



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Pacific Blue Innovations

File: B-406397

Date: May 11, 2012

Gary Abramov, for the protester.

Debra J. Talley, Esq., Department of the Army, for the agency.

Kenneth Kilgour, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision not to fund the protester's proposal under phase II of the Department of Defense Small Business Innovation Research program is denied where there is no basis in the record to question the reasonableness of the agency's evaluation.

DECISION

Pacific Blue Innovations (PBI), of San Diego, California, protests the Department of the Army, Army Materiel Command's determination not to award it phase II funding for a project PBI proposed under the Department of Defense (DoD) Small Business Innovation Research (SBIR) program. PBI contends that the agency improperly evaluated PBI's proposal to develop a dual purpose hand grenade.

We deny the protest.

BACKGROUND

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 (2006). Pursuant to this authority, federal agencies (such as the Army) with R&D extramural budgets in excess of \$100 million 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 15 U.S.C. §§ 638(e)(4), (f). Under phase I, small businesses are invited to submit proposals to conduct research on one or more topics specified in the annual SBIR program solicitation.

Under phase II, firms that received phase I awards may, on their own initiative, submit proposals for further development work on the topic. Phase III contemplates that, unlike phases I and II, non-SBIR funds will be used to pursue commercial applications of the R&D. See _____, Inc., B-291818, Apr. 2, 2003, 2003 CPD ¶ 67 at 2-3; <https://www.armysbir.army.mil/default.aspx>.

The Army issued a solicitation in May 2009 for a “Dual Purpose Hand Grenade with Enhanced Non-Lethal and Lethal Effects.” PBI submitted two proposals, one of which was selected for a phase I award. The agency then invited PBI to participate in the phase II proposal process. Under phase II, proposals would be evaluated on the following three criteria: (1) the soundness, technical merit, and innovation of the proposed approach and its incremental progress toward topic or subtopic solution; (2) qualifications of the principal/key investigators, supporting staff, and consultants, to include the ability to commercialize the results; and (3) the potential for commercial application and the benefits expected to accrue from that commercialization. Solicitation at 19. The commercialization potential would be assessed using two criteria: the proposer’s commercialization strategy, and the proposer’s record of commercializing its prior SBIR projects. *Id.* at 19-20.

The protester’s first proposal was not selected for a phase II award. In May 2011, PBI’s second phase II proposal was selected for a potential award, subject to the results of a Pre-Award Survey on Safety, Security and Accounting System. Agency Report at 2. The pre-award survey recommended no award. The contracting officer referred PBI to the Small Business Administration (SBA) for a certificate of competency, which the SBA denied.

The Army granted the protester’s request that it be permitted to resubmit a new (a third) phase II proposal, which PBI did, along with three other firms whose proposals addressed a different topic. The technical evaluation team scored the four proposals, and PBI’s ranked last in the group. The agency source selection authority, per the recommendation of the technical evaluation team, selected the top two proposals for award.¹ This protest followed.

DISCUSSION

The protester challenges the agency’s evaluation of its proposal. Agencies have broad discretion to determine which proposals will be funded under the SBIR program, and we review such determinations to ensure that they were made consistent with the terms of the solicitation and applicable statutes or regulations and that the agency did not act fraudulently or in bad faith. Intellectual Properties, Inc., B-280803.2, May 10, 1999, 99-1 CPD ¶ 83 at 5-6. Agency discretion, though

¹ The solicitation specifies no set percentage or number of firms that should receive awards. See Solicitation ¶ 5.2 Awards (Phase II).

broad, is not unfettered, and continues to be subject to the test of reasonableness. Id.

On the entire record, as explained below, we see no basis on which to conclude that the agency's evaluation of the protester's proposal was unreasonable. The agency identified and documented its assessment of various weaknesses in PBI's proposal, consistent with the solicitation's broadly stated evaluation criteria. PBI's challenges to those assessed weaknesses, for the most part, merely disagree with the agency evaluation and provide no grounds for sustaining the protest.

The agency documented several concerns with the protester's proposal under criterion one, the soundness, technical merit, and innovation of the proposed approach and its incremental progress toward topic solution. Specifically, the agency criticized the overall design of the grenade as simply modifying the size, shape and venting of current grenades. Such a design, the agency asserts, severely limits the possibility for successful development of the dual purpose grenade. The agency concluded that the proposal showed insufficient "proof of principle"² in three areas. The agency faulted the protester's proposal for failing to document that its proposed testing facility had been validated by a DoD organization. Finally, the agency noted that there was no evidence that the protester's accounting system had been validated by the Defense Contract Audit Agency (DCAA).

The protester asserts that a letter of intent from its subcontractor, SRI, and the accompanying title page of SRI's explosive safety manual substantiates its compliance with pertinent regulations. That letter makes no mention of compliance with DoD safety regulations, however. See Proposal at page 34, Letter from SRI to PBI, Oct. 28, 2011. Moreover, SRI's manual title page simply states "[i]n compliance with DoD 4145.26-M, Contractor's Safety Manual for AMMUNITIONS and EXPLOSIVES." Id. at 37. In our view, there is nothing unreasonable in the agency's determination that the protester's proposal failed to document that its proposed testing facility had been validated by a DoD organization. SRI's own assertion that it was in compliance is not tantamount to such independent validation. PBI does not dispute that its accounting system has not been validated by DCAA; it asserts that, if requested to be audited by the agency, PBI could pass a DCAA audit.³ PBI simply disagrees with the remainder of the agency's evaluation

² "Proof of principle" is a realization of a certain method to demonstrate its feasibility, or a demonstration in principle, whose purpose is to verify that some theory or concept has the potential of being used. See http://en.wikipedia.org/wiki/Proof_of_concept.

³ PBI also states that it obtained proof of its subcontractor's compliance with DCAA too late to include it in its proposal.

of its proposal under criterion one, except to assert that the testing required to show sufficient proof of principle was beyond the scope of what firms were required to submit as part of their proposals. The agency, however, maintains that actual testing was not required to demonstrate “proof of principle.” Rather, it could have been provided through, for example, additional engineering drawings. Fundamentally, the agency’s “proof of principal” concerns reflected issues reasonably pertaining to the “soundness” of the protester’s proposed concept, a matter expressly identified as a basis for evaluation under the first criterion.

The agency’s evaluation of the protester’s proposal under criteria two, qualifications of the principal/key investigators, noted the following weaknesses. The agency asserted that the protester had no prior experience in hand grenade design or any test data to support the design proposed. The protester defended its substantial research experience without contradicting the agency’s evaluated weakness. Moreover, the agency noted that the protester had not proposed a sufficient overall level of effort, including subcontractor support,⁴ to produce a dual purpose hand grenade. Nor was it clear to the agency how the protester would organize and direct its various proposed subcontractors in order to mature and prove out the final design. While the protester asserts that the agency failed to credit PBI’s proposal with the full measure of subcontracting offered, the agency argues that the protester’s proposal failed to describe the subcontracting efforts in detail, as required by the solicitation. For example, PBI claims that one of its subcontractors, SRI, “would bring to the project their vast expertise in design, assemble and test of explosive materials and devices,” Protester’s Comments, May 2, 2012 at 2, yet PBI’s proposal states simply that SRI “will conduct Level 1 and Level 2 live testing

⁴ While requiring that an offeror perform, at a minimum, one-half of the R&D effort during phase II, the solicitation was imprecise as to how subcontractor’s participation would be calculated. The solicitation stated that “[t]he percentage of work is usually measured by both direct and indirect costs, although proposers planning to subcontract a significant fraction of their work should verify how it will be measured their DoD contracting officer.” Solicitation ¶ 1.3. The solicitation did require that the involvement of subcontractors be described “in detail” and “identified in the cost proposal.” *Id.* at ¶ 3.5.b(9). The record is inconclusive on the level of subcontracting effort contained in PBI’s proposal. The agency calculated the level of subcontracting effort at roughly 6 percent; the protester’s own calculation was 23 percent. The agency attributes the difference to the fact that it included only engineering costs, and not testing costs, in its calculation. *See* Agency’s Comments, April 20, 2012, at 4. In any event, the level of subcontracting support that the protester’s proposal offered is not determinative of the protest.

of our grenade prototypes including advanced data collection and post-test analysis.”⁵ Proposal at 30.

Under the third criteria--the potential for commercial application--the agency noted that the protester’s design relied on variations on known approaches and that the probability of success is not especially high. The agency anticipated that the live testing would produce insufficient analysis for firms to be able to conclude that the dual purposes would be achieved. While the protester’s proposal stated that PBI’s partners would contribute \$1million in investment, and that another \$1million could be obtained by venture financing, the agency noted that there was no evidence in the proposal that any of those entities were considering providing the necessary funding.

Portions of PBI’s proposal had obvious merit; the agency’s evaluation recognized numerous proposal strengths. Nevertheless, given the weaknesses that the agency identified in PBI’s proposal, in each of the three evaluation criteria, we have no basis on which to conclude that the agency’s evaluation of the protester’s proposal was unreasonable.

The protest is denied.

Lynn H. Gibson
General Counsel

⁵ The contribution of other subcontractors was similarly vague. See, i.e., Proposal at 29 (noting that one subcontractor will “become our partner for explosive materials development and FRP”); and id. at 30 (noting that another contractor will be a partner “for shell and fuses development and later [low-rate initial production] and [full rate production] stages”).