

Decision

Matter of: MiMoCloud

File: B-419482

Date: March 25, 2021

Tejbir Phool for the protester.

Brian Weber, Esq., and Matthew R. Wilson, Esq., Department of the Army, for the agency.

Mary G. Curcio, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably rejected the protester's phase I proposal submitted in response to a Small Business Technology Transfer solicitation is denied where agency evaluation did not violate solicitation or procurement regulations and was otherwise reasonable.

DECISION

MiMoCloud, a small business located in College Park, Maryland, protests the Department of the Army's rejection of the phase I proposal it submitted in response to the Department of Defense's (DOD) Small Business Technology Transfer (STTR) program broad agency announcement (BAA) topic number A20B-T024, for a soldier borne radar detector. The protester asserts that the agency unreasonably evaluated its proposal.

We deny the protest.

BACKGROUND

STTR is a government-funded program that solicits proposals, in three phases, from domestic small business concerns to engage in federal research and research and development. Agencies use the STTR program to award contracts or grants to small business concerns that are participating in cooperative research and development. See 15 U.S.C. § 638(e)(6). In phase I (project feasibility), the agency evaluates the scientific, technical and commercial merit of the ideas submitted. Agency Report (AR), Tab 4, BAA at 6. In phase II (technology development), major research and development is funded to develop projects into technology to support the warfighter. *Id.*

In phase III (commercialization), small businesses are expected to obtain non-STTR government or private funding to transition phase II technologies into a product or service for the government and commercial marketplace.¹ *Id.* The protest here concerns a phase I funding decision. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 6. The period of performance for a funded contract is generally between six to twelve months with twelve months being the maximum period allowable. BAA at 6.

DOD issued the BAA on May 6, 2020.² COS/MOL at 2. As relevant here, the solicitation anticipated the award of a phase I contract for responding to Army topic number A20B-T024, soldier borne radar detector, for the development of a radar early warning receiver for the dismounted soldier's uniform, armor, or battle kit that identifies and locates a ground surveillance radar (GSR) threat. BAA at 92. The solicitation described the requirement as follows:

Phase I must show the feasibility of the technical approach through a demonstration of the preliminary designs including breadboard or demonstration board of electronic components, signal processing, electronic integration with uniform, armor, or soldier kit, and detailed plans for placement as well as size, weight and power. The sensor should capture sufficient information to identify GSR system from a library of waveforms. It must also be able to find angle of arrival and estimate of the location relative the user. The system must perform for [GSR] signals in the X and Ku Bands (8-18 GHz). It is not necessary to demonstrate the integration of the technology into a complete system, however, the planned technical approach and feasibility for system integration for Phase II must be included.

Id. at 92-93.

As relevant here, the solicitation required offerors to submit a statement of work for phase I which addressed the following:

Provide an explicit, detailed description of the Phase I approach. . . . The Statement of Work should indicate what tasks are planned, how and where the work will be conducted, a schedule of major events, and the final product(s) to be delivered. The Phase I effort should attempt to determine the technical feasibility of the proposed concept. The methods

¹ The STTR Program, is modeled substantially on the Small Business Innovation Research (SBIR) Program. BAA at 4.

² The BAA identified the following "Participating DOD Components": Department of the Army, Department of the Navy, Defense Health Agency, and Defense Threat Reduction Agency. BAA at 1.

planned to achieve each objective or task should be discussed explicitly and in detail.

Id. at 21. Phase I proposals were evaluated against the following three factors: (A) the soundness, technical merit, and innovation of the proposed approach and its incremental progress toward topic or subtopic solution; (B) the qualifications of the proposed principal/key investigators, supporting staff, and consultants, including the ability to perform the research and development and the ability to commercialize the results; and (C) the potential for commercial (government or private sector) application and the benefits expected to accrue from this commercialization. *Id.* at 24. The BAA advised that proposals should concentrate on research or research and development which will significantly contribute to proving the scientific and technical feasibility, and commercialization potential of the proposed effort, the successful completion of which is a prerequisite for further DOD support in phase II. *Id.* at 6.

The solicitation notified offerors that DOD was under no obligation to fund any proposal or any specific number of proposals in a given topic. *Id.* at 15. For purposes of funding decisions offerors were assigned a band rating as follows: A (highly recommended), B (recommended), C (not recommended), or D (recommended with reservations). AR, Tab 7, STTR Evaluation and Review Guidelines at 3.

The phase I proposals were evaluated by a technical evaluator chief and two subject matter experts/technical evaluators. Agency Response to Clarification Request, Declaration of Technical Chief, at 1. Each of the evaluators reviewed the proposals against the three evaluation criteria, and assigned strengths and weaknesses for each criteria, a summary of his or her findings, and a funding recommendation. The technical chief and the evaluators then conducted a teleconference to discuss the proposals, after which the technical evaluators provided their reviews to the technical chief. The technical chief was responsible for synthesizing and elaborating on the distinctive aspects of the proposals that justified the funding recommendation to the agency's senior technical panel. *Id.* at 3, 4. The senior technical panel was responsible for final funding determinations. *Id.* at 4.

The technical chief's summary of MiMoCloud's proposal which was provided to the senior technical panel is as follows:

The strength [of] MiMoCloud and Morgan State University's proposal is their Cloud-G distributed computing platform. However their proposal gets bogged down with unrealistic goals of multiple Army supported field tests and the development of 9 working prototypes in the 6 month Phase I period. Their proposal shows no human integration considerations. They lack experience in radar and [radio frequency] systems at these frequencies. Their commercialization plan is under developed. Strengths: their Cloud-G distributed computing platform. One squad member synthesis data from others so not every soldier needs the most capable and expensive receiver to perform triangular (reduce overall system cost).

Weaknesses: Lack of human integration. Lack of specific radar experience. Over reliance on unfunded support from Government agencies (man power test range use Government furnished equipment). Over ambitious and unachievable development schedule. Under developed commercialization plan.

Grading and Recommendation Explained: MiMoCloud and Morgan State received consistently low ratings from all technical reviews noting lack of human integration specifically called out in the topic. Lack of radar expertise. Unobtainable development schedule. Over reliance of unfunded Government support. And under developed commercialization strategy. The review criteria for a 'C' grade specifically states "High risk. Lack of evidence that Offeror's proposed capability/proposed effort can achieve the objective of the topic. Numerous major inconsistencies and significant incompatibilities with other portions of the proposed effort exist. Significant weak points or deficiencies may exist." The review instructions also state "Commercialization potential will be emphasized". This proposal meets this criteria based on all technical reviews. It was therefore graded C – Not recommended for funding.

AR, Tab 11, Selection Summary at 1; AR Tab 9, Technical Team Evaluations at 4.

MiMoCloud was notified that its proposal was not selected for funding on September 9. Following a debriefing, MiMoCloud filed an agency-level protest with the Army on October 5 in which MiMoCloud challenged each weakness assigned to its proposal. COS/MOL at 6. The Army denied the protest on December 10. *Id.* MiMoCloud filed this protest with our Office on December 21.³

³ MiMoCloud timely filed its protest with GAO on December 21, 2020, 10 days after the agency denied MiMoCloud's agency-level protest. 4 C.F.R. § 21.2 (c). The agency filed its report in response to the GAO protest on January 20, 2021. MiMoCloud timely filed a supplemental protest based on information in the report on February 1, 10 days after the agency report was submitted. In the supplemental protest, MiMoCloud argued that the evaluators failed in certain instances to follow the agency's evaluation guidance documents and did not consider comments that were favorable to its proposal.

Our Office established a due date of February 4 for the filing of the supplemental agency report, and a due date of February 8 for the protester's comments. The agency submitted its report in response to the supplemental protest on February 4. MiMoCloud timely submitted its comments on the initial agency report on February 5 (MiMoCloud was granted an extension to file its comments). The protester, however, did not file comments responding to the supplemental agency report by the February 8 due date. We dismissed MiMoCloud's supplemental protest because MiMoCloud failed to timely

DISCUSSION

MiMoCloud raises two primary arguments: (1) the agency's evaluation of its proposal was unreasonable and inconsistent with the terms of the BAA, and (2) the agency's response to the protest relies on positions that are not supported by the contemporaneous record. Protest at 2. We have reviewed all of the protester's arguments and find that none provides a basis for us to conclude that the Army violated applicable solicitation provisions or regulations or is otherwise unreasonable. We discuss several representative examples below.⁴

Where an agency is conducting an SBIR or STTR 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; see also *Small Business Innovation Research Program and Small Business Technology Transfer Program Policy Directive*, 81 Fed. Reg. 20484 (2016). Agency discretion, though broad, is not unfettered, and continues to be subject to the test of reasonableness. *Pacific Blue Innovations*, B-406397, May 11, 2012, 2012 CPD ¶ 301 at 2-3. In reviewing protests challenging a decision whether to fund a proposal under the STTR program, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria. *Kolaka No'eau, Inc.*, B-291818, Apr. 2, 2003, 2003 CPD ¶ 67 at 5.

As a preliminary matter, we note the evaluation record consists primarily of the technical evaluation document, which contains the findings of the technical chief and two subject matter expert/evaluators. AR, Tab 9, Technical Evaluation. The technical chief explains that he and the evaluators discussed their findings, and agreed on the band ratings for each proposal. AR, Tab 16, Dec. of Technical Evaluation Team Chief at 3. The team chief "synthesize[d] and elaborate[d] on the evaluations" prepared by the other evaluators to prepare the final proposal summary. *Id.* at 3; see AR, Tab 9, Technical Evaluation at 4. The selection summary repeats the findings of the evaluation team chief regarding MiMoCloud's proposal and the band rating of C, not recommended for funding. AR, Tab 11, Selection Summary at 1. Our decision therefore cites primarily to the technical evaluation document. Additionally, as addressed below, we also refer to the agency's responses to the protest elaborating on the technical team evaluations, as we find them consistent with the contemporaneous record.

submit its comments on the agency report. Electronic Protest Docketing System No. 20; see 4 C.F.R. § 23.1(i)(1), (2)).

⁴ Although we do not address every argument raised by the protester, we have reviewed them all and find no basis to sustain the protest.

Technical Proposal Evaluations

Under evaluation factor A, the agency evaluated the soundness, technical merit, and innovation of the proposed approach and its incremental progress toward the topic or subtopic solution. The objective of the topic was for a contractor to design, fabricate, and demonstrate a radar early warning receiver for a dismounted soldier's uniform, armor or battle kit that identifies and locates a GSR threat. BAA at 92.

The agency assigned MiMoCloud's proposal a weakness under factor A because the agency concluded that the hardware example provided by MiMoCloud was not consistent with the topic, which asked for the receiver to be integrated with the warfighter's uniform, armor, or kit. AR, Tab 9, Technical Evaluation at 3. Instead, the agency found that the receiver was an additional piece of equipment that was mounted on the soldier, similar to a Fitbit-like standalone device.⁵ *Id.* at 2-3.

MiMoCloud protests that the assigned weakness was unreasonable. MiMoCloud explains that, for phase I, it proposed a radio signal sub-system (RSS), which is an external device that would be coupled with the soldier's Android Tactical Assault Kit (ATAK). Protest at 7. The protester states, however, that it intends to integrate the RSS into the ATAK as part of a future phase II award. *Id.* MiMoCloud reasons that, because it intends to integrate the RSS into the battle kit in a future phase II contract, the RSS cannot reasonably be considered a stand-alone device for purposes of the phase I evaluation. Comments at 15.

The agency acknowledges that MiMoCloud's proposal stated that the RSS would be integrated into the battle kit in the future. COS/MOL at 9. The Army explains, however, that the protester's approach was identified as a weakness because, although it provided a number of options for integration, the proposal did not provide a plan for achieving the integration. *Id.* at 9 (*citing* AR, Tab 6, MiMoCloud Proposal at 8). Further, the agency found that MiMoCloud did not demonstrate its ability to integrate the RSS into the battle kit--specifically, MiMoCloud did not provide an integration plan apart from an intent to study the matter and address it later during phase II integration. *Id.* The agency contends that it was reasonable for it to evaluate the proposal as offering a stand-alone Fitbit-like system because that was the only concrete plan presented.

We find that the agency's evaluation was reasonable and did not violate any procurement laws or the solicitation. The solicitation advised offerors that under this phase I solicitation the agency would evaluate the feasibility of the offeror's technical approach to the subject. BAA at 92. Specifically, the solicitation instructed offerors to "[s]how the feasibility of the approach through a demonstration of the preliminary design including . . . electronic integration with uniform, armor or soldier kit and detailed plans for placement as well as size, weight power." *Id.* On this record, we conclude that the agency was not required to rely on MiMoCloud's statement that it would later integrate

⁵ A Fitbit is a device worn on the wrist to track a user's health and fitness. See Fitbit website, www.fitbit.com/global/us/home (last visited Mar. 22, 2021).

the RSS during phase II in the absence of a plan to do so, and therefore reasonably assigned the weakness.

Next, under evaluation factor B, the agency evaluated the qualifications of the proposed principal/key investigators to perform the research and development, and to commercialize the results. The agency assigned MiMoCloud's proposal a weakness under evaluation factor B because MiMoCloud's proposal did not demonstrate the experience of its proposed personnel with radar or microwave radio frequency systems. AR, Tab 9, Technical Evaluation at 3, 4. This experience would be necessary to develop a system that would perform for signals in the X and Ku Bands (8-18 GHz), as required by the BAA. BAA at 93.

MiMoCloud challenges the assignment of this weakness as unreasonable. MiMoCloud notes that the agency acknowledged that the protester's proposed personnel have experience working with commercial cellular frequencies. Protest at 18. MiMoCloud explains that commercial cellular frequencies include operations at 1,900 MHz, which the agency classifies as a microwave frequency. *Id.* MiMoCloud concludes that since the agency acknowledged that MiMoCloud's personnel have experience working with commercial cellular frequencies, it indirectly acknowledged that the personnel have experience with microwave frequencies.

The agency explains that the microwave frequencies discussed by the protester are not relevant to the solicitation's certification requirement for X and Ku Band (8 to 18 GHz) operation. COS/MOL at 14 (*citing* BAA at 93). Additionally, as the agency notes, "MiMoCloud acknowledges that it has no radar systems experience," and instead contends that experience with commercial cellular frequencies should have been viewed as "a logical extension of this platform." *Id.* at 14 (*quoting* Protest at 19).

We find that the agency's evaluation was reasonable and did not violate any procurement laws or the solicitation. MiMoCloud argues, in essence, that the agency's evaluation incorrectly stated that, as a broad matter, the protester's personnel do not have experience with radar. Comments at 38. We agree with the agency, however, that MiMoCloud's proposal does not explain why experience of its personnel with commercial cellular frequencies demonstrates experience that is relevant to the solicitation's certification requirement for X and KU band operations. On this record, we conclude that the protester's disagreement with the agency's judgement does not provide a basis to sustain the protest.

Next, under evaluation factor C, the agency evaluated the potential for commercial (government or private sector) application and the benefits expected to accrue from this commercialization. MiMoCloud's proposal was assigned a weakness under this factor because its commercialization plan was "[u]nder developed" in part because its proposed personnel lacked experience with relevant radar requirements.⁶ AR, Tab 9,

⁶ As discussed above, the agency's reference to radar technology concerned the frequencies relevant to the BAA.

Technical Evaluation at 4. The agency's summary of the weakness noted that MiMoCloud's approach could have been improved by partnering with a company that has expertise with radar, to maximize the effectiveness of their distributed computing platform. See *id.*

MiMoCloud asserts that the assignment of a weakness due to the lack of radar experience is unreasonable because its proposal stated that, during phase III, the protester would "develop a system with a transition partner." Protest at 20; AR, Tab 6, MiMoProposal at 8. MiMoCloud further asserts that there was no requirement to name a specific transition partner for phase I. *Id.*

We find no basis to conclude that the agency violated the solicitation or procurement regulations. The agency explains that, while MiMoCloud's proposal stated that it would "develop a system with a transition partner" in phase III, the protester did not explain how this approach addressed the commercialization requirements for phase I or its shortcomings regarding the experience of its proposed personnel. See COS/MOL at 16-17. On this record, we find no basis to conclude that the agency's evaluation was unreasonable.

Next, MiMoCloud protests that the agency evaluated its proposal based on unstated criteria. Protest at 19. For example, MiMoCloud complains that its proposal was assigned a weakness because it did not provide human integration experience or a plan for human integration. See AR, Tab 9, Technical Evaluation at 3. According to MiMoCloud human integration experience was not a stated evaluation factor, and therefore could not be the basis for assigning a weakness. Protest at 19.

While procuring agencies are required to identify significant evaluation factors and subfactors in a solicitation, they are not required to identify every aspect of each factor that might be taken into account; rather, agencies reasonably may take into account considerations, even if unstated, that are reasonably related to or encompassed by the stated evaluation criteria. *Quimba Software*, B-299000, Jan. 18, 2007, 2007 CPD ¶ 14 at 3. Here, the solicitation sought the offeror's technical approach to electronic integration with a soldier's uniform, armor or kit. BAA at 92. The solicitation further required offerors to provide detailed plans for the placement of the receiver, as well as the size, weight, and power. Given that the requirement was to integrate the receiver with a human soldier, we conclude that the offeror's experience with human integration is encompassed by the unstated evaluation criteria. *Id.*

Other Challenges to the Technical Evaluation

MiMoCloud raises other challenges to the agency's evaluation, in particular the agency's documentation of the evaluation and what the protester contends are unsupported *post-hoc* justifications for the evaluations. Protest at 3. We find no merit to these arguments, and discuss a representative example.

In determining the rationality of an agency's evaluation and award decision, we do not limit our review to contemporaneous evidence, but consider all the information provided, including the parties' arguments and explanations. *Remington Arms Co., Inc.*, B-297374, B-297374.2, July 12, 2006, 2006 CPD ¶ 32 at 7, 10. While we generally give little weight to reevaluations prepared in the heat of the adversarial process, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, as is the case here, simply fill in previously unrecorded details. These explanations will generally be considered in our review of the rationality of selection decisions, so long as the explanations are credible and consistent with the contemporaneous record. *Id.*

MiMoCloud argues that the agency failed to adequately document its evaluation. For example, in evaluating MiMoCloud's proposal the agency assigned a weakness because it determined that MiMoCloud's proposal to deliver 9 working prototypes at the end of phase I was unrealistic. AR, Tab 9, Technical Evaluation at 3-4. MiMoCloud protests that the agency's evaluation did not explain in detail the basis for the concern that the protester's phase I schedule was "aggressive yet unrealistic." Protest at 14 (quoting AR, Tab 9, Technical Evaluation at 4).

In response to the protest, the agency explained that MiMoCloud's proposed schedule was unrealistic because the protester's proposal did not have a plan that is ready for prototyping within the first month of phase I, did not provide sufficient information on its receiver architecture, and relied on government resources without providing a contingency plan in the event they were not available. COS/MOL at 20-23. For these reasons, the agency explains it could not conclude that MiMoCloud's proposed time frame was realistic. *Id.* at 23. On this record, we conclude that the agency's response to the protest is unobjectionable as it simply fills in or amplifies details that are consistent with the contemporaneous record.⁷ See *Remington Arms Co., Inc.*, *supra*.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁷ To the extent the protester also contends that information in the agency's debriefing was inconsistent with the agency's response to the agency-level protest or the instant protest, we find that this is not a valid basis of protest. In this regard, errors or misstatements in a debriefing are procedural matters that do not affect the validity of an otherwise reasonable award. *Hallmark Capital Grp., LLC*, B-408661.3 *et al.*, Mar. 31, 2014, 2014 CPD ¶ 115 at 4 n.4.