

S. Riback



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

124888

Decision

Matter of: Systems Research Company
File: B-260280.2
Date: August 8, 1995

Dr. Po Kee Wong for the protester.
Mary C. Bell, Esq., Department of the Navy, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Award to highest technically evaluated offeror, instead of
protester, under Small Business Innovative Research Program
solicitation was proper where there is no showing of agency
fraud or bad faith or of violation of regulations, and award
decision was consistent with the terms of the solicitation.

DECISION

Systems Research Company (SRC) protests the rejection by the
Department of the Navy of its proposal submitted under
Department of Defense Fiscal Year 1994 Small Business
Innovation Research Program (SBIR) solicitation No. 94.2,
Topic No. N94-124.¹ SRC maintains that the Navy improperly
evaluated its proposal.

We deny the protest.

The solicitation sought SBIR proposals for 125 different
topics. Topic N94-124, at issue here, sought phase I²

¹The SBIR program was established under the Small Business
Innovation Development Act, 15 U.S.C. § 648 (1994), and
requires federal agencies to reserve a portion of their
research requirements for small businesses. Pursuant to the
Act, agencies enter into funding agreements in the form of
grants, cooperative agreements or contracts with small
businesses after receiving and evaluating proposals
submitted in response to a solicitation.

²Awards under the SBIR program are made for one of three
phases. Under phase I, agencies make awards to determine
(continued...)

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proposals for innovative research in the area of automatic target recognition. Specifically, offerors were to submit proposals for the development of new mathematical techniques for the representation of objects subject to random variation in form that could be applied to optimize automatic target recognition capabilities. For evaluation purposes, the solicitation contained four criteria that were equal in weight: (1) soundness and technical merit of the proposed approach and its incremental progress toward topic or subtopic solution; (2) potential for commercial (government or private sector) application and the benefits expected to accrue from commercialization; (3) adequacy of the proposed effort for fulfillment of the research topic's requirements; and (4) qualifications of the principal/key investigators, staff and consultants, in terms of both their ability to perform the research and their ability to commercialize the results.

The Navy received 14 proposals. Based on the evaluation, the protester's proposal was ranked 11th, with a total score of 20 out of a possible 100 points (the proposal received 5 out of 25 points under each evaluation criterion). The Navy made award to Aegir Systems based on that firm's highest-rated proposal's score of 95 points.

SRC takes issue with the Navy's technical evaluation, maintaining that its offered idea is superior to all other ideas submitted for purposes of addressing the topic of automatic target recognition. According to the protester, the Navy's principal error was in incorrectly concluding that its idea failed to address target recognition where the target is subject to random variations in shape. The protester also maintains that its proposal was improperly downgraded in the areas of commercialization and personnel qualifications; according to SRC, its proposal described both the commercial applications of the idea as well as the qualifications of the firm's principal investigator.

Where an agency is conducting an SBIR procurement, it has the discretion to determine which proposals it will fund. Because of the agency's discretion in this regard, our review of an agency's conduct of SBIR procurements is limited to determining whether the agency violated any applicable regulations or solicitation provisions, or acted fraudulently or in bad faith. Noise Cancellation Technologies, Inc., B-246476; B-246476.2, Mar. 9, 1992, 92-1 CPD ¶ 269. SRC does not allege that the agency's actions here were fraudulent or taken in bad faith, nor does it

²(...continued)

the scientific or technical merit and feasibility of ideas submitted in proposals.

contend that the agency violated any applicable regulations. The only question for our review, therefore, is whether the agency's evaluation of SRC's proposal was consistent with the terms of the solicitation; we find that it was.

The considerations which led the Navy to downgrade SRC's proposal were all consistent with and encompassed by the stated criteria, and the award decision was based on the relative ranking of the proposals under these criteria. SRC points to no other solicitation provisions to which the agency allegedly did not adhere in arriving at its award decision, and none is evident from the record.

SRC's protest focuses solely on its disagreement with the evaluation of its proposal. In light of the discretion afforded agencies under the SBIR program, Noise Cancellation Technologies, Inc., supra, the evaluation judgments that go into award decision generally are not subject to legal objection, and in any case the record shows here that the evaluation of SRC's proposal was unobjectionable. Under the commercial application criterion, the agency assigned the proposal a score of 5 points because, while the proposal claimed great potential commercial application, it did not describe how the firm planned to commercialize its proposed methodology. For example, the proposal states "the entire federal government will be affected in designing new tracking systems of objects with applications involved in the missions of DOD, DOE, NIH, DOT, NASA, NSF, Justice Department and Department of Treasury," but the proposal contains no support for this claim, such as a description of how the idea would be marketed or applied. The proposal also stated that SRC's idea had been submitted to some 29 government and private entities, but that none had awarded a contract to or otherwise entered into an agreement with SRC for purposes of exploiting the idea. The agency considered this--reasonably, we think--a negative indicator of the commercial applicability of the idea. We thus would have no basis for questioning the downgrading of SRC's proposal in this area.

SRC also challenges the results of the evaluation under the other criteria. However, since SRC's proposal received only 5 points under the commercial applicability criterion--the evaluation under which was unobjectionable--its maximum possible total score would be only 80 points (25 points for the three other criteria plus 5 points for the criterion discussed above). As this score would not move SRC in line for the award, the arguments concerning the other evaluation

areas are academic and will not be considered. See generally General Offshore Corp., B-251969.5; B-251969.6, Apr. 8, 1994, 94-1 CPD ¶ 248.³

The protest is denied.

for 
Robert P. Murphy
General Counsel

³SRC, in its comments responding to the agency report, states that each of the 14 firms competing for this contract should be subjected to a "challenge" of solving four mathematical problems identified by the protester. Since such an exercise was not required under the terms of the solicitation, the results of such a challenge would be immaterial to our review of the agency's evaluation of SRC. See Noise Cancellation Technologies, Inc., supra.