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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Advanced Photon Applications, LLC

File: B-409860

Date: August 26, 2014

James Harder, for the protester.

Wade L. Brown, Esq., Department of the Army, for the agency.

Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's challenge to agency's decision not to fund protester's proposal under Phase I of a solicitation issued pursuant to the Department of Defense Small Business Innovation Research program is denied where protester's proposal was reasonably found to have weaknesses that resulted in it being ranked 18th of the 23 proposals received.

DECISION

Advanced Photon Applications, LLC (APA), of Bedford, Texas, protests the Department of the Army, U.S. Army Materiel Command's, failure to award it Phase I research funds under Department of Defense (DOD) Small Business Innovation Research (SBIR) program solicitation FY 14.1, Army Topic No. A14-008, Wide Field of View Primary Optic for Semi-Active Laser Sensor. APA challenges the agency determination that its proposal did not meet the program requirements.

We deny the protest.

The SBIR program is conducted pursuant to the Small Business Innovation Development Act, 15 U.S.C. § 638 (2011), 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 listing the research topics for which it will consider SBIR proposals.

Under Phase I small businesses are invited to test the scientific, technical, and commercial merit and feasibility of a certain concept. If Phase I is successful, the firm may apply for a Phase II award to further develop the concept. During

Phase III, firms are expected to obtain funding from non-SBIR sources to develop the concept into a product for commercial and/or military markets. See DOD SBIR Program Solicitation at 5.

The solicitation here sought proposals on Army Topic A14-008, Wide Field of View Primary Optic for Semi-Active Laser Sensor. Specifically, the Army sought a contractor to investigate, develop, and validate a novel optical wide-field-of-view, semi-active laser spot-tracking missile seeker, based on a biologically-inspired compound eye for use in the near-infrared spectrum. Army SBIR Proposal Submission Instructions at 20. The proposed solution was required to provide effective rejection of solar interference, and allow tracking of a target by a missile using a strapped-down fixed sensor, without the need for a gimbaled sensor. Id.

During Phase I, among other things, the offeror was to create a design for a novel compound eye seeker, and to provide performance estimates, analyses, and simulations (including measures to predict rejection of solar or other radiation outside of a selected near-infrared band-pass and angles of interest). Army SBIR Proposal Submission Instructions at 21. The solicitation specified that the seeker optics shall enable narrow band-pass filtering of the source to a 10 nanometer (nm) threshold, 2 nm objective, transmission bandwidth, which shall be effective throughout the entire field of regard of the seeker. Id. The seeker design also was required to allow tracking of the intended laser source throughout the sensor's field of regard when in the presence of a bright background source (i.e. the sun) located at any field point greater than 2 degrees threshold, 1 degree objective, from the intended source. Id.

The solicitation provided that proposals would be evaluated against the following three factors, in descending order of importance: (1) soundness, technical merit and innovation of the proposed approach and its incremental progress toward topic or subtopic solution; (2) qualifications of the proposed staff, including not only the ability to perform the research and development, but also the ability to commercialize the results; and (3) the potential for commercial application and the expected benefits from commercialization. Solicitation at 24. The solicitation noted that the agency could make none, one, or multiple awards. Id.

The Army received and evaluated 23 Phase I proposals using a two-tier process. AR at 1. The initial evaluation consisted of a technical assessment by the technical evaluation team (TET), which categorized the proposals as "must fund," "select if funds are available," or "do not select." Id. at 2. Four proposals recommended for funding were then forwarded to the Technology Area Chiefs (TAC), who comprised the source selection evaluation board; 3 of the proposals were ultimately funded. Id. The TET ranked APA's proposal 18th of the 23 proposals received, and did not include it among the 4 proposals it recommended for funding consideration.

APA disputes the agency's evaluation, asserting that it met or exceeded all of the agency's requirements. According to APA, the negative evaluation was the result of retaliation because APA had informed the agency that its sensor optical bandwidth specification was unworkable.

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, applicable statutes and regulations, and not made fraudulently or in bad faith. See Pacific Blue Innovations, B-406397, May 11, 2012, 2012 CPD ¶ 301 at 2-3; Higher Power Eng'g, B-278900, Mar. 18, 1998, 98-1 CPD ¶ 84 at 2.

Based on our review of the record here, we find no basis to conclude that the agency acted improperly in deciding not to select APA's proposal for funding. In this regard, the agency identified and documented its assessment of various weaknesses in APA's proposal, consistent with the solicitation's stated evaluation criteria. Nothing in APA's protest shows that these assessed weaknesses were unreasonable or otherwise improper.

First, APA has shown no basis to question the assessed weaknesses in APA's proposal under the technical factor. For example, as noted above, the seeker design was required to allow tracking of the intended laser source throughout the sensor's field of regard when in the presence of a bright background source such as the sun. Army SBIR Proposal Submission Instructions. The Army, however, found that APA's proposal failed to address spatial filtering, that is, limiting confusing background radiation based upon its location in the scene relative to the target. Supplemental Declaration, Evaluation Team at 2. The Army reports, and APA does not dispute, that APS's proposal did not contain a physical mechanism by which to achieve this goal. Id. Similarly, the Army noted that APA's required tasks and trade studies were not detailed, traceable tasks. The record supports the agency's concern in this regard. For example, APA's proposal listed tasks such as the effective focal length of the lens array "needs to be carefully selected," and the transfer function slope "needs to be maximized," but did not provide any details as to how these tasks will occur. APA Technical Volume at 6-7; Declaration of Evaluation Team at 3.

Nor has APA shown any basis to question the evaluated weaknesses in its proposal with respect to commercialization. In this regard, with respect to the qualifications factor, the TET found that APA's proposal did not provide sufficient evidence of potential commercialization partners, or sufficient detail that APA has a facility that might be able to commercialize the resulting technology. Declaration of Evaluation Team at 4. While APA states that it has commercialized missile trackers before, APA does not disagree that it did not detail in its proposal potential partners or an available facility for use with this project. Similarly, with respect to the potential for commercialization factor, the TET noted that APA's proposal did not contain a

section addressing commercialization. According to the evaluators, the proposal contained insufficient evidence of potential interested commercialization partners or of potential commercialization strategies or opportunities. Id. Since the solicitation required offerors to address commercialization under the qualifications and potential for commercialization factors, Solicitation at 20, the agency's downgrading of the proposal on this basis was consistent with the terms of the solicitation.

Given these reasonably assessed weaknesses in APA's proposal, there is no basis to conclude that the agency acted unreasonably in choosing not to award Phase I funding to APA. In this regard, it is an offeror's responsibility to submit an adequately written proposal. See Herndon Sci. and Software, Inc., B-245505, Jan. 9, 1992, 92-1 CPD ¶ 46. Where the offeror fails to do so it runs the risk that its offer will not be accepted.

Further, regarding APA's claim of retaliation, we note that, as a general matter, government officials are presumed to act in good faith. Consequently, a protester's claim that contracting officials were motivated by bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Basic Concepts, Inc., B-299545, May 31, 2007, 2007 CPD ¶ 98 at 3-4; Shinwa Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6. Here, APA has made no showing that the evaluation was the result of retaliation against APA for challenging the agency's specification for sensor optical bandwidth.

The protest is denied.

Susan A. Poling
General Counsel