



Decision

Matter of: Global Aerospace Corporation

File: B-414514

Date: July 3, 2017

Kerry T. Nock, Global Aerospace Corporation, for the protester.
Karen M. Reilley, Esq., and D. Evelyn Lyon, Esq., National Aeronautics and Space Administration, for the agency.
Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. A debriefing provided in connection with a Small Business Innovation Research (SBIR) procurement conducted pursuant to 15 U.S.C. § 638 does not fall within the debriefing exception to our general timeliness rules at 4 C.F.R. § 21.2(a)(2), because such procurement is not a procurement conducted on the basis of competitive proposals, under which a debriefing is requested and, when requested, is required. Thus, protest regarding another offeror based on information that was known to the protester prior to, but not raised until after, the debriefing is untimely and therefore is dismissed.
 2. Protest that agency unreasonably evaluated protester's proposal for an SBIR procurement is sustained where the agency did not document its basis for award recommendation contemporaneously and where the explanation for the agency's award recommendation prepared to address this protest appears to lack a reasonable basis.
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DECISION

Global Aerospace Corporation, a small business, of Irwindale, California, protests the National Aeronautics and Space Administration's (NASA) decision not to fund Global's phase II proposal under the Small Business Innovation Research (SBIR) program pursuant to solicitation No. NNX16SBIR/STTR. The protester challenges the agency's evaluation of its proposal. Additionally, Global alleges that one of the firms, which was selected to receive funding, Thin Red Line USA d/b/a MKF Interests, LLC (TRLU), a small business, of Houston, Texas, was ineligible for a phase II award because it previously performed phase I--and likely will continue to perform phase II--research and

research and development (R/R&D) outside of the United States in violation of the solicitation's requirements.

We sustain the protest in part and dismiss it in part.

BACKGROUND

The SBIR program is designed to increase the participation of small business concerns in federally funded R/R&D. 15 U.S.C. § 638; Agency Report (AR), Tab 2, Small Business Innovation Research (SBIR) Program Policy Directive, at 213.¹ Pursuant to this authority, certain federal agencies, including NASA, are required to provide a program under which a portion of the agency's R/R&D effort is reserved for award to small business concerns through a three-phased process. Under the program, firms first apply for a 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 sources to develop the concept into a product for sale. This protest involves a phase II award.

NASA published the solicitation at issue in November 2015 seeking proposals for various potential R/R&D topics, including Topic No. S3, Spacecraft and Platform Subsystems, which was sponsored by NASA's Science Mission Directorate. Contracting Officer's Statement of Facts (COSF) at 2. Relevant to the issues in this protest is subtopic No. S3.06, entitled "Terrestrial and Planetary Balloons." Solicitation at 140-41. The subtopic sought proposals, among other areas, for vehicles capable of conducting scientific research on either the planet Venus or Saturn's moon Titan. The Venus subtopic sought proposals for vehicles that can float vertically. Id. at 141. The Titan subtopic sought proposals for vehicles that can both change altitude and execute controlled movements in latitude and longitude. Id.

In response to the solicitation, Global proposed a winged glider responsive to the Titan subtopic. See AR, Tab 7, Global Phase II Briefing Chart, at 399. TRLU, on the other hand, proposed an adaptable multi-segment altitude control balloon in response to both the solicitation's Venus and Titan subtopics. See AR, Tab 8, TRLU Phase II Briefing Chart, at 440. Global and TRLU were each subsequently selected for phase I funding.

The solicitation directed that the award of a phase I contract would serve as a request for proposal for phase II follow-on projects. Solicitation at 020. Offerors were instructed that phase II proposals were to address: (1) the proposed innovation relative to the state of the art and the market; (2) phase I results relative to the scientific, technical merit and feasibility of the proposed innovation and its relevance and significance to NASA needs; and (3) the planning for a focused project that builds upon phase I results and encompasses technical, market, financial and business factors relating to the

¹ References herein to page numbers are to NASA's Bates numbering in the AR.

development and demonstration of the proposed innovation, and its transition into products and services for NASA mission programs and other potential customers. Id.

Phase II proposals were to include a proposal summary, a budget summary, a milestone plan, and a technical proposal. Id. at 022. Offerors were instructed to include or address the following 11 matters in their technical proposals: (1) table of contents; (2) identification and significance of the innovation and results of the phase I proposal; (3) technical objectives; (4) work plan; (5) related R/R&D; (6) key personnel; (7) phase III efforts, commercialization, and business planning; (8) facilities/equipment; (9) subcontracts and consultants; (10) potential post applications; and (11) essentially equivalent and duplicate proposals and awards. Id.

Phase II proposals were to be evaluated and ranked on a competitive basis. Id. at 031. After an initial screening for responsiveness to the solicitation's administrative requirements and the agency's R/R&D interests, the proposals were to be evaluated by NASA personnel to determine the most promising technical and scientific approaches. Id. Proposals were to be evaluated considering five factors.

Under factor 1, scientific/technical merit and feasibility, NASA was to evaluate the originality, feasibility, and potential technical value of the proposed innovation. Id. at 032. Under factor 2, experience, qualifications and facilities, NASA was to evaluate the technical capabilities, experience, and availability/commitment of the offeror's primary investigator or program manager, key personnel, staff, consultants, and subcontractors, as well as the adequacy of necessary instrumentation or facilities and any reliance on external sources. Id. Under factor 3, effectiveness of the proposed work plan, NASA was to evaluate the comprehensiveness and effectiveness of the proposed use of available resources, labor distribution, and schedule, as well as the proposed path beyond phase II for further development and infusion into a NASA mission or program. Id.

Under factor 4, commercial potential and feasibility, NASA was to evaluate the commercial potential and feasibility of the innovation, the intent and commitment of the offeror, the capability of the offeror to realize commercialization, the offeror's experience and record in technology commercialization, current funding commitments from private or non-SBIR sources, existing and projected phase III funding commitments, and investment, sales, licensing, and other indicators of commercial potential and feasibility. Id. Under factor 5, price reasonableness, NASA was to evaluate the offeror's proposed price for reasonableness. Id. at 033.

Factors 1-3 were to be scored numerically, with factor 1 worth up to 50 points, and factors 2 and 3 each worth up to 25 points. Id. The sum of the scores for factors 1-3 would be the technical merit score. Id. Factor 4, which was to be a "critical factor," was to be evaluated using an adjectival rating ranging from excellent to poor. Id. Factors 1-4 were to be used in the selection of proposals selected for negotiation, while factor 5 was to be evaluated and used in the selection for award. Id. In addition to the above criteria, the solicitation notified offerors that NASA reserved the right to consider

additional factors. Specifically, the solicitation stated that: “[f]inal selection decisions will consider the recommendations, overall NASA priorities, program balance and available funding, as well as any other evaluations or assessments (particularly pertaining to commercial potential).” Id.

NASA received three proposals in response to subtopic No. S3.06, including those submitted by Global and TRLU. See AR, Tab 14, SBIR Phase II Source Selection Presentation, at 479. NASA initially referred the proposals to peer review teams for scoring and evaluation, and for subtopic ranking. The peer reviewers then ranked the proposals submitted in response to the various subtopics under solicitation Topic No. S3, Spacecraft and Platform Systems. Based on that review, the Global and TRLU proposals were rated and ranked as follows:

	Global	TRLU
Factor 1	48 points	47 points
Factor 2	23 points	24 points
Factor 3	23 points	23 points
Total Technical Merit Score	94 points	94 points
Factor 4 – NASA	Excellent	Excellent
Factor 4 – Non-NASA	Excellent/Very Good	Excellent/Average
Subtopic Rank	1	2
Topic Rank	7	29

AR, Tab 9, Global Peer Review Evaluation, at 444; Tab 10, TRLU Peer Review Evaluation, at 451.²

The peer reviewers noted several strengths associated with each proposal, and based on their positive evaluations, recommended that both projects be funded. In addition to the peer review teams, NASA conducted a separate peer review of offerors’ respective commercialization potential under factor 4. COSF at 4. Those additional reviews evaluated Global as average, and TRLU as below average. AR, Tab 16, Global Phase II Commercial Review, at 533; Tab 17, TRLU Phase II Commercial Review, at 534.

In the next phase of the agency’s evaluation, proposals that were recommended by the peer reviewers were forwarded to the applicable NASA field centers based on the center’s area of expertise and programmatic interest. In addition to considering the proposals’ relative technical and commercial merit, the centers were also to consider NASA’s priorities, program balance, and other appropriate considerations. Relevant here, the Global and TRLU proposals, as well as 30 other proposals, were forwarded to the Jet Propulsion Laboratory (JPL) for further review and prioritization. COSF at 5.

² Numerical scores reflect the average of the two evaluators’ individual scores. Where the evaluators did not agree on an adjectival rating, both ratings are reflected above.

JPL favorably evaluated the Global and TRLU proposals, documenting several strengths and potential benefits to the agency from both proposals. See AR, Tab 11, Global Summary Eval. Report, at 455-56; Tab 12, TRLU Summary Eval. Report, at 457-58. With respect to TRLU, the JPL evaluators determined that the proposed balloon offered a simple but robust design, would be applicable to both Venus and Titan atmospheric exploration missions, as well as other planetary bodies, would start and conclude at higher technology readiness levels (TRL)³ than Global's proposed glider, and could enable a low risk Venus or Titan exploration mission shortly after completion of the phase II work. AR, Tab 12, TRLU Summary Eval. Report, at 457-58; Decl. of JPL Program Manager (Apr. 18, 2017), ¶¶ 4, 9. Based on this analysis, JPL ranked TRLU's proposal 9th, and designated it a high priority. AR, Tab 12, TRLU Summary Eval. Report, at 457. Although also identifying strengths with Global's proposal, JPL ranked the proposal 23rd, making it a medium priority. AR, Tab 11, Global Summary Eval. Report, at 455.

After the centers evaluated and prioritized proposals, the applicable mission directorate further reviewed and prioritized the proposals. Relevant here, the Science Mission Directorate (SMD) reviewed a total of 108 phase II proposals, including the 32 proposals reviewed by JPL. Decl. of SMD SBIR Program Rep., ¶ 9. SMD was allocated funding for a total of 48 projects. Id. Based on its review of the proposals, including the various centers' analyses, SMD ranked the 108 proposals and determined, notwithstanding the funding limitation, to recommend the top 65 projects to the Source Selection Official (SSO). Id. Based on its evaluation and prioritization, SMD ranked TRLU's proposal 23rd overall; Global's proposal was not ranked as being among the top 65 proposals. Id.

On March 1, 2017, the SSO issued a memorandum identifying the 133 projects selected for contract negotiations; Global's proposal was not selected. AR, Tab 13, NASA's 2016 SBIR Phase II Selection Statement. The SSO's memorandum does not contain a detailed analysis or explanation for why the 133 projects were selected or why additional projects were not selected. Rather, it appears that the SSA adopted the recommendations presented by the mission directorates regarding which projects to select, including the top 49 projects recommended by SMD for funding. See AR, Tab 14, SBIR Phase II Source Selection Presentation. On March 8, NASA publically announced the 2016 SBIR phase II selections. Global requested a debriefing, and the agency provided one on March 16. This protest to our Office followed.

DECISION

Global challenges NASA's evaluation of its proposal, arguing that the agency diverged from the solicitation's enumerated criteria and otherwise unreasonably considered the

³ The TRL describes the stage of maturity in the development process from observation of basic principles through final product operation. Solicitation at 189.

merits of its proposal. The protester also alleges that TRLU should have been found ineligible for a phase II award for violating the solicitation's prohibition on performing R/R&D outside of the United States.⁴ For the reasons that follow, we dismiss as untimely Global's challenges to the evaluation of TRLU's proposal and sustain in part its challenge to the evaluation of its proposal.

TRLU's Ineligibility for Phase II Funding

Global argues that TRLU should have been found ineligible for phase II funding because it previously used a Canadian subcontractor on its phase I award, and is likely to do so again on any resulting phase II award, which violates the solicitation's prohibition on R/R&D being performed outside of the United States. In addition to responding to the merits, NASA argues that this protest allegation should be dismissed as untimely because it was raised more than 10 days after Global knew or should have known of the basis for protest. The protester argues that this protest ground was timely raised within 10 days of the receipt of its debriefing. As discussed below, we dismiss this protest ground because it is untimely.⁵

Our Bid Protest Regulations contain strict rules for the timely submission of protests. The timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 5. Under these rules, a protest such as Global's, based on other than alleged improprieties in a solicitation, must be filed not later than 10 days after the protester knew or should have known of the basis for its protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2).⁶ An exception to this general rule is a protest that challenges "a

⁴ The solicitation specifically required that R/R&D "must be performed in the United States," but also allowed NASA to grant a waiver to the requirement based on "a rare and unique circumstance." Solicitation at 007.

⁵ We independently question whether Global is an interested party to challenge the evaluation of TRLU's proposal. In the analogous context of a procurement for R/R&D conducted pursuant to a broad agency announcement (BAA) under Federal Acquisition Regulation Part 35, we have determined that a protester cannot challenge the evaluation of other offerors' proposals because offerors who submit proposals under a BAA are not competing against each other, but rather are attempting to demonstrate that their proposed research meets the agency's requirements. See Microcosm, Inc., B-277326 et al., Sept. 30, 1997, 97-2 CPD ¶ 133 at 2, 11. We need not, however, resolve whether the same consideration applies in the context of an SBIR procurement because we dismiss this protest ground as untimely.

⁶ Apart from the timeliness question with respect to the debriefing, we also question whether this allegation is untimely raised after award. As discussed below, Global became aware of the basis for its allegation with respect to TRLU and its foreign subcontractor prior to the phase II award. Furthermore, it knew that NASA had

(continued...)

procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required.” Id. In such cases, with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, the protest must be filed no later than 10 days after the date on which the debriefing is held. Id. Here, we find that this SBIR procurement was not conducted on the basis of “competitive proposals” as contemplated by 4 C.F.R. § 21.2(a)(2).⁷

In evaluating whether a procurement was conducted on the basis of “competitive proposals” for the purpose of the debriefing exception to our timeliness rules, we have noted that the use of negotiated procedures in accordance with Federal Acquisition Regulation (FAR) Part 15--as evidenced by the issuance of a request for proposals--is the hallmark. See Millennium Space Sys., Inc., B-406771, Aug. 17, 2012, 2012 CPD ¶ 237 at 4. We have, however, recognized that the FAR identifies “other competitive procedures” that are distinct from competitive proposals. Specifically, FAR § 6.102(d) carves out the following procurement methods: (1) procurements for architecture-engineer contracts conducted pursuant to the Brooks Act, 40 U.S.C. § 1102 et seq.; (2) procurements for basic and applied research conducted pursuant to a BAA under FAR Part 35; and (3) procurements under the Federal Supply Schedule (FSS) pursuant to FAR subpart 8.4. We have found that procurements utilizing these “other competitive

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determined that TRLU was eligible for a phase II follow-on award based on TRLU’s 2016 phase I award. In an analogous situation, we recognized that where a solicitation is issued on an unrestricted basis, the protester is aware of the facts giving rise to the potential organization conflict of interest (OCI), and the protester has been advised by the agency that it considers the potential offeror eligible for award, the protester cannot wait until an award has been made to file its protest of an impermissible OCI, but instead must protest before the closing time for receipt of proposals. See, e.g., Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 6. We need not, however, resolve this issue because we find that even if the protest allegation properly could have been raised after award, it was nevertheless untimely.

⁷ Our Office has not previously addressed the question of whether an SBIR procurement is conducted on the basis of “competitive proposals”. Although we considered the question in a prior case, we expressly did not resolve the question because we determined that the case presented a significant issue of first impression--specifically, the application of conflict of interest regulations to peer review evaluators in SBIR procurements--and therefore heard the protest under the significant issue exception to our timeliness rules. See Celadon Labs., Inc., B-298533, Nov. 1, 2006, 2006 CPD ¶ 158 at 4. Pursuant to 4 C.F.R. § 21.2(c), our Office may consider the merits of an untimely protest where good cause is shown or where the protest raises a significant issue of widespread interest to the procurement community. In order to prevent our timeliness rules from becoming meaningless, however, exceptions are strictly construed and rarely used. Hawker Beechcraft Def. Co., LLC, B-406170, Dec. 22, 2011, 2011 CPD ¶ 285 at 4 n.4.

procedures” are not conducted on the basis of “competitive proposals” as contemplated by 4 C.F.R. § 21.2(a)(2), and, thus, the debriefing exception included therein is inapplicable. See Millennium Space Sys., Inc., supra (BAA procurement); The MIL Corp., supra (FSS procurement); McKissack-URS Partners, JV, B-406489.2 et al., May 22, 2012, 2012 CPD ¶ 162 (Brooks Act procurement).

Although not included in the list set forth in FAR § 6.102(d), applicable statutory provisions demonstrate that a competitive SBIR procurement is an “other competitive procedure.”⁸ Specifically, NASA procurements are subject to Chapter 137 of Title 10 of the United States Code. 10 U.S.C. § 2303(a)(6). Pursuant to 10 U.S.C. § 2302(2), the term “competitive procedures” means procedures under which the head of an agency enters into a contract pursuant to full and open competition, but also includes the “other competitive procedures” set forth in FAR § 6.102, as well as “a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638) [the SBIR program].”⁹ Thus, applicable statutory provisions demonstrate that SBIR procurements are not conducted based on competitive proposals as contemplated by 4 C.F.R. § 21.2(a)(2), but, rather, generally fall within the category of procurements utilizing “other competitive procedures.”¹⁰

Here, the protester indicates that it knew or reasonably should have known the basis of its protest with respect to TRLU before NASA’s March 8 notice of phase II selections. See, e.g., Protest at 5-6 & exh. D (relying on, in addition to other sources, SBIR-related materials dating back to 2009 to establish the alleged relationship between TRLU and its foreign subcontractor); Comments at 17-18 (arguing not that Global learned new information about TRLU since the phase I award, but, rather that it was not an interested party to challenge TRLU’s phase I award). Furthermore, Global does not argue that it learned any new information with respect to TRLU through the debriefing provided by NASA. Thus, at the very latest, any protest challenging TRLU’s eligibility

⁸ The FAR does not address SBIR procurements. The Small Business Administration (SBA), not the FAR Council, 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); AR, Tab 2, SBIR Program Policy Directive, at 213.

⁹ A materially similar provision is also included in the definition for “competitive procedures” applicable to procurements conducted by civilian agencies pursuant to Title 41 of the U.S. Code. 41 U.S.C. § 152.

¹⁰ This interpretation is also consistent with the nature of SBIR procurements. Similar to a BAA, proposals in response to an SBIR solicitation are not submitted in accordance with a common statement of work. Rather, offerors propose to conduct R/R&D across a broad array of potential topic areas. This is distinct from a FAR Part 15 procurement where the evaluation and selection process is premised on making meaningful comparisons between and among competing proposals submitted in response to a common set of requirements. See Millennium Space Sys., Inc., supra, at 6 n.4.

based on information known prior to the debriefing had to be filed within 10 days of the agency's March 8 notice of SBIR phase II selections. This protest allegation, which was not raised for the first time until March 27, is untimely. See ACRO-TECH, Inc.--Recon., B-270506.2, Apr. 18, 1996, 96-1 CPD ¶ 193 at 3 (affirming dismissal of protest challenging the protester's non-selection for funding in an SBIR procurement as untimely where the protester waited to file its protest until after its debriefing, but failed to show that it learned any new information relevant to its protest at the debriefing).¹¹

Proposal Evaluation

Global raises two primary challenges to the agency's evaluation of proposals. First, the protester alleges that NASA failed to evaluate proposals in accordance with the terms of the solicitation when it engaged in a separate proposal prioritization process considering factors other than the solicitation's enumerated technical and commercial factors. Additionally, Global challenges the adequacy and reasonableness of the agency's ultimate recommendation with respect to its proposal because it alleges that the record fails to demonstrate that the final recommendation reasonably considered Global's proposal under the applicable solicitation subtopic. For the reasons that follow, we agree that the final award recommendation is inadequately documented and unreasonable, and therefore sustain the protest on that basis.

Where an agency is conducting an SBIR procurement, it has substantial discretion to determine whether it will fund a proposal. See Vehicle Data Sci., Inc., B-413205, B-413205.2, Aug. 15, 2016, 2016 CPD ¶ 224 at 4; Photonics Optics Tech, Inc., B-402967, July 28, 2010, 2010 CPD ¶ 173 at 2-3. Agency discretion, though broad, is not unfettered, and continues to be subject to the test of reasonableness. See Pacific Blue Innovations, B-406397, May 11, 2012, 2012 CPD ¶ 301 at 2-3.

As addressed above, NASA employed a multiple step approach to evaluating, prioritizing, and ultimately selecting proposals. First, peer reviewers evaluated proposals based on the solicitation's technical and commercial factors, and then ranked proposals at the subtopic and topic levels. Next, the applicable NASA center reviewed the proposals and prioritized them based both on the evaluation ratings, as well as other considerations including, but not limited to, overall NASA priorities, program balance and available funding. Third, the applicable mission directorate conducted a further review and prioritization of proposals across its cognizant centers. Finally, the mission directorates briefed the SSO on its recommendations, and the SSO selected the proposals for negotiations.

Global first challenges NASA's prioritization of proposals utilizing evaluation factors other than the solicitation's enumerated technical and commercial factors. Contrary to the protester's arguments, however, the solicitation specifically notified offerors that

¹¹ Additionally, we note that Global concedes that "there is no procurement statute or regulation requiring debriefing in the SBIR procurement process." Comments at 17.

NASA would consider other factors, including overall NASA priorities, program balance, and available funding. Solicitation at 033. As discussed above, the record reflects that both the Global and TRLU proposals were evaluated as having high technical merit and offering potentially significant benefits to NASA. Although both proposals were recommended by the peer reviewers for funding, NASA elected, as expressly contemplated by the solicitation, to consider other factors when prioritizing which projects to fund.

In light of the solicitation's notice to offerors and the broad discretion afforded to agencies with respect to which SBIR proposals to fund, we find no basis to sustain the protest on this basis. This is particularly true under an SBIR procurement, which is not based on design or performance specifications for existing equipment, but rather emphasizes scientific and technical innovation and has as its objective the development of new technology. It is precisely because of the experimental and creative nature of this type of procurement that the contracting agency is given substantial discretion in determining which proposals it will fund. See, e.g., Science, Math & Eng'g, Inc., B-410509, Jan. 7, 2015, 2015 CPD ¶ 31 at 6.

Global also challenges the SMD's review and prioritization of its proposal. Specifically, the protester alleges that the minimal post-protest explanation for why its proposal was not selected for funding is unreasonable as it does not appear to address the merits of Global's proposal under the applicable solicitation subtopic. For the reasons that follow, we agree with Global that the record is inadequate to demonstrate that the SMD's recommendation to the SSO was reasonable and consistent with the solicitation.

We recognize that the SBIR program encourages agencies to use simplified procedures. See Deborah Bass Assocs., B-257958, Nov. 9, 1994, 94-2 CPD ¶ 180 at 6. Notwithstanding the use of simplified procedures, however, it is a fundamental principle of government accountability that an agency be able to produce a sufficient record to allow for a meaningful review where its procurement actions are challenged. See e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 8. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for the source selection decision. Systems Research & Apps. Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 12.

The contemporaneous record here is devoid of any analysis of Global's proposal at the SMD recommendation phase. See AR, Tab 11, Global Summary Eval. Report, at 456 (including no comments under the Mission Directorate "recommendation rationale" or proposal ranking sections); Tab 14, SBIR Phase II Source Selection Presentation (including no discussion or reference to Global's proposal). In lieu of any contemporaneous documentation, the agency in response to the protest submitted a declaration from the SMD SBIR Representative explaining the basis for the SMD's recommendation to the SSO regarding project funding priorities. In discussing the perceived risks with Global's proposed glider, the representative identified risks with respect to Venus exploration. As the protester correctly notes, however, its proposal

responded to the subtopic area involving exploration of Titan, which included different requirements. Nowhere in the SMD SBIR Representative's declaration does he acknowledge that Global's proposal was in response to the Titan subtopic, let alone analyze the merits of the proposal with respect to the solicitation's requirements for the Titan subtopic or the relative merits of the proposal with respect to Titan exploration.

NASA sought leave to respond to Global's comments on the agency report. The agency, however, elected not to submit a clarifying response from the SMD SBIR Representative. Rather, it submitted a second declaration from the JPL SBIR Program Manager. The declaration primarily explained that the peer reviewers and JPL correctly analyzed the technical merit of Global's proposal based on the requirements of the Titan subtopic. Decl. of JPL SBIR Program Manager (May 16, 2017), ¶¶ 5-9. We agree with the agency that the record reasonably demonstrates that both the peer reviewers and JPL evaluated the merits of Global's proposal based on the Titan subtopic, while also noting the potential for the proposed Global glider to also be used in future Venus exploration. Our concern, however, is with the adequacy and reasonableness of the SMD's recommendation to the SSO.

In this regard, NASA's only rebuttal addressing whether the SMD reasonably understood the Global proposal to be focused on Titan exploration is the assertion in the JPL SBIR Program Manager's post-comments declaration that:

The points already made in the Declaration from [the SMD SBIR Representative] explaining the JPL Center and Science Mission Directorate assessments of the [Global] proposal, specifically about the level of technical maturity, risk, uncertainties in a turbulent atmosphere, science priority differences in addressing vertical versus horizontal structure, etc. all apply to Titan, although it also referred to Venus.

Id. at ¶ 10.

This conclusory assertion, however, is not reasonably supported by the record. For example, the SMD SBIR Representative stated in his post-protest declaration that NASA did not select Global's proposal for funding, in part, because the agency "recognized that the immediate science needs for Venus exploration address vertical atmospheric structure, but not necessarily lateral structure, so the ability to glide offered a capability that was valuable but was not required and had some additional risk." See Decl. of SMD SBIR Program Rep., ¶ 6. The solicitation confirms the SMD SBIR Representative's point that the agency was concerned with a vehicle's vertical capabilities under the Venus subtopic. Solicitation at 141 (establishing floating vehicle altitude requirements). The statement, however, is inconsistent with the solicitation's requirements for Titan aerial vehicles. Indeed, the solicitation specifically instructed offerors that NASA was "interested in Titan aerial vehicles that can both change altitude and also execute controlled motions in latitude and longitude to target surface locations of interest." Id. (emphasis added). Thus, while the ability for lateral movement proposed for a vehicle under the Venus subtopic would exceed the minimum

requirements and therefore might present some additional development risks, it was an explicit requirement for vehicles proposed under the Titan subtopic.

Similarly, the SMD SBIR Representative noted that “there are more mature Venus approaches” than the glider proposed by Global. Decl. of SMD SBIR Program Rep., ¶ 6. Although it may have been entirely reasonable for NASA to prioritize mature technologies for Venus exploration over earlier stage Titan exploration vehicles, the limited record appears to consider Global’s proposed technology as though it had been proposed for Venus exploration. Global unquestionably proposed technology in response to the solicitation’s Titan exploration subtopic. In the absence of any reasonable documentation demonstrating that the SMD (and ultimately the SSO) understood that Global’s proposal was for the Titan exploration subtopic (as opposed to the Venus exploration topic) or otherwise explaining the basis for the SMD’s recommendation to the SSO with respect to the decision to not fund Global’s proposal, we have no alternative but to conclude that the record fails to demonstrate that the award recommendation and decision were reasonable. Thus, we sustain Global’s protest on this basis.

RECOMMENDATION

We recommend that the agency conduct and adequately document a new SMD recommendation. After preparing its new SMD recommendation, the agency should prepare and adequately document a new source selection decision. We also recommend that Global be reimbursed its reasonable costs of filing and pursuing its protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester’s certified claim for costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. Id. § 21.8(d)(1).

The protest is sustained in part and dismissed in part.

Susan A. Poling
General Counsel