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Decision

Matter of: ASRC Federal Data Network Technologies, LLC

File: B-418765

Date: August 28, 2020

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DIGEST

Protest that agency's issuance of a small business innovation research (SBIR) phase III sole-source task order was improper because the work required by the order did not derive from, extend, or complete a prior SBIR phase I or II agreement is denied where protester fails to show that the order's requirements do not incorporate any original concepts, findings, ideas, or research results generated through performance of a prior SBIR phase I or II contract.

DECISION

ASRC Federal Data Network Technologies, LLC (AFDNT), a small business of McLean, Virginia, protests the issuance of a small business innovation research (SBIR) phase III sole-source task order to American Systems Corporation, of Chantilly, Virginia, by the Defense Health Agency (DHA) for the modernization of an existing military healthcare delivery system. AFDNT contends that the agency's phase III order was improper because it did not derive from, extend, or complete a prior SBIR phase I or II agreement performed by American Systems.

We deny the protest.

BACKGROUND

The SBIR program was established under the Small Business Innovation Development Act of 1982, and is codified in section 98 of the Small Business Act. 15 U.S.C. § 638. The program is designed to increase the participation of small business concerns in federally funded research or research and development (R/R&D). See *id.* Pursuant to this authority, certain federal agencies 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. See *id.* § 638(e)(4).

The SBIR program has three phases. Under phase I, firms competitively apply for an award to test the scientific, technical, and commercial merit and feasibility of a certain concept. 15 U.S.C. § 638(e)(4)(A). Under phase II, a firm may submit a proposal to further develop the concept that it first conceived in phase I. *Id.* § 638(e)(4)(B). For phase III, the Small Business Act provides that "where appropriate," there may be a "third phase for work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program." *Id.* § 638(e)(4)(C). Under phase III, firms obtain funding from non-SBIR government sources or the private sector to develop concepts from a phase I or II award into commercial products or products or services for use by the federal government. *Id.*

This protest involves the Theater Medical Information Program - Joint (TMIP-J) healthcare delivery system, which comprises at least 11 different software systems and products that collect a variety of data related to the healthcare of service members. See Contracting Officer's Statement (COS) at 2-3. According to the agency, the TMIP-J "enhances the clinical care and information capture at all levels of care in [t]heater, transmits critical information to the [t]heater [c]ommander, [i]dentifies the evacuation chain for combat and non-combat casualties and forges the theater links of the longitudinal health record to the [military healthcare system] and the Department of Veterans Affairs." *Id.* at 3. TMIP-J also supports healthcare delivery, including "the application of routine and emergency medical practices such as preventive, routine, emergency, surgical, enroute care, and diagnostic care in complex dynamic environments." *Id.* The TMIP-J software suite is used by all branches of the Armed Forces to provide healthcare data and logistics for service members deployed around the world. See *id.* 3-4.

The TMIP-J software systems are old and disparate; each system has independent architectures, code baselines, schedules, and sustainment methods. *Id.* at 4. The systems are becoming obsolete and currently the agency has contracted with American Systems to sustain and maintain the current capabilities of each system. *Id.* at 4-5. According to the agency, this sustainment effort is "resource intensive" and presents a number of challenges. *Id.* at 4. As a result, the agency is seeking to transform and modernize the TMIP-J system to utilize a single electronic health record system, which requires large data platforms and interoperability between the systems. *Id.* at 5.

On September 20, 2019, the agency issued to American Systems an SBIR phase III basic ordering agreement (BOA) that was intended to “build on efforts that derive from, extend, or complete efforts that were generated under previous SBIR [p]hase I and II work.” Agency Report (AR), Tab 1, BOA No. HT003819G0001 at 6. That same day, the agency also issued under the BOA an order to transform and support the TMIP-J software suite. Protest at 5. On September 25, 2019, AFDNT protested with our Office the issuance of the BOA and order to American Systems, arguing that American Systems was ineligible to receive an SBIR phase III award under relevant provisions of the SBIR statute and the SBIR Program Policy Directive promulgated by the Small Business Administration (SBA) because American Systems had not performed, was not novated, and had not been recognized as a successor in interest to the underlying SBIR phase I or II contracts from which the phase III award allegedly derived. *ASRC Federal Data Network Technologies, LLC*, B-418028, B-418028.2, Dec. 26, 2019, 2019 CPD ¶ 432 at 6-7.

As explained in our decision resolving that protest, the initial order issued to American Systems stated that the work performed must derive from prior phase I and II topics, including “Automated Readiness Measurement System (ARMS) SBIR Topic N00-123.” *ASRC Federal Data Network Technologies, LLC*, *supra* at 3. That SBIR topic referred to a different SBIR phase III BOA that was awarded to a company called DDL Omni Engineering LLC (DDL Omni) in September 2014. *Id.* DDL Omni’s phase III BOA derived from work on prior SBIR phase I and II contracts that had been awarded to and fully performed by DDL Omni. In December 2018, American Systems acquired DDL Omni, and in May 2019, the government executed a novation agreement that recognized American Systems as the successor in interest of DDL Omni for certain identified contracts. *Id.* at 4. While the novation agreement included DDL Omni’s phase III BOA, it did not include either of the phase I or II contracts on which that phase III BOA was based. *Id.* On December 26, 2019, we sustained AFDNT’s protest because we found that American Systems had never performed or been novated the underlying SBIR phase I or II contracts, and was therefore ineligible to receive a phase III award based on the plain language of the SBIR Program Policy Directive.¹ *Id.* at 11-12.

After our decision was issued, in March 2020, the Defense Contract Management Agency (DCMA) and American Systems executed an amendment to the May 2019 novation agreement. AR, Tab 4, Novation Package at 1. That amendment added to the list of contracts novated to American Systems the SBIR phase I and II contracts on which DDL Omni’s SBIR phase III BOA was based. *Id.* at 11, 14. Believing it had rectified the novation issue that was the basis of our sustain in the previous protest, on

¹ AFDNT also protested that the order issued to American Systems did not meet the statutory definition of a phase III award because the work did not derive from, extend, or complete the prior phase I or II SBIR agreements. *ASRC Federal Data Network Technologies, LLC*, *supra* at 6. Because we found that American Systems was ineligible to receive the phase III award under the applicable statute and regulations, we did not address this protest ground. See *id.*

May 12, 2020, the agency issued under American Systems's existing BOA a new SBIR phase III order for "transformational planning and tactical transformation activities for the modernization" of the TMIP-J software suite (hereinafter referred to as the "modernization planning order"). AR, Tab 2, BOA Delivery Order at 8.

The new modernization planning order contemplates that the work to be performed is an incremental step to achieving the following four goals:

1. unify the architecture of the full complement of TMIP-J products and provide the suite as a fully centrally managed solution driven by outcomes rather than by [g]overnment specification,
2. make any appropriate technology changes to reduce the resources and time required for deployment and implementation, especially to [n]aval platforms,
3. make any appropriate technology changes to simplify the transition of the system into routine long-term continuity of operations, and
4. make any appropriate technology changes to simplify and ease the "sunset" of end-of-life components of the suite.

Id. at 9. The order requires American Systems "to develop a plan for the [g]overnment to consider in accomplishing these goals and in making appropriate technology changes." *Id.* at 20. Under the order, American Systems must develop and deliver to the government a roadmap for the tactical transformation of the TMIP-J software suite into a unified process. *Id.* In particular, the order required American Systems to assess the existing TMIP-J software suite and the customers using the suite, "to identify opportunities for central management, develop suggested outcomes to drive the suite and future development of the suite for central management and simplified interfacing, and to recommend potential beneficial technology changes that would reduce time and resources required for deployment and implementation."² *Id.* at 22.

On May 12, 2020, the Department of Defense issued a press release stating that it had awarded an SBIR phase III task order to American Systems for transformation planning of the TMIP-J software suite. Protest, exh. C at 3. Six days later, counsel for AFDNT contacted agency counsel, who confirmed that the agency had issued a new phase III award to American Systems. On May 21, AFDNT filed its protest with our Office.

² The agency explains that these requirements are "downsized" from the requirements of the prior order issued to American Systems. Memorandum of Law (MOL) at 10. The agency states that the modernization planning order requires American Systems only to "deliver a plan to modernize the TMIP-J software suite," which the agency will then use to determine how to move forward with TMIP-J modernization. *Id.* The agency further explains that it does not yet have a formal plan to perform the actual transformation of the TMIP-J software suite, but that the ultimate goal is to eventually competitively award a contract for the future sustainment of the modernized TMIP-J platform. *Id.*

DISCUSSION

AFDNT protests that the new phase III order issued to American Systems is improper because it does not derive from, extend, or complete work performed by American Systems under a prior SBIR phase I or II agreement. For the reasons discussed below, we deny the protest.³

As noted above, an agency may issue a phase III SBIR award for “work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program.” 15 U.S.C. § 638(e)(4)(C). The Small Business Act also states that agencies shall “issue, without further justification, [p]hase III awards relating to technology, including sole source awards, to the SBIR . . . award recipients that developed the technology.” *Id.* § 638(r)(4)(B). The SBIR Program Policy Directive explains that the competitions for the phase I and II awards satisfy any competition requirements of the Competition in Contracting Act.⁴ SBIR Policy Directive § 4(c)(3). Thus, where an agency seeks to fund an SBIR phase III award “which is an extension of prior [p]hase I and/or [p]hase II awards,” the agency is not required to conduct a competition for the phase III award. *Id.* The SBIR Policy Directive provides that “in conducting actions relative to a [p]hase III SBIR . . . award, it is sufficient to state for purposes of a [j]ustification and [a]pproval, if one is deemed required by the agency, that the project is an SBIR . . . [p]hase III award that is derived from, extends, or completes efforts made under prior SBIR . . . [f]unding [a]greements and is authorized pursuant to 15 U.S.C. 638(r)(4)” and that “[f]urther justification is not needed.” *Id.*

³ In this protest, AFDNT again argues that American Systems was ineligible to receive the phase III BOA and modernization planning order because American Systems had not performed or been novated the underlying SBIR phase I or II contracts. As explained above, the agency report included an amended novation agreement, in which DDL Omni’s prior phase I and II contracts were added to the list of contracts novated to American Systems. In its comments on the agency report, AFDNT questioned how DCMA could recognize the novation of contracts that were already fully performed, but acknowledged that GAO lacks jurisdiction over the novation process, and withdrew this protest ground. Comments at 1, n.1.

⁴ The Small Business Act requires the SBA to issue policy directives for the operation of the SBIR program. 15 U.S.C. § 638(j). Under this authority, the SBA has promulgated the SBIR Program Policy Directive through notice and comment rulemaking. See 84 Fed. Reg. 12794-849 (Apr. 2, 2019). The most recent version of the Policy Directive (dated May 2, 2019) was published in the Federal Register on April 2, 2019 and is available on the SBA’s SBIR program website. See SBIR Program Policy Directive, https://www.sbir.gov/sites/default/files/SBIR-STTR_Policy_Directive_2019.pdf (last visited Aug. 21, 2020). Citations to the Policy Directive in this decision refer to the sections of the Directive itself, not the pages of the Federal Register.

We routinely find that contracting agencies have broad discretion to determine their needs and the best way to meet them. *Crewzers Fire Crew Transport, Inc.*, B-402530, B-402530.2, May 17, 2010, 2010 CPD ¶ 117 at 3. We have recognized this discretion with respect to the SBIR program, and in reviewing the propriety of a phase I or II SBIR award, we have found that our review “is limited to determining whether the agency violated any applicable regulations or solicitation provisions, or acted in bad faith.” *Wang Electro-Opto Corp.*, B-418523, June 4, 2020, 2020 CPD ¶ 187 at 5; *U S Positioning Grp., LLC*, B-294027, June 21, 2004, 2004 CPD ¶ 133 at 3.

With respect to an SBIR phase III award, our Office has previously found that to show that one effort derives from, extends, or completes another, “it must be evident that the requirements for the second effort incorporated original concepts, findings, ideas, or research results that were generated in the first.” *Toyon Research Corporation*, B-409765, Aug. 5, 2014, 2014 CPD ¶ 235 at 16 n.15. In *Toyon*, the protester challenged the agency’s decision to issue a competitive solicitation for a vehicle-based satellite communication system, arguing that it should have received an SBIR phase III contract for the work because the solicitation’s requirements incorporated tasks performed by the protester on prior SBIR phase I and II contracts. *Id.* at 10-11. We denied the protest, finding that “[i]n the absence of a clear showing that the [solicitation] incorporates . . . requirements that are reasonably identifiable as original concepts, findings, ideas, or research results that Toyon generated through performance of its SBIR work, we defer to the agency.”⁵ *Id.* at 13-14.

Given the relatively limited requirements to justify a phase III award and the discretion otherwise afforded to agencies, at issue here is whether AFDNT has clearly shown that the modernization planning order does not incorporate any original concepts, findings, ideas, or research generated under prior SBIR phase I or II work. Here, the prior phase I contract was for a “shipboard assessment methodology with prototype software for training-based, combat systems readiness measurement.”⁶ AR, Tab 10, SBIR N00-

⁵ The agency argues that “the question of whether or not a[n] SBIR phase III award meets the statutory definition is subject to, at most, *pro forma* review by the GAO, and where the agency has made the assertion that it seeks to derive, extend, or complete technologies created under prior SBIR phase I/II agreements under the challenged SBIR phase III award, this standard is met.” MOL at 17. We know of no instance in which our Office has accepted an agency’s mere assertion that it met a particular statutory standard as proof that the standard was met. We therefore reject the agency’s suggestion that we need conduct only a *pro forma* review and simply accept the agency’s assertion that the work required by the modernization planning order derives from, extends, or completes prior phase I or II work. Rather, we will review the record and conduct an analysis to determine whether the agency’s actions were consistent with the applicable statute and regulations.

⁶ As noted above, the phase I contract was performed by DDL Omni but then novated to American Systems after American Systems acquired DDL Omni. For consistency, in

123, Ship Readiness Measurement System at 3. Under that contract, American Systems conducted automated data collection through “passive taps” of various combat systems interfaces on Navy ships, and developed storage for an interactive assessment database to retrieve readiness assessment data. *Id.* at 6. The overall objective was to “investigate the feasibility of an automated combat systems readiness assessment methodology whose results can be visually displayed in an interactive visual specification providing [commanding officers] better insight into overall mission effectiveness.” *Id.* at 9.

In a memorandum for the record, the contracting officer provided an analysis of how the TMIP-J software suite transformation work derives from, extends, or completes the prior work of the phase I contract.⁷ AR, Tab 8, Memorandum for Record. The contracting officer explained that a “major limiting factor[] inhibiting modernization of the TMIP-J software is the slow pace of availability for naval platforms (e.g., ships, submarines, etc.)” *Id.* at 3. In particular, the contracting officer noted that because Navy ships are deployed for long periods of time and only infrequently in port, there is limited time and availability for technology updates and insertion. *Id.* The contracting officer stated that American Systems has the “ability to take advantage of its research into automated shipboard readiness assessments, especially designed to measure and improve performance of shipboard activities” and that this expertise would benefit the TMIP-J transformation by “making informed decisions that consider the limitations of shipboard availability.” *Id.*

The contracting officer noted that the relevant SBIR topic “proposed to design unique systems that could be used and updated in [n]aval platforms” and that “tactical environments and combat systems have difficulty maintaining mission readiness, which includes the collection and analysis of data while at sea.” *Id.* In light of this, the contracting officer determined that the work performed under the modernization planning order “derives from the information and solutions collected under the SBIR [topic] regarding the deployment of software to ship platforms to maintain readiness” and that American Systems will be required to “develop a plan to leverage their knowledge about optimal software in ship platforms and apply it to the TMIP-J software suite.” *Id.*

Finally, the contracting officer explained that achieving the four goals set forth in the order awarded to American Systems “will require elements derived from the previous SBIR efforts such as the algorithms, data models, assessments, performance metrics, etc[.], and will extend the previous efforts by broadening the types of technologies and

this decision we will refer to American Systems as having performed the phase I contract.

⁷ The memorandum for the record was dated May 12, 2020, which is the same date as the press release announcing the task order issued to American Systems, and nine days before AFDNT filed its protest. AR, Tab 8, Memorandum for Record at 1.

platforms to which those elements are applied.” *Id.* at 4. The contracting officer concluded that to satisfy those goals, “these elements will provide key benefits due to the prior success of consolidating multiple systems, automating data collection and measurement, and providing the best training practices available.” *Id.*

The protester raises a number of arguments alleging that the record does not show that the work required under the order derives from, extends, or completes the work on the prior SBIR phase I contract.⁸ For example, AFDNT argues that the modernization planning order does not identify any specifications or requirements that are in common with those in the phase I contract, nor is there any evidence that the order incorporates any original concepts, findings, ideas, or research results from the phase I contract.⁹ Comments at 7.

The modernization planning order contains a performance work statement that requires American Systems to complete a variety of tasks, including an assessment of the existing TMIP-J software suite and delivery of a plan to modernize the software suite. While the modernization planning order itself does not reference American Systems’ prior SBIR work, the BOA under which the order was issued states that it “will build on efforts that derive from, extend, or complete efforts that were generated under previous SBIR phase I and II work.” AR, Tab 1, BOA at 6. The BOA also states that it “will support the identification technology and organizational modernization needs and will leverage [p]hase I and II SBIR technologies, processes, services, tools, and methodologies” and that “[o]rders issued under the BOA are expected to expand the analysis capabilities to support decisions tied to robust data sets and modeling techniques.” *Id.* The modernization planning order states that the terms and conditions of the BOA are incorporated by reference and “remain in full force and effect.” AR, Tab 2, BOA Order at 2. Given this language, the fact that the order itself does not contain specifications or requirements that explicitly reference or are in common with

⁸ While this decision does not specifically address all of the arguments raised by AFDNT, we have reviewed each of them and find that none provides a basis to sustain this protest.

⁹ The agency argues that AFDNT is not an interested party because it is ineligible for an SBIR award; it has not demonstrated that it can perform the protested work; and the agency intends to pursue the modernization of the TMIP-J through phase III awards to other offerors, should this protest be sustained. MOL at 23-24. We rejected what were essentially the same arguments in the prior protest, finding that AFDNT showed that it would compete for an award under full and open competition should the agency’s phase III order be found improper, and that the record did not establish that a phase III award to any other offeror would be consistent with the applicable statutes and regulations. *ASRC Federal Data Network Technologies, supra* at 5-6. That same analysis applies here, and we find that AFDNT is an interested party to bring this protest.

American Systems's prior SBIR phase I work does not show that the work fails to derive from, extend, or complete the prior work.¹⁰

AFDNT next argues that nothing in the agency's memorandum for the record explains why the agency believes the phase I effort will make it easier to perform updates, upgrades, and patches to the TMIP-J software suite on Navy vessels. Comments at 8. In this regard, AFDNT asserts that the prior phase I work "focused on challenges to maintaining combat training readiness by assessing training readiness through automated data taps on existing combat systems" but that this technology has nothing to do with the challenges to maintain software through pushing automated updates to ship computers around the world. *Id.*

As explained above, the contracting officer determined that American Systems could use its research into automated shipboard readiness assessments that was designed to measure and improve performance of shipboard activities to "mak[e] informed decisions that consider the limitations of shipboard availability." AR, Tab 8, Memorandum for Record at 3. The contracting officer also noted that under the prior phase I contract, American Systems designed unique systems that were used and updated in naval platforms and that under the order, American Systems will be required to "develop a plan to leverage their knowledge about optimal software in ship platforms and apply it to the TMIP-J software suite." *Id.*

In response to the protest, the agency contends that the modernized TMIP-J software suite must operate within the Navy's specific security protocols, and that the SBIR topic "demonstrates an understanding of working within the constructs of Navy security protocols and has demonstrated acceptability with the Navy." MOL at 19. The agency also argues that the software analysis tools created under the SBIR topic for automated data feedback "provide[] a method for data to be available to software developers to inform their decisions regarding future upgrades, patches, or maintenance updates needed within the software suite." COS at 20. Thus, "[t]he potential for this automated feedback feature to be further enhanced and included in the [m]odernization [p]lan is enticing because it means that the [program management office] will establish a constant feedback connection from the systems and user community which would allow developers to access real-time information or near real-time information to optimize their next software iterations." *Id.* Moreover, the agency states that "[a]lthough the goal is to be able to eventually have remote pushes of software updates, since . . . the update process is so cumbersome, it is of great importance that the update be not only sound,

¹⁰ AFDNT also argues that the proposal American Systems submitted for the modernization planning order, and the agency's evaluation of that proposal, do not discuss the technology in the SBIR phase I contract. However, the fact that the proposal and evaluation do not specifically discuss the SBIR technology does not prove that the work required under the order does not derive from, extend, or complete work performed on the prior phase I contract. Moreover, we note that the applicable statute and regulations do not require a company to submit a proposal to receive a phase III award. See 15 U.S.C. § 638; SBA Policy Directive § 6.

but also designed based on the most up to date data and feedback gleaned from both users and the systems.” MOL at 20.

On this record, we find credible the agency’s explanation that American Systems’s ability to develop unique software systems that were compatible with the challenges of the naval environment in its phase I contract could be extended to the work required by the modernization planning order. In particular, the agency credibly explained how the automated data feedback developed for the phase I contract could potentially be extended to the modernization of the TMIP-J software suite as a way to provide users and developers real-time information to optimize software updates. The agency even indicated that while the phase I technology may not demonstrate the ability to remotely push software updates, the existing ability to obtain automated and up-to-date feedback would be beneficial in ultimately developing remote update technology.¹¹

AFDNT also argues that, contrary to the agency’s claim, the prior phase I work did not optimize interoperability between disparate systems. Comments at 9. In this regard, AFDNT asserts that the prior phase I work “did not make a ship’s handful of disparate combat training systems . . . interoperable”; did not “involve[] unifying the architectures of the combat training systems on which it worked, or mov[ing] them onto a single platform”; “did not create a system for autonomously updating and patching software for ships at sea”; and “did not have anything to do with modernizing healthcare record software or interfacing with any of the numerous TMIP-J systems.” *Id.*

In response to the protest, the agency contends that the prior phase I work “demonstrated an ability to transmit data from one system to another.” MOL at 21; see *also* COS at 21. The agency maintains that a current problem with the TMIP-J software suite is that the 11 different systems that comprise the suite have “suboptimal interoperability” and do not smoothly transmit data between each system. See COS at 21. Thus, the agency asserts that because the prior phase I work demonstrated the ability to optimize interoperability and communication between systems, the order seeks to extend this approach into the modernized TMIP-J system.¹² *Id.*

¹¹ AFDNT also argues that American Systems’s experience working with Navy software and security requirements is a “function of its past performance, not a feature of its proprietary technology.” Comments at 8. We agree that American Systems’s prior experience working on Navy vessels alone does not equate to original concepts, findings, or ideas generated under a prior SBIR phase I contract. However, the agency was focused on American Systems’s ability to design specific software that was successfully deployed on Navy vessels. Indeed, the agency stated that the SBIR topic “proposed to design unique systems that could be used and updated in Naval platforms” and that the development of these systems could be extended to the modernization of the TMIP-J software suite, particularly on Navy vessels. AR, Tab 8, Memorandum for Record at 3.

¹² The agency also asserts that the “underlying SBIR [contract] also initiated work on naval shipboard platforms during real time warfighter events to provide diagnostic

AFDNT's argument suggests that the work performed on the prior phase I contract must specifically match the goals the agency seeks to achieve through modernization of the TMIP-J software suite. However, this is not the standard to show that a phase III effort derives from, extends, or completes a prior phase I or II effort. Here, the agency maintains that the phase I work showed an ability to transmit data from one system to another onboard a Navy ship; in other words, it created some aspect of interoperability between different systems. Indeed, the software for the readiness assessment developed under the phase I contract required automated data collection from various combat systems interfaces.¹³ AR, Tab 10 SBIR N00-123, Ship Readiness Measurement System at 3. The agency states that the modernization planning order seeks to extend this "interoperability feature" into the TMIP-J software suite. Thus, the record indicates that the agency intends that the modernization planning order will extend some of the original concepts regarding collection and transmittal of data between disparate systems that were generated under the phase I work; AFDNT's argument does not refute this and therefore does not provide a basis to sustain the protest.

Finally, AFDNT also disputes the agency's claim that achieving the four goals of the modernization planning order "will require elements derived from the previous SBIR efforts such as algorithms, data models, assessments, performance metrics, etc." Comments at 9-10. AFDNT argues that the agency does not identify any of the algorithms, models, assessments, or metrics that will be used, nor does the record show that they would be needed to achieve the four goals. *Id.* at 10. However, the agency explained that these elements are beneficial because of the "prior success of consolidating multiple systems, automating data collection and measurement, and providing the best training practices available." AR, Tab 8, Memorandum for Record at 4. As explained above, the agency maintains that the order seeks to extend to the modernization of the TMIP-J software the ability demonstrated under the phase I contract to collect data from multiple systems and to implement automated data feedback. Thus, while AFDNT may disagree with the agency's assessment that the underlying algorithms, data models, and metrics developed under the phase I agreement are essential to achieving the order's goals, in the absence of a clear showing that this assessment is incorrect, we defer to the agency's analysis. AFDNT's disagreement with the agency's judgment in this regard does not demonstrate that the judgment is unreasonable.

information for sustainment recommendations" and that this knowledge and technology "can be further extended to optimize deployment, interoperability, and sustainment as it relates to the TMIP-J software." COS at 22.

¹³ AFDNT itself explained that the work under the prior phase I contract involved "install[ing] data taps compatible with multiple shipboard combat training systems." Comments at 9.

As explained above, the SBIR statute and policy directive set forth relatively limited requirements to justify a phase III award. Here, the record contains an explanation for how the modernization planning order incorporates at least some of the original concepts, findings, and ideas--such as developing unique software able to operate on Navy vessels, providing for automated data feedback, and collecting and transmitting data between disparate systems--from the prior SBIR phase I contract. AFDNT has not clearly shown that the modernization planning order fails to incorporate any of these original concepts, findings, and ideas, and therefore has not shown that the issuance of the phase III order to American Systems violated the applicable statute and regulations.

The protest is denied.

Thomas H. Armstrong
General Counsel