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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: U S Positioning Group, LLC

File: B-294027

Date: June 21, 2004

Steven M. Shope, Ph.D., for the protester.

Maj. Christina M. Slicker and Eric Kattner, Department of the Air Force, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In procurement under Department of Defense Small Business Innovation Research program, protest that agency's source selection was improperly based on awardee's proposal to deliver prototype is denied where agency's consideration of this factor was in accordance with solicitation's stated expectation of deliverable prototype.

DECISION

U S Positioning Group, LLC (USPG) protests the Department of the Air Force's determination to award phase II funding to JXT Applications, Inc. (JXT), and not to USPG, for work on command and control interfaces under the Department of Defense (DOD) Small Business Innovation Research (SBIR) program. USPG alleges that the Air Force improperly considered JXT's proposal to furnish a prototype as a deliverable in making its selection decision.

We deny the protest.

The SBIR program is conducted pursuant to the Small Business Innovation Development Act, 15 U.S.C. § 638 (2000), which requires certain federal agencies to reserve a portion of their research and development funds for awards to small businesses. As part of its SBIR program, DOD issues an SBIR solicitation twice a year listing the research topics for which it will consider SBIR program admission. Firms first apply for a 6-month phase I award to test the scientific, technical, and commercial merit and feasibility of a certain concept. If phase I is successful, the firm may be invited to apply for a 2-year 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 government sources to develop the concept into a product for sale in private sector and/or military markets. DOD's SBIR Website, <<http://www.acq.osd.mil/sadbu/sbir/overview/index.htm>>.

DOD issued SBIR solicitation 2003.1, which included Air Force Topic No. AF03-060, entitled Command and Control Interfaces for Virtual Teams. The objective of this topic is to develop user interfaces that permit rapid and distributed command and control meetings and decision-making. USPG and JXT were selected by the Air Force for phase I awards. When completion of the phase I contracts drew near, the Air Force requested phase II proposals from both contractors. A separate solicitation for phase II was not issued, since the original DOD solicitation contained the instructions for all three phases. Section 4.3 of the solicitation instructions set forth the following evaluation criteria:

- 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. . . .
- c) The potential for commercial (Government or private sector) application and the benefits expected to accrue from this commercialization.

Section 4.1 stated that final selection decisions would be based on the scientific and technical evaluations and other factors, including a commitment for phase III follow-on the funding, the possible duplication with other research and development, program balance, budget limitations, and the potential of a successful phase II effort leading to a product of continuing interest to DOD.

Both USPG and JXT submitted proposals, which were evaluated by the topic No. AF03-060 program manager. USPG's proposal received a perfect score, with strengths listed under each evaluation criterion. JXT's proposal received a slightly lower technical score, but had strengths listed under each evaluation criterion and only one weakness (regarding subcontractor management). USPG's proposal was priced slightly lower than JXT's. Both proposals were highly recommended for funding in the briefing to the cognizant technical director. Agency Report (AR), Tab 19 at 15. The technical director then re-evaluated the proposals and, based upon the re-evaluation and initial evaluation scores and evaluator comments, concluded that the proposals were essentially equal, except that JXT had offered a deliverable prototype. Because there was funding for only one proposal, the technical director recommended award to JXT, based on the following reasoning:

Both [USPG] and [JXT] submitted excellent proposals The deciding factor was based on the deliverables. Both contractors

proposed to build hardware/software systems However only [JXT] proposed to deliver the hardware/software to the Government. [USPG] did not offer to deliver any hardware/software to the Government; their main deliverables were a briefing and a final report. By proposing to deliver the hardware/software to the Government, [JXT's] proposal included program balance and the potential of a successful Phase II effort leading to a product of continuing interest to DoD which was not contained in the [USPG] proposal.

AR, Tab 28. The division chief agreed and selected JXT's proposal for award. After receiving a written debriefing, USPG filed this protest.

USPG asserts that it was improper for the agency to consider deliverables other than technical reports and data in distinguishing between the proposals.¹ In this regard, it notes that its proposed final report was "very rich in content" and would include, among other things, a complete design of a synthetic task environment along with hardware and software, a validation of its design, and a research tool and laboratory available for future evaluation experiments. Comments at 1.

Where an agency is conducting an SBIR procurement, it has the discretion to determine which proposals it will fund. R&D Dynamics Corp., B-285979.3, Dec. 11, 2000, 2000 CPD ¶ 201 at 4. In light of this discretion, our review of an SBIR procurement is limited to determining whether the agency violated any applicable regulations or solicitation provisions, or acted in bad faith. Bostan Research, Inc., B-274331, Dec. 3, 1996, 96-2 CPD ¶ 209 at 2; see also Intellectual Properties, Inc., B-280803.2, May 10, 1999, 99-1 CPD ¶ 83 at 5-6.

The agency's award decision was unobjectionable. Contrary to the protester's assertions, there was nothing improper or unreasonable in the agency's focusing on deliverables as the key discriminator between the otherwise equal proposals. In this regard, the solicitation specifically provided that "Phase II is the principal research or research and development effort and is expected to produce a well-defined deliverable prototype." Solicitation, ¶ 1.2. Further, though not specified under the evaluation criteria, delivery of a prototype was logically encompassed by the first factor regarding technical merit and progress toward topic solution. See Base Techs., Inc., B-293061.2, B-293061.3, Jan. 28, 2004, 2004 CPD ¶ 31 at 8. In this regard, we agree with the contracting officer that offering to deliver a prototype is an indication of the soundness and technical merit of the proposed approach and the

¹ USPG's protest raised a number of other assertions, including an assertion that the agency failed to consider commercial potential and principal/key personnel qualifications. The agency responded to USPG's allegations in its agency report and USPG made no mention of these arguments in its comments on the report. Accordingly, we find that USPG abandoned these arguments. The Writing Co., B-284622.2, May 19, 2000, 2000 CPD ¶ 100 at 3.

“embodiment” of the contractor’s solution to the topic problem. Contracting Officer’s Statement at 6. Here, USPG does not dispute that its proposal failed to include delivery of a prototype; it simply asserts that the agency’s focus on deliverables as the deciding factor was the antithesis of the firm’s approach. Comments at 1. The agency recognized that both firms proposed the development of software and hardware, but reasonably concluded that delivery of a prototype represented a better value. USPG’s mere disagreement with the agency’s judgment on the usefulness of supplying a prototype does not provide a basis for finding the agency’ source selection unreasonable. Global Assoc., Ltd., B-275534, Mar. 3, 1997, 97-1 CPD ¶ 129 at 9.

The protest is denied.

Anthony H. Gamboa
General Counsel