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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: NW Systems

File: B-401352

Date: July 13, 2009

Dr. Carol Niznik for the protester.

Vera Meza, Esq., Department of the Army, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision not to fund proposal under phase I of Department of Defense Small Business Innovation Research Program is denied where there is no evidence that agency acted in bad faith or violated regulations, and evaluation was consistent with solicitation.

DECISION

NW Systems (NWS), of Rochester, New York, protests the Army's failure to award it phase I research funds under Department of Defense (DOD) Small Business Innovation Research (SBIR) program solicitation No. FY 09.1.

We deny the protest.

The SBIR program is conducted pursuant to the Small Business Innovation Development Act, 15 U.S.C. § 638 (2006), 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 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. See DOD SBIR Website, <http://www.acq.osd.mil/sadbu/sbir/overview/index.htm>.

The solicitation here sought proposals on 12 topics, including Army Topic A091-012 (Tactical Ballistic Missile (TCB) Composite Tracking and Discrimination Capability for Army Systems of Systems (ASoS) Integrated Air and Missile Defense (IAMD)), for which NWS submitted a phase I proposal. The solicitation provided that proposals would be evaluated against the following three factors, in descending order of importance: technical merit and innovation of the proposed approach and its incremental progress toward topic or subtopic solution; qualifications of the proposed principal/key investigators, supporting staff, and consultants; and, the potential for commercial application and the benefits expected to accrue from this commercialization. Solicitation at 18. The solicitation noted that the agency could make none, one, or multiple awards. Id.

The Army received 295 phase I proposals and evaluated them using a two-tier process. The tier I evaluation consisted of a technical assessment by the technical evaluation team (TET), which was comprised of personnel representing the participating organizations. The TET forwarded what it determined were the best proposals for the tier II evaluation, consisting of a review by the technical area chief, who recommended proposals for funding consideration. Agency Report (AR) at 2.

In evaluating NWS's proposal, the TET identified both strengths and weaknesses, and did not recommend the proposal for tier 2 review. AR at 2. Under the first factor, the TET noted as a weakness that the proposal did not provide a detailed schedule showing tasks to be accomplished and the time period for each. Evaluation at 1. The TET also noted as a weakness that NWS's proposal did not provide for formal documentation of a final written or interim report to be generated as the effort progressed to its final conclusion. Id. at 2. The TET noted as a weakness under the second factor that NWS proposed a theoretical programmer to perform a substantial number of the contract hours, but did not list any qualifications for the programmer, Id., and, under the third factor, that NWS did not provide a commercialization strategy or sufficient evidence that it was committed to additional investment in technology during phase II or that it had phase III funding commitments. Id. at 1.

NWS asserts that it could not provide the schedule the evaluator was looking for because development was not predictable; that it did not believe the theoretical programmer's qualifications needed to be included in the proposal; and that the type of effort contemplated does not allow for commercialization statements.

Agencies have substantial discretion to determine which proposals they will fund under an SBIR procurement. Higher Power Eng'g, B-278900, Mar. 18, 1998, 98-1 CPD ¶ 253 at 2. In light of this discretion, our review of an SBIR procurement is limited to determining whether the agency acted in bad faith or violated any applicable regulations or solicitation provisions. Id. Based on our review of the record, we find no basis to conclude that the agency acted improperly in deciding not to select NWS's proposal for funding.

First, there is no evidence or allegation that the agency acted in bad faith or violated applicable regulations. As for the solicitation provisions, it is clear that the agency adhered to the evaluation standards set forth in the solicitation in assigning the identified weaknesses in NWS's proposal. In this regard, the solicitation provided for the evaluation of incremental progress, the qualifications of key investigators and consultants, and commercialization potential, including investment in technology during phase II and funding commitments for phase III. Solicitation at 19. Thus, while NWS may have had reasons for omitting the information in these areas, the fact is that it was required and that the agency's downgrading the proposal on this basis was consistent with the terms of the solicitation. Similarly, with respect to report requirements, evaluation of incremental progress was specifically provided for under the first evaluation factor. NWS asserts that it was clear that it would meet this requirement, since it would be required to provide a monthly status report in support of partial payments during performance, which it requested in its cost proposal. However, rather than assume that the agency would infer this information from its cost proposal, NWS should have explained in its technical proposal that it planned to provide status reports and the timing of those reports. It is an offeror's responsibility to submit an adequately written proposal. See Herndon Sci. and Software, Inc., B-245505, Jan. 9, 1992, 92-1 CPD ¶ 46.

The protest is denied.

Daniel I. Gordon
Acting General Counsel.