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Decision

Matter of: Compotech, Inc.

File: B-423368

Date: June 12, 2025

Jason A. Blindauer, Blindauer Law, PLLC, for the protester.
Hector Rivera-Hernandez, Esq., and Erika Whelan Retta, Esq., Department of the Air Force, for the agency.
Mary G. Curcio, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester is not an interested party to challenge solicitation requirements as unduly restrictive of competition where protester can meet the requirements.
 2. Requirement in Small Business Innovation Research solicitation that proposal be signed by both a unique customer and a unique end-user is reasonable since it supports agency's obligation to ensure that there is a customer who will support procurement of the item and an end-user that needs the item.
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DECISION

Compotech, Inc., of Brewer, Maine, protests the terms of small business innovation research (SBIR) phase II solicitation, topic AFX24.5, innovative defense-related dual purpose technologies/solutions with a clear Air Force stakeholder need, issued by the Air Force under broad agency announcement (BAA) Department of Defense (DOD) X25.5 commercial solutions opening. Compotech asserts that the solicitation is unduly restrictive of competition and that the agency is improperly treating a non-material requirement as mandatory.

We deny the protest.

BACKGROUND

The **SBIR** program is conducted pursuant to the Small Business Innovation Development Act, 15 U.S.C. § 638, which requires certain federal agencies to reserve a portion of their research and development funds for awards to small businesses. The

Small Business Administration (SBA) has the statutory obligation to issue policy directives for the general conduct of the government's SBIR programs. See 15 U.S.C. § 638(j); Agency Report (AR), Tab 3, SBIR Program Policy Directive at 3. The SBIR program has three phases: phase I, to determine the scientific, technical, and commercial merit of ideas; phase II, to perform the principal research and development effort resulting in a well-defined, deliverable prototype for particular program needs; and **phase III**, during which the small business must obtain private or non-SBIR designated public funding to develop the prototype into a viable commercial product for sale to military and/or private sector markets. AR, Tab 3, SBIR Program Policy Directive at 18-25; See *Photonics Optics Tech, Inc.*, B-402967, July 28, 2010, 2010 CPD ¶ 173 at 1-2.

The end items that the agency acquires in the first two phases of the SBIR program are typically limited to prototypes or equipment that are incidental to demonstrating the feasibility of technical solutions. Air Force open topics are primarily focused on non-defense commercial solutions to be adapted to meet Air Force stakeholders' needs. See AR Tab 14, Phase II Solicitation, amend. 1 at 3, 4. Air Force open topics do not state defined technological parameters, as the topics are agnostic of industry, technology, and a specific area that the agency wants to see addressed. *Id.* at 4. However, offerors are expected to demonstrate a clear understanding of how their existing mature non-defense technical solution can be adapted to meet a specific need of a Department of the Air Force customer. *Id.*

On February 5, 2025, the agency issued the phase II topic release instructions to businesses that had received phase I awards. AR, Tab 12, Phase II Solicitation. The objective of phase II included exploring innovative technologies applicable to both defense and non-defense markets, scaling capability, and growing the industrial base for defense. *Id.* at 3. Offerors that submitted phase II proposals were expected to demonstrate a "high probability of identifying a product-mission fit between a[n] [Air Force] stakeholder and the proposed adaptation of the non-defense commercial solution." *Id.* The topic release instructions explained that this was best accomplished "through a proposal with a mature non-defense technical solution and a clear understanding of its adaptation to meet a[n] [Air Force] customer's specific need, supported by documentation from a specific motivated, empowered [Air Force] end-user, customer, and technical point of contact . . . ready and willing to participate in the proposed prototype solution's trial." *Id.*

Phase II offerors were instructed that proposals should include development, installation, integration, demonstration or test and evaluation of the proposed solution prototype system. *Id.* at 5. The agency would evaluate proposals against three criteria-technical approach, defense need, and commercialization. *Id.* at 10-11.

As relevant to this protest, offerors were required to submit a customer memorandum with their phase II proposals. *Id.* at 31-32. The purpose of the customer memorandum is to document interest from an Air Force organization in working with a phase II awardee on a proposed phase II effort. AR, Tab 13, Customer Memorandum at 1. The solicitation required the customer memorandum to be signed by a customer and an

end-user and to include all required signatures. Phase II Solicitation at 32. The solicitation also stated that the “[c]ustomer and [e]nd-[u]ser cannot be the same.”¹ *Id.* The customer organization is the organization that will manage the future procurement or sustainment of the solution, and that will manage the funding, contracting, and logistics needs for phase III awards, as appropriate. Customer Memorandum at 1, 7. The end-user organization is the operational user of the solution being prototyped and is the organization that directly benefits from the solution. *Id.* According to the solicitation, “Inclusion of a Customer Memorandum is mandatory for all proposals. Proposals without a signed Customer Memorandum or proposals that do not follow the mandatory template will not be considered for award.” *Id.* at 15.

The solicitation also explained that under the defense need criterion, “[a] complete and compelling [customer memorandum] . . . signed by an appropriate end-user, customer, and [technical point of contact] indicates the appropriateness, relevance, and specificity of an identified [d]efense [n]eed.” AR, Tab 12, Phase II Solicitation at 10. In addition, the solicitation stated that under the commercialization criterion, “[t]he existence of [p]hase II follow-on commitments for the subject research, and funding commitments related to the subject effort, whether from government sources, as documented in the [Air Force] [c]ustomer [m]emorandum . . . are evidence of commercialization potential.” *Id.* at 10-11.

Compotech timely filed its protest challenging the terms of the phase II solicitation on March 6, the same day proposals were due.

DISCUSSION

Compotech protests that the requirement for two unique signatures--one from the customer and one from the end-user--is unduly restrictive of competition. Compotech further asserts that the two-signature requirement should not be considered mandatory because it is immaterial in that it does not affect price, quality, quantity, or delivery.

We deny the protest.

Unduly Restrictive of Competition

Compotech protests that the requirement for two unique signatures--one from the customer and one from the end user--is unduly restrictive of competition. According to Compotech only one signature is required to substantiate the information in the customer memorandum.

¹ The customer memorandum must also be signed by a technical point of contact who is expected to facilitate interactions between the company and the customer and end-user organizations, work to overcome tactical execution barriers, and resolve challenges. The technical point of contact can be the same person as the customer or the end-user. AR, Tab 13, Customer Memorandum at 1.

Based on our review of the record, we find that Compotech is not an interested party to raise this issue since it is able to meet the requirement. Compotech acknowledges in its protest that it could have met the requirement but had an issue with timely obtaining the required signatures. Protest at 6. Moreover, after the closing date for the receipt of proposals Compotech submitted a customer memorandum with unique signatures from the customer and end-user. Protester Comments, Att. 1 at 16.

We have stated that a prospective offeror generally lacks standing to challenge a specification as unduly restrictive where it can meet the requirement set forth in the solicitation, as such a challenge would be, in essence, on behalf of other potential suppliers who are economically affected by the specification's allegedly restrictive nature. *Government and Military Certification Systems, Inc.*, B-409420, Apr. 2, 2014, 2014 CPD ¶ 116 at 4; *Accenture Federal Services, LLC*, B-418321.4, Jan. 29, 2021, 2021 CPD ¶ 67 at 4. Because Compotech has acknowledged that it is able to meet this requirement, and in fact has been able to meet it during the pendency of this protest, this basis of protest is dismissed.

Material Requirement

Compotech protests that it is unreasonable for the agency to treat the two-signature requirement on the customer memorandum as mandatory because it is not a material requirement. That is, according to Compotech, the signatures do not concern the price, quantity, quality, or delivery terms of the item being procured.

Contrary to Compotech's argument, agencies are not limited to establishing mandatory solicitation terms that concern only price, quality, quantity, or delivery. Rather, a contracting agency has the discretion to determine its needs and the best method to accommodate them provided the requirement is reasonably necessary to meet the agency's needs. *Helionix Systems*, B-404905.2, May 26, 2011, 2011 CPD ¶ 106 at 4.

Here, the phase II solicitation stated that offerors had to include two unique signatures--one for the end-user and a different one for the customer--in the customer memorandum and made clear that the failure to provide the required signatures would render the proposal unacceptable. The Air Force reasonably established that the two-signature requirement is material. The agency explains that the SBIR program is not a traditional procurement where the agency is procuring a specific end item. Contracting Officer's Statement (COS) at 4. Instead, the Air Force uses the program with the goal of advancing scientific and technical knowledge and applying that knowledge to meet a recognized but unmet agency need, and to later develop a prototype into a viable commercial product for sale to military and or private sector markets. *Id.* at 3-4. This explanation is consistent with the SBIR policy directive, which states that the purpose behind phase II awards is "to further develop work from phase I that meets particular program needs and exhibits potential for commercial application." AR, Tab 3, SBIR Program Policy Directive at 4.

The agency further explains that the customer memorandum is the most material proposal submission requirement because it is a formalized way of ensuring that offerors submit crucial information that is necessary for the Air Force to make its selection decisions using two of its stated evaluation criteria--defense need and commercialization. COS at 14-15. Specifically, as the solicitation indicated, the customer memorandum documents the appropriateness, relevance, and specificity of an identified defense need. AR, Tab 12, Phase II Solicitation at 10. The customer memorandum also documents phase II funding which is a key indicator of the potential for government or private sector commercialization and the benefits expected to accrue from commercialization. *Id.*

The agency explains that the signature of the end-user evidences the validation of the defense need and the signature of the customer evidences the potential for commercialization. COS at 15. The agency maintains that the signatures also provide evidence of the formal commitment of the end-user and customer which “serve to safeguard both the Air Force and the [a]wardee interests in having specified individuals or groups of individuals who will use the technology proposed and their interests in having viable acquisition and transition pathways for proposed technologies.” *Id.* at 16. Consistent with these explanations, the customer memorandum states that the signatories must understand and exert influence over operational needs, formal requirements, or funding. AR, Tab 13, Customer Memorandum at 15.

While Compotech argues that the signatures themselves are not material because it is the narrative in the customer memorandum that documents the customer need and commercialization potential, the protester misses the point. The signatures document a formal commitment from the agency which does not flow from the narrative itself. On this record, we conclude that it is reasonable for the Air Force to require the signatures of a committed customer and a committed end-user so that it can meet its obligation to award SBIR phase II contracts that have a specific program need and commercialization potential.

Edda Emmanuelli Perez
General Counsel