, under our Bid Protest Regulations, a party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. 4 C.F.R. § 21.0(a) and 21.1(a) (1991); State Technical Inst. at Memphis, 67 Comp. Gen. 236 (1988), 88-1 CPD ¶ 135. Since there has been no challenge to the proposals of the five other offerors who ranked higher in the evaluation than the protester, NCT is not an interested party for the purpose of challenging the acceptability of the Barron Associates proposal.

The protest is denied in part and dismissed in part.



*for* James F. Hinchman  
General Counsel