

## Decision

**Matter of:** Equitus Corporation

**File:** B-419701

**Date:** May 12, 2021

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Robert Guidry, the protester.  
Colonel Patricia S. Wiegman-Lenz, and Josephine Farinelli, Esq., Department of the Air Force, for the agency.  
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest raised subsequent to a post-award debriefing provided in connection with a Small Business Innovation Research (SBIR) procurement conducted pursuant to 15 U.S.C. § 638 is untimely where it was filed more than 10 days after the basis of protest was known; since the procurement was not conducted on the basis of competitive proposals, GAO's timeliness rules at 4 C.F.R. § 21.2(a)(2), which apply to protests that challenge a procurement conducted on the basis of competitive proposals under which a debriefing is requested and required, are not applicable.

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### DECISION

Equitus Corporation, a small business located in Clearwater, Florida, protests the Department of the Air Force's decision not to fund Equitus's phase II proposal under the Air Force's Small Business Innovation Research (SBIR) program solicitation No. J201-CS01, for research and development of defense-related dual purpose technologies/solutions.<sup>1</sup> The protester asserts that the agency unreasonably evaluated its proposal.

We dismiss the protest.

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<sup>1</sup> SBIR is a government-funded program that solicits proposals, in three phases, from small business concerns to engage in federal research and research and development. 15 U.S.C. § 638. Under phase I, the agency evaluates the scientific, technical and commercial merit of the ideas submitted. If 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 proposal for a phase II award.

## BACKGROUND

The Air Force issued the initial solicitation in December 2019 seeking proposals for SBIR topic J201-CSO1. This topic was an open call for innovative, clear, defense-related dual purpose technologies/solutions with a clear stakeholder need. Protest, exh. C, Notification at 1-2. The agency posted the phase II proposal instructions in July 2020, and phase II proposals were due August 26. Req. for Dismissal at 1. Equitus submitted a phase II proposal in response to the solicitation. Protest, exh. C, Notification at 2. On December 15, 2020, Equitus received notification of its “tentative selection for an award” which stated that “[c]ontract award is dependent on successful contract negotiations, funds availability, and review of company qualifications and proposal documents.” *Id.*

After evaluating proposals, the agency found that it would be inappropriate to fund Equitus’s proposal because the proposed effort “failed to meet the statutory definition of research and development” and lacked “the level of innovation required to allow the use of [the research, development, test and evaluation] RDT&E appropriation.” Req. for Dismissal at 2; *id.*, attach. 1, Memo for File at 2. On March 10, 2021, the agency notified Equitus that its phase II proposal was not selected for award. Protest, exh. B, Non-Award Letter at 1. The letter advised Equitus that its proposal is “not-awardable based on the requirement not fitting the requirement of research and development[.]” *Id.* The letter explained that “[o]verall, the proposal lacks the level of innovation required to satisfy the definition of [research and development] R&D or to allow the use of an R&D appropriation.” *Id.* Thereafter, Equitus requested a debriefing, which the Air Force provided on March 16. On March 25, Equitus filed this protest with our Office.

## DISCUSSION

Equitus challenges the evaluation of its proposal, arguing that the Air Force applied an unreasonable interpretation of “R&D” and lacks an understanding of Equitus’s proposed effort. The Air Force responds that the protest should be dismissed as untimely because it was filed more than 10 days after Equitus knew or should have known of the basis for protest. Equitus asserts that it did not learn its basis of protest until receiving the debriefing, and that it properly filed its protest within 10 calendar days of that time. For the reasons discussed below, we conclude that the protest is untimely, and dismiss it on that basis.

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 Equitus’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). An exception to this general rule is a protest that challenges “a 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.<sup>2</sup> *Id.* Our Office has previously determined that SBIR procurements conducted pursuant to 15 U.S.C. § 638 are not procurements conducted on the basis of “competitive proposals” as contemplated by 4 C.F.R. § 21.2(a)(2) and that the debriefing exception to our timeliness rules does not apply to those procurements. *Global Aerospace Corp.*, B-414514, July 3, 2017, 2017 CPD ¶ 198 at 7.

Equitus argues that its protest was timely filed because it could not have known the basis of its protest allegation until receiving the debriefing on March 16. We disagree. Equitus’s protest argues that its proposal did not receive an award due to the agency’s “misinterpretation of what is, and what is not R&D” and a “lack of understanding of the significant R&D that is required to implement [the] proposed project.” Protest at 1. As set forth above, this protest allegation is based on the Air Force’s conclusion that Equitus’s proposed effort lacks the level of innovation required to satisfy the definition of R&D--information the protester knew from the non-award letter, which it received on March 10. See Protest at 2-3; see *also id.*, exh. E, Non-Award Letter.

Equitus has failed to point to any information relied upon in its protest that was not available in the non-award letter. Although Equitus asserts that it learned during the debriefing that “there was a new interpretation of ‘R&D’ being applied that resulted in [its] non-award” and information on “why there were two different determinations on the acceptability” of its proposal, Resp. to Dismissal at 3, the protester received all the information that formed the basis of its protest allegation in the non-award letter. Equitus’s assertion--that the agency applied an unreasonable interpretation of “R&D” or misunderstood Equitus’s proposed plan--was based on information the protester knew

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<sup>2</sup> 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 is the hallmark. See *Millennium Space Sys., Inc.*, B-406771, Aug. 17, 2012, 2012 CPD ¶ 237 at 4. We have also recognized that the FAR identifies “other competitive procedures” that are distinct from competitive proposals and have found that procurements using “other competitive procedures” are not conducted on the basis of “competitive proposals” as contemplated by 4 C.F.R. § 21.2(a)(2) and therefore the debriefing exception was inapplicable to those procurements. See, e.g., *Millennium Space Sys., Inc.*, *supra* (procurement for basic and applied research pursuant to a broad agency announcement under FAR part 35); *The MIL Corp.*, *supra* (procurement under Federal Supply Schedule pursuant to FAR subpart 8.4); *McKissack-URS Partners, JV*, B-406489.2 *et al.*, May 22, 2012, 2012 CPD ¶ 162 (procurement for architecture-engineer contract under the Brooks Act, 40 U.S.C. § 1102 *et seq.*); *Global Aerospace Corp.*, *supra* (SBIR procurement conducted pursuant to 15 U.S.C. § 638).

prior to its debriefing, and yet, Equitus did not file its protest within the required time.  
4 C.F.R. § 21.2(a)(2).

The protest is dismissed.

Thomas H. Armstrong  
General Counsel