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Decision

Matter of: R&D Dynamics Corporation

File: B-285979.3

Date: December 11, 2000

William T. Welch, Esq., Maurice J. Mountain, Esq., and Keith L. Baker, Esq., Barton, Baker, McMahon & Tolle, for the protester.
Maj. Cynthia M. Mabry, and Alvin E. Prather, Esq., Department of the Army, for the agency.
Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that evaluation and source selection conducted pursuant to the Department of Defense Small Business Innovation Research program was improper because the agency improperly failed to evaluate proposals and make award in accordance with the solicitation's stated evaluation factors is denied where the record shows that the evaluation was reasonable and consistent with those evaluation factors.

DECISION

R&D Dynamics Corporation protests the Department of the Army's determination to award phase II funding to Mohawk Innovative Technology, Inc. (MITI) for a project both firms proposed under the Department of Defense (DOD) Small Business Innovation Research (SBIR) program. R&D alleges that the Army improperly failed to evaluate proposals and make award in accordance with the solicitation's stated evaluation factors.¹

We deny the protest.

¹ By separate decision we denied R&D's protest that government personnel improperly advised the firm that it need not pursue DOD SBIR "Fast Track" procedures in order to obtain phase II funding, and that these personnel had an improper conflict of interest with MITI. R&D Dynamics Corp., B-285979.2, Nov. 14, 2000, 2000 CPD ¶ __.

The SBIR program is conducted pursuant to the Small Business Innovation Development Act, 15 U.S.C. § 638 (1994 & Supp. IV 1998), which requires certain federal agencies to reserve a portion of their research and development funds for awards to small businesses. As part of its SBIR program, DOD issues an SBIR solicitation twice a year listing the research topics for which it will consider SBIR program admission. 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 phase I is successful, the firm may be invited to apply for a 2-year 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. DOD's SBIR website, <<http://www.acq.osd/mil/sadbu/sbir/overview.html>>.

DOD Fiscal Year (FY) 1999 SBIR Program Solicitation 99.2 listed the available SBIR topics for FY 1999 for phase I proposals. The solicitation divided these topics into sections corresponding with a different DOD component. Each section contained topic descriptions and special instructions for preparing and submitting proposals to organizations within the cognizant DOD component. In the Army's section of the solicitation, the Army Research Laboratory (ARL) solicited topic A99-019, "Oil-free Auxiliary Power Unit and Propulsion System Technology," which called for a contractor to "develop innovative oil-free compliant foil bearing and seal technology in a size class suitable for application in the oil-free auxiliary power unit and gas turbine turbomachinery systems used in Army vehicles." Solicitation at Army-25.

Both R&D and MITI received phase I funding for this topic in January 2000. A set of Army SBIR program phase II proposal instructions was appended to these award documents.

Both section 4.3 of the DOD solicitation and paragraph 7.a. of the Army SBIR program phase II proposal instructions set forth the following evaluation criteria for phase II proposals:

- a) The soundness, technical merit, and innovation of the proposed approach and its incremental progress toward topic or subtopic solution;
- b) the qualifications of the proposed principal/key investigators, supporting staff, and consultants; and
- c) the potential for commercial application and the benefits expected to accrue from this commercialization.

The first criterion was to be weighted slightly more than the second two, which were to be equally weighted. Phase II Proposal Instructions at 34. The DOD solicitation advised that the reasonableness of the proposed costs was to be examined to determine those proposals that offered the best value and that, where technical

evaluations were essentially equal in merit, cost to the government was to be considered in determining the successful offerors. However, the Army SBIR phase II proposal instructions contained no such language. Instead, those instructions stated that phase II proposals were to be subject to a detailed technical evaluation by technology experts in the Army Laboratories and Centers and by a second, independent review conducted by a panel of senior Army technologists. The instructions continued:

Final decisions will be based upon the senior panel's recommendations in light of the scientific and technical evaluations and other factors, including a commitment for co-funding or follow-on funding, possible duplication of other ongoing research or research and development, overall program balance, budget limitations, and the potential of a successful Phase II effort leading to a product of continuing interest to the Army and DOD.

Phase II Proposal Instructions at 35.

The Army invited both R&D and MITI to submit phase II proposals, and both firms did so in May. The ceiling cost for phase II proposals was \$730,000. Both firms' proposed costs were within \$[DELETED] of that figure. The proposals were initially evaluated by four technology experts in the Army Laboratories and Centers. The maximum technical score for proposals was 100 points. R&D's proposal received a consensus rating of 97 points, and MITI's proposal 100 points. The results of this initial evaluation were forwarded to the cognizant Technology Area Chief (TAC) for a second, independent review. The forwarding cover letter advised that both proposals were highly recommended for phase II contract award and ranked MITI's proposal first and R&D's proposal second in order of merit.

The TAC examined the evaluations of all proposals for the various topics in his area, including this topic, based on scientific and technical evaluation aspects, possible duplication of on-going research, program balance, budget constraints, and the additional factors set forth in the solicitation. Initial TAC Statement at 2. Based on his overall analysis, he provided an overall prioritized list of these proposals and placed the proposals in one of four bands--Band I for "must fund"; Band II for "fund if money is available"; Band III for "marginal proposal"; and Band IV for "do not fund." The TAC placed MITI's proposal in Band I and R&D's proposal in Band II. Id. The selection evaluation board (SEB) reviewed the priority lists submitted by all of the TACs and, based on estimates of the annual SBIR budget and TAC recommendations, selected the projects for award. The SEB did not revise the priority list submitted by the TAC Chief for this technology area. Army SBIR Program Manager's Statement at 8. The SEB's findings were forwarded to the Deputy Assistant Secretary of the Army for Science and Technology for his review and approval; he concurred with the SEB's findings.

In this protest, R&D first contends that the initial technical evaluators failed to justify and document the differences between the two proposals and improperly downgraded its proposal based upon an unstated evaluation factor. R&D next contends that the TAC improperly failed to consider cost reasonableness in making his award recommendations.

Where an agency is conducting an SBIR procurement, it has the discretion to determine which proposals it will fund. See SBIR Program Policy Directive, 58 Fed. Reg. 6,144, 6,149 (1993); Microexpert Sys., Inc., B-233892, Apr. 13, 1989, 89-1 CPD ¶ 378 at 2. In light of this discretion, our review of an SBIR procurement is limited to determining whether the agency violated any applicable regulations or solicitation provisions, or acted in bad faith. Bostan Research, Inc., B-274331, Dec. 3, 1996, 96-2 CPD ¶ 209 at 2; see also Intellectual Properties, Inc., B-280803.2, May 10, 1999, 99-1 CPD ¶ 83 at 5-6. Our review of the record shows that the agency's actions were reasonable.

Again, the initial technical evaluators arrived at consensus scores of 100 points for MITI and 97 points for R&D. The differences between the two proposals arose under the first and most important evaluation factor: the soundness, technical merit, and innovation of the proposed approach and its incremental progress toward topic or subtopic solution.² While all four evaluators assigned the maximum 40 points to MITI's proposal under this factor, they assigned R&D's proposal 37, 38, 35, and 38 points respectively, for a consensus rating of 37.

R&D asserts that, given the closeness of the scores, the two proposals were essentially technically equal. In this regard, R&D contends that the "general, superlative descriptions" in the narrative evaluations of both proposals do not support the 3-point differential and alleges that the evaluators failed to adequately document their evaluation so as to justify that differential.

When technical proposals are point-scored, the closeness of the scores does not necessarily indicate that the proposals are essentially equal. Deborah Bass Assocs., B-257958, Nov. 9, 1994, 94-2 CPD ¶ 180 at 4; Moorman's Travel Serv., Inc.--Recon., B-219728.2, Dec. 10, 1985, 85-2 CPD ¶ 643 at 7 (proposals were not considered equal despite difference of only .5 points on a 100-point scale). In other words, we do not rely on a mechanistic view of the numbers themselves. Deborah Bass Assocs., supra. Rather, point scores are only guides to intelligent decision-making by source selection officials. Beyond the mere point scores, the real issue is whether the competing proposals offer differing levels of technical merit, a question that is essentially a matter for the judgment of the agency evaluators. Id. The rationale for this judgment must be documented in sufficient detail to show that it is not arbitrary

² Both proposals received the maximum points available under the other two evaluation factors.

and that there was a reasonable basis for the selection decision. Management Tech., Inc., B-257269.2, Nov. 8, 1994, 95-1 CPD ¶ 248 at 6-7. The record affords us no basis to object to the agency's actions.

Each evaluator produced a detailed narrative assessment of each proposal under each evaluation factor, including the one at issue here. The evaluators also produced a detailed narrative consensus assessment of each proposal. We do not agree with R&D that the narrative evaluation of both proposals contains "general, superlative descriptions" which render the merits of the proposals indistinguishable. As the chief evaluator explains in his supplemental statement, clear qualitative distinctions between the two proposals are quite evident when the two sets of consensus narratives are compared. For example, MITI's proposal is characterized as having "outstanding technical merit and innovation," while R&D's proposal offers a "systematic, robust and technically sound approach." Further, MITI proposed an "excellent research project. . . . The proposed project's targeted Oil-Free technology application . . . is aggressive leading edge technology with potential application to a range of turbomachinery used in Army power and vehicle propulsion systems." In contrast, R&D provided "a strong proposal that addresses the research topic area of interest to the Army. The proposed research will advance the state of the art in Oil-Free turbomachinery technology with benefits to Army vehicle systems and operating costs." The chief evaluator has also provided additional explanations of the differences between the two proposals that are wholly ignored by the protester. In our view, the record fully supports the reasonableness of the Army's position that while R&D submitted a strong proposal, MITI's was simply stronger; the two proposals were not technically equal.

R&D also argues that its proposal was improperly downgraded based upon an unstated evaluation factor because one of the four evaluators made the comment that "there was no mention of any research of foil thrust bearings" in its proposal. R&D explains that there are both foil journal bearings (which are round) and foil thrust bearings (which are flat), and that it proposed the development and commercialization of only a foil journal bearing within the context of its research program. R&D contends that it should not have been penalized for not discussing a bearing that is not part of its development program.

The chief technical evaluator explains that topic A99-019 covered turbomachinery systems that inherently require both types of bearings, a fact unrebutted by the protester. The chief technical evaluator states, however, that R&D's proposal was not downgraded because it did not address foil thrust bearings but simply did not receive the maximum points available for its proposal overall. We find that we need not resolve any dispute on this matter because the record shows that it was not the reason for R&D's lower rating. The consensus narrative makes no mention of this comment. Moreover, the comment was made by only one evaluator, and all four of the evaluators assigned R&D's proposal less than the maximum number of points available for this factor.

R&D next argues that the TAC improperly failed to consider the cost reasonableness of proposals eligible for funding prior to award and improperly failed to consider proposed costs in making a best value determination. R&D's arguments are without basis.

While the DOD solicitation provided that the reasonableness of the proposed costs were to be examined to determine those proposals that offered the best value, the Army SBIR phase II proposal instructions, which applied to this specific topic, contained no such language. Instead, a senior panel was to make final recommendations in light of the scientific and technical evaluations and other factors, including a commitment for co-funding or follow-on funding, possible duplication of other ongoing research or research and development, overall program balance, budget limitations, and the potential for a successful phase II effort leading to a product of continuing interest to the Army and DOD. Offerors' cost proposals were only required to include enough information to allow the Army to assess their plans to use the requested funds. Phase II Proposal Instructions at 32. Here, the TAC states that he examined each offeror's work scope versus its proposed budget and, within the uncertainty of significantly different first-time innovative research and development projects, judged that none of the proposals was out of line. Despite having access to MITI's cost proposal and to the Army's cost evaluation, the protester has not challenged their contents. Given the closeness in the proposed costs of both proposals, we fail to see how any further consideration of proposed costs would have affected the award decision.³

The protest is denied.

Anthony H. Gamboa
Acting General Counsel

³ While R&D complains that the award decision did not consider the fact that [DELETED], since this feature was evaluated favorably in the technical evaluators' consensus narrative, there is no reason to doubt that it was considered in the source selection decision.