



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bostan Research, Inc.

File: B-274331

Date: December 3, 1996

Paralee White, Esq., Cohen and White, for the protester.
Jewel L. Miller, Esq., Defense Advanced Research Projects Agency, for the agency.
Marie Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency's decision not to fund protester's proposal under Small Business Innovation Research Program procurement was proper where evaluation was consistent with terms of solicitation and there is no showing of agency fraud or bad faith, or of violations of regulations.

DECISION

Bostan Research, Inc. protests the rejection of its proposal by the Department of Defense (DOD), Defense Advanced Research Projects Agency (DARPA), under DOD Fiscal Year 1996 Small Business Innovation Research (SBIR) Program solicitation No. SB962-080. Bostan alleges that DARPA improperly evaluated its proposal.

We deny the protest.

The solicitation sought phase I proposals on the topic, "Micro Unmanned Aerial Vehicle (UAV) System Design and Operation." Offerors were to submit proposals for exploratory development of a very small UAV system, with a maximum dimension of 15 centimeters (6 inches) or less, for unique military applications. The solicitation provided that offerors were to assess the UAV's operational utility and further stated that "[f]light vehicle concepts and designs should address critical performance attributes such as range, speed, hover, agility, and covertness, but the operation approach must address all relevant implementation issues."

The solicitation contained four evaluation criteria: (1) soundness and technical merit of the proposed approach and its incremental progress toward topic solution, (2) potential for commercial (government or private sector) application and the benefits expected to accrue from commercialization; (3) adequacy of the proposed effort for fulfillment of the research topic's requirements; and (4) qualification of the principal/key investigators, staff and consultants, in terms of both their ability to

perform the research and their ability to commercialize the results. Additionally, the solicitation provided that "[s]ystem concepts will be evaluated on the basis of technical feasibility, ease of implementation, operational utility, and affordability."

The agency received 19 proposals. Based on the evaluation, the protester's proposal was ranked eleventh, with 13 of a possible 20 points. The agency made award (and selected for funding) the two highest-scored proposals.

Bostan takes issue with the technical evaluation, maintaining that the agency failed to consider the technical merit of certain features of the firm's proposed UAV, and incorrectly concluded that the firm's proposed ducted fan UAV technology contained performance and stability claims for which no data, analyses, or references were offered. The protester believes the evaluators are familiar only with fixed wing UAV technology, and failed to understand its new technology, *i.e.*, ducted fan vertical take-off and landing (VTOL), with transition to forward flight.

Where an agency is conducting an SBIR procurement, it has the discretion to determine which proposals it will fund. In light of their 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. Systems Research Co., B-260280.2, Aug. 8, 1995, 95-2 CPD ¶ 62. We find that the evaluation was consistent with the terms of the solicitation, and there is no evidence of bad faith.

The considerations which led DARPA to downgrade Bostan's proposal--primarily unsubstantiated performance and stability claims--were all consistent with and encompassed by the stated criteria, and the award decision was based on the relative ranking of the proposals under these criteria. Further, it is clear that the agency considered the content of Bostan's proposal; for example, contrary to the protester's contention, the record indicates that the evaluators did in fact consider that Bostan's "proposed vehicle would operate in a VTOL mode, with transition to forward flight" and that the "vehicle concept [was] based on . . . gyroscopic stabilization." Consequently, we have no basis to conclude that the evaluation was inconsistent with the solicitation. As Bostan also has presented no evidence that the agency intended to harm the protester, Quantum Magnetics, Inc., B-257968, Nov. 30, 1994, 94-2 CPD ¶ 215, there is no basis for finding bad faith in the evaluation process.

Bostan's protest really focuses on its disagreement with the evaluation conclusions. However, in light of the discretion afforded agencies under the SBIR program, Systems Research Co., *supra*, the evaluation judgments that go into award decisions generally are not subject to legal objection. In any case, the agency's evaluation conclusions appear unobjectionable. For example, under the first and third evaluation criteria, the agency concluded that the proposal made unsubstantiated

agility claims and that the size and weight of the proposed vehicle raised questions about its agility. The protester maintains that these findings are "in open disregard to the known maneuverability principles," which were "straight out of an aerodynamic[s] design book," and were reflected in its proposal in the following sentence: "[t]he aircraft maneuverability is expressed in climbing performance, acceleration capacity and turning speed." The agency considered this statement—reasonably, we think—inadequate support for the firm's agility claims, and there is no other supporting data in Bostan's proposal concerning agility, such as referenced experiments or literature (the aerodynamics design book the protester cites is not referenced). While Bostan contends that it was able to list only some of its data due to the solicitation's 25-page limit for proposals, the solicitation clearly stated that "[t]echnical reviewers will base their conclusions only on information contained in the proposal," and "[r]elevant supporting data such as journal articles, literature . . . etc., should be contained or referenced in the proposal." The solicitation also listed agility as a critical performance attribute which offerors should address. It is an offeror's responsibility to submit an adequately written proposal in order to establish that what it proposes will meet the government's needs. See Herndon Science and Software, Inc., B-245505, Jan. 9, 1992, 92-1 CPD ¶ 46. It was Bostan's responsibility to structure its proposal so as to satisfy the page limitation and the requirement for supporting information.

The protest is denied.

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