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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: KR3Tech, Inc.

File: B-413692

Date: December 14, 2016

Wallace Ritchie for the protester.

Anthony J. Paza, Esq., Department of the Navy, Space and Naval Warfare Systems Command, for the agency.

Gabriel D. Soll, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision not to fund proposal under phase I of Department of Defense Small Business Innovation Research Program is denied where the evaluation was reasonable and consistent with the solicitation.

DECISION

KR3Tech, Inc., of Deltona, Florida, protests the determination by the Department of the Navy, Space and Naval Warfare Systems Command (Navy), not to fund KR3Tech's phase I proposal under the Department of Defense (DOD) Small Business Innovation Research (SBIR) program¹ solicitation No. DoN 16.2 SBIR

¹ The SBIR program is designed to increase the participation of small business concerns in federally funded research or research and development (R&D). See Small Business Innovation Research Program Act of 1982, 15 U.S.C. § 638. Pursuant to this authority, certain federal agencies, including the Navy, are required to provide a program under which a portion of the agency's research or R&D effort is reserved for award to small business concerns through a three-phased process. See generally, id. Under the program, firms first apply for a 6-month phase I award to test the scientific, technical, and commercial merit and feasibility of a certain concept. If this is successful, the firm may be invited to apply for a phase II award to further develop the concept. After the completion of phase II, firms are expected to obtain funding from the private sector and/or non-SBIR government sources to develop the concept into a product for sale in private sector and/or military markets. This protest involves the award of a phase I contract.

topic N162-135, for research projects to develop shipboard troposcatter technologies to aid in communications in areas prone to interference. The protester contends that its proposal was evaluated in a manner inconsistent with the solicitation, and that more than one proposal should have been funded.

We deny the protest.

BACKGROUND

On April 22, 2016, the DOD issued an SBIR phase I solicitation that identified topic areas for awards to be made by 12 DOD components, including the Navy, and provided the general framework for the SBIR proposal and award process. See generally, Agency Report (AR), Tab 3, DOD Solicitation. The solicitation noted that the number of phase I awards to be made would be determined by the component's budget for that purpose. Id. at 14. The solicitation also stated that the DOD components were not obligated to make any awards, and that all awards were subject to the availability of funds. Id. at 4.

The DOD solicitation announced that proposals would be evaluated under the following three phase I evaluation criteria, listed in descending order of importance: (1) the soundness, technical merit, and innovation of the proposal; (2) the qualifications of the researchers; and, (3) the potential for commercialization of the project. Id. at 27. The solicitation specifically warned that technical reviewers would base their evaluations only on information contained in the proposals and that offerors could not assume familiarity with individuals or experiments that were not fully described. Id. The solicitation stated that funding decisions would be based on a best-value determination. Id.

Under the DOD solicitation, the Navy issued a Navy-specific SBIR solicitation, identified as DoN 2016.2, seeking phase I proposals and providing instructions on more than 60 research topics, including the shipboard troposcatter initiative at issue here.² AR, Tab 4, Navy Program Solicitation. The Navy announced that it would evaluate proposals in accordance with the DOD solicitation's evaluation criteria, but would place greater value on the technical merit factor and would weigh the researcher's qualifications and commercialization-potential factors equally in the evaluation. Id. at 3. The Navy-specific proposal submission guidelines also reserved the Navy's right to limit the number of awards under any topic because of "limited funding." Id.

² Generally, troposcatter is a form of radio communications that relies on reflecting a signal off the troposphere to permit communications over great distances. See <https://www.electronics-notes.com/articles/antennas-propagation/tropospheric/troposcatter.php> (last visited Nov. 16, 2016)

With respect to phase I, topic N162-135, the solicitation specified that the effort was to:

[d]etermine technical feasibility for the development of troposcatter control algorithms and to increase communications capability for shipboard application, identify potential algorithms/software that can counter ship motion effects, and develop a strategy to realize troposcatter capabilities that maximize reuse of existing CBSP [Commercial Broadband Satellite Program] and a commercial off the shelf troposcatter modem (e.g., Comtech CS67500A) systems. Elements of the control algorithms can be considered for embedment in the future Navy Multiband Terminal (NMT) Wideband Anti-jam Modem (WAM) for CBSP application.

AR, Tab 4, Navy Program Solicitation, at 116.

The Navy received eight timely proposals, including KR3Tech's, for this topic. AR at 6. The proposals were evaluated by a technical evaluation team, which scored proposals based on a 100-point scale. Id.

KR3Tech's proposal was ranked 5th among the eight proposals received, with a total technical score of 74. Id. at 7. The evaluators identified five weaknesses in KR3Tech's proposal under the three evaluation criteria, several of which reflect the evaluators' conclusion that the proposal provided insufficient information or was inadequately detailed to allow a clear understanding of the protester's approach. AR, Tab 5, Evaluation Summary at 1-3. While the evaluators recognized a thorough understanding in the proposal of the challenges associated with troposcatter communications, they also found that, overall, the proposed approach would "revisit research already performed," and that the proposal did not cover a number of requirements. Id. at 1. This view was conveyed to KR3Tech in its debriefing, in which the agency identified as an overall weakness that the protester's "[s]trategies lack specificity." AR, Tab 8, KR3Tech Debriefing Material, at 2.

The Navy selected only the top-scoring proposal for award. AR at 6. KR3Tech was notified on August 18, 2016, that its proposal was not selected for funding, and received a written debriefing on August 29, 2016. This protest followed.

DISCUSSION

KR3Tech challenges the Navy's evaluation of its proposal, alleging that the agency's assessment of each of the five weaknesses in the protester's proposal was unreasonable. Protest at 4-6. The protester primarily complains that the Navy evaluated the proposal as if it were a phase II proposal, for which different, more exacting standards are applied, based on the outcome of phase I research.

Comments at 1-2. KR3Tech disagrees with the Navy's conclusion that the protester's proposal failed to provide details, and the assessment of weaknesses on that basis, arguing that the "omitted" details are, in fact, matters that KR3Tech seeks to better understand through the proposed research effort. Protest, at 6-7. In this regard, the protester complains that the level of information the agency was requiring in its evaluation was inconsistent with the SBIR phase I solicitation. On this record, we disagree and find no basis to conclude that the agency's evaluation was improper, as discussed by representative examples below.

It is well-established that agencies have substantial discretion to determine which proposals they will fund under an SBIR procurement. NW Systems, B-401352, July 13, 2009, 2009 CPD ¶ 152 at 2, citing Higher Power Eng'g, B-278900, Mar. 18, 1998, 98-1 CPD ¶ 84 at 2. In light of this discretion, our review of an SBIR procurement is limited to determining whether the agency acted in bad faith or violated any applicable regulations or solicitation provisions. Id. In reviewing protests against an allegedly improper evaluation, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria. Science, Math & Engineering, Inc., B-410509, Jan. 7, 2015, 2015 CPD ¶ 31 at 5. The protester's disagreement with the agency's judgment, by itself, does not establish that an evaluation was unreasonable. Id., citing UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

Under the first evaluation criterion, KR3Tech's proposal was assigned two weaknesses. Under this criterion, the agency was to consider the technical merit and innovation of the proposed approach. AR, Tab 3, DOD Solicitation, at 27. The first weakness stated that KR3Tech's proposal did not cover certain modifications that would be required.³ AR, Tab 5, KR3Tech Evaluation Sheet, at 2. In response, the protester argues that its proposal did address these matters, and points to specific areas of its proposal as supporting its assertion. Protest at 4-5. The protester also argues that an understanding of this very concern would be the intended result of the phase I effort. Comments at 2.

In response, the Navy states that for each weakness, the proposal areas that KR3Tech has cited in its response were vague in describing the approach being proposed; and that this, in turn, limited the agency's ability to evaluate the protester's actual approach. AR at 10-12. For example, KR3Tech's proposal stated that its "research effort will also provide a strategy for maximizing the reuse" of

³ KR3Tech was not represented by counsel in its protest, and therefore no protective order was issued. Accordingly, our discussion of some aspects of the protester's proposal and the agency's evaluation is necessarily general in nature in order to avoid reference to nonpublic information. Our conclusions, however, are based on our review of the entire record, including nonpublic information.

certain technologies. AR, Tab 9, KR3Tech Proposal, at 1. The Navy notes that despite this statement, the remainder of the proposal did not specify the potential means of reuse, nor any possible modifications of the technology that might be researched under the proposal. AR at 11.

We consider the agency's assessment of this weakness to be reasonable, since the topic description specifically called for research that would result in the development of strategies that would maximize reuse of existing technologies. AR, Tab 4, Navy Program Solicitation, at 116. While specific details of the strategy would presumably be a result of the phase I research, it was not unreasonable for the Navy to expect the proposal to provide some discussion of expected results and general direction of the proposed research.

In another example, the second assessed weakness noted that feasibility studies had already been performed by at least two other organizations. AR, Tab 5, KR3Tech Evaluation Sheet, at 2. KR3Tech alleges that the assessment of this weakness was unreasonable as the feasibility of a project should be the proper focus of a phase I proposal.⁴ Protest at 5.

In response, the Navy cites KR3Tech's own characterization of the "overall Phase I technical objective [as being] to determine the feasibility of shipboard troposcatter," AR at 13; AR, Tab 3, KR3Tech Proposal, at 27. The Navy explains that the evaluators viewed this as research for which feasibility had already been determined. AR at 13. The agency points out, in this regard, that the feasibility efforts for this SBIR topic, even under phase I, were intended to be focused on "whether [commercial broadband satellite program] elements can be repurposed for troposcatter application, as evidenced by the topic statement that offerors should '[d]etermine technical feasibility . . . to realize troposcatter capabilities that maximize reuse of existing CBSP . . . [systems]'.⁴ Id. Therefore, proposed research focused on a broader, less-innovative topic, as presented in the protester's proposal, was given a lower evaluation score. Id.

⁴ Regarding this issue, KR3Tech also alleges that the Navy improperly withheld pertinent information. Protest, at 2, 6; Attachment D. KR3Tech points to a sentence in the topic description noting that "[r]ecent work by Draper Laboratories indicates that the issue of platform dynamics can be addressed" and claims that its inability to review the referenced work hindered its ability to present an informed proposal. Id., citing, AR, Tab 4, Navy Program Solicitation, at 123. To the degree that KR3Tech knew or believed it needed to review the prior work of Draper Laboratories to submit an informed proposal, it was required to challenge this as a known deficiency in the solicitation prior to the closing date for proposals. URS Federal Servs., Inc., B-412580, B-412580.2, Mar. 31, 2016, 2016 CPD ¶ 116 at 5. As KR3Tech chose to wait until after the award to challenge this basis of protest, the protest issue is untimely raised and therefore dismissed. 4 C.F.R. § 21.2(a)(1).

On this record, we find the agency's assessment of this weakness reasonable and consistent with the terms of the solicitation. As stated above, the discretion afforded an agency in evaluating SBIR proposals is substantial. While some SBIR programs may allow for phase I proposals to be funded based on more general descriptions of the approach, it is apparent from the record that the Navy, in this instance, evaluated a lack of details in an approach as less likely to succeed. The protester's various expressions of disagreement do not render the Navy's evaluation judgments unreasonable. To the contrary, the record reflects that for each weakness the protester challenges, the Navy reasonably identified a lack of information and concluded that the omissions presented a risk to reaching the topic's stated goals. We deny the challenges to the technical evaluation.⁵

This protest is denied.

Susan A. Poling
General Counsel

⁵ We have reviewed the remaining protest allegations but find that none provides a basis to sustain the protest. Each of these allegations either has no merit, is untimely raised, or concern matters for which KR3Tech is not an interested party under our Bid Protest Regulations, based on the proposal's ranking.