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**Comptroller General
of the United States**

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

Decision

Matter of: RDAS Corporation

File: B-294848

Date: December 23, 2004

Augustus H. Green, Jr., for the protester.

Victor G. Vogel, Esq., U.S. Army Materiel Command, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly did not choose to fund protester's phase II Small Business Innovation Research proposal is denied where record shows agency had concerns relating to protester's proposed approach, and protester does not explain or demonstrate why agency's concerns were not well founded.

DECISION

RDAS Corporation protests the decision of the Department of the Army not to fund its phase II proposal under Department of Defense (DOD) Small Business Innovation Research (SBIR) program solicitation No. FY03.2. RDAS asserts that the agency made errors in the evaluation of its proposal.

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 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's SBIR Website, <http://www.acq.osd.mil/sadbu/sbir/overview/index.htm>.

The solicitation included Army topic A03-139, entitled “Robust Alignment Concepts for Precision Guided Weapons.” Previously, the agency had awarded two phase I awards, one to the protester, and one to Continental Controls and Design, Inc. (CCDI). Both firms were asked to submit phase II proposals, which the solicitation advised would be evaluated using the following 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.

RFP at 10. Both firms submitted phase II proposals that were subjected to a two-tiered evaluation process. First, the proposals were evaluated by the cognizant Army laboratory or center that had written the topic (in this case, the Army Aviation & Missile Research and Development Center). The protester’s proposal was assigned a score of 95 (out of a possible 100) points, while the CCDI proposal was assigned a score of 97 points. Agency Report (AR), exhs. N, O. Thereafter, the proposals were forwarded to a panel of Army Technology Area Chiefs (TAC), who are responsible for making the final selection from among all of the Army SBIR proposals. In this regard, the TACs take into consideration a number of factors, including the results of the first tier evaluations, their own assessment of the merits of a proposal, whether the proposal meets an Army requirement, whether the proposed work would duplicate other ongoing Army or DOD efforts, and overall SBIR program balance. The TAC selected CCDI’s proposal for funding, and not the protester’s. AR, exh. R.

RDAS asserts that the agency misevaluated its proposal and made an incorrect finding that led, ultimately, to the decision not to fund its proposal. Specifically, RDAS asserts that the agency improperly concluded that its proposal did not identify an application for its proposed product, which is a method for determining misalignment between target sensors and precision guided weapons. According to the protester, it did in fact identify two current weapons programs--the non-line-of-site launcher system (NLOS-LS) and the joint common missile (JCM)--to which its product does have application. RDAS therefore asserts that the agency did not have a reasonable basis for deciding not to fund its proposal.

Where an agency is conducting an SBIR procurement, it has substantial 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.

Here, we have no basis to object to the agency's decision not to select the RDAS proposal for funding. Although the protester maintains that it was the agency's erroneous conclusion that it failed to identify applications (such as the NLOS-LS and the JCM) for its proposed product that led the agency not to select its proposal, in fact, this is not borne out by the record; on the contrary, the selection document specifically states that the RDAS proposal identified the two proposed applications. The document goes on to identify what the agency considers an inherent limitation of RDAS's proposed approach in light of the stage of development of those systems, with particular emphasis on the JCM system. The selection document states:

Good engineering approach through a sound algorithmic solution (based upon [the firm's] previous experience with other similar successful programs). Constant progress has been made in the area "Alignment Concepts" for precision guided weapons. The proposal addresses two different systems: collocated [JCM] and non-collocated [NLOS-LS]. The proposed concepts are not specific to any particular current or future systems. The weakness of the proposal is related to this particular point. The JCM has not been fully designed and the misalignment errors are not completely known. There is a fair amount of risk involved in the geometry based solution approach to a system for which errors are not fully established. In my [the source selection official's] opinion, the proposed work may be inadequate for the future/developing systems.

AR, exh. R at 8.

In its report, the agency specifically advanced the position that this was the basis for not selecting the RDAS proposal. However, RDAS did not respond substantively to the agency's position in its comments on the agency report, stating instead that it essentially stood by the position taken in its initial protest--that the agency erroneously found that the firm had not identified any applications for its proposed product. We conclude that the protester is simply incorrect in its assertion, and that the reason stated by the agency at the time of its decision not to fund the RDAS proposal--that the protester's proposed approach may have inherent limitations in light of the stage of development of the identified systems--was the actual basis for the agency's decision not to fund the RDAS proposal. The agency's finding regarding RDAS's proposal appears reasonable, and since RDAS has not shown otherwise, we have no basis to question it.

The protest is denied.

Anthony H. Gamboa
General Counsel