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Decision

Matter of: Front End Analytics, LLC

File: B-420024.2; B-420024.3

Date: February 2, 2022

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Aaron J. Weaver, Esq., Lawrence M. Anderson, Esq., Major Constance S. Wilkes, and Colonel Frank Yoon, Department of the Air Force, for the agency.
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DIGEST

Protest challenging agency's decision not to select proposal for funding under phase II of a Department of Defense Small Business Innovation Research Program solicitation is denied where solicitation required proposals to address specific "areas of interest" and agency reasonably concluded that the protester's proposal did not relate to these areas of interest.

DECISION

Front End Analytics, LLC, a small business of Boston, Massachusetts, protests the decision by the Department of the Air Force not to select its phase II proposal under the Department of Defense's (DOD) Small Business Innovation Research (SBIR) 21.2 Program Broad Agency Announcement (BAA), which invited proposals for research and development projects. The protester challenges the agency's evaluation of its proposal as not selectable for award and the agency's corrective action taken in response to an earlier protest.

We deny the protest.

BACKGROUND

The Department of Defense issued the BAA under the SBIR program on April 21, 2021, seeking proposals from small businesses for a variety of research and development

(R&D) topics on behalf of multiple participating DOD components, including the Department of the Air Force.¹ See Agency Report (AR), Tab 4, BAA at 1.

The BAA consisted of three sections of increasing specificity: first, the text of the BAA applicable to all proposals; second, “component-specific instructions” applicable only to proposals submitted to a particular DOD component; and third, a description of and instructions for each specific topic for which the DOD components were seeking proposals. See *generally*, BAA. The BAA stated that proposals needed to identify the topic to which they applied. *Id.* at 23. The BAA further provided that “[t]he proposed research or research and development must be responsive to the chosen topic.” *Id.* at 12.

Certain Air Force topics under the BAA were identified as “direct to phase II” topics, meaning firms would be eligible for an award even if they had not previously received a phase I SBIR award related to the topic.² *Id.* at 211-12. The BAA provided as follows regarding the evaluation of phase II proposals:

Proposals will be evaluated based on the criteria outlined below, unless otherwise specified in the Component-specific instructions. Selections will be based on best value to the Government considering the following factors which are listed in descending order of importance:

- a. The soundness, technical merit, and innovation of the proposed approach and its incremental progress toward topic or subtopic solution.

¹ The SBIR program is conducted pursuant to the Small Business Innovation Development Act of 1982, 15 U.S.C. § 638 (2011), which requires certain federal agencies to reserve a portion of their R&D funds for small businesses. See 15 U.S.C. §§ 638(e)(4), (f). As part of DOD’s SBIR program, DOD components invite small businesses to submit innovative research proposals that address high-priority requirements of the DOD components and that have the potential for commercialization. *Wang Electro-Opto Corp.*, B-418523, June 4, 2020, 2020 CPD ¶ 187 at 1-2; see BAA at 4.

² The SBIR program has three phases. In phase I, firms conduct research or research and development; in phase II, firms conduct further research or research and development to produce a well-defined prototype; and in phase III, firms obtain additional funding from either the private sector, a non-SBIR government source, or both, to develop the concept into a product for sale in private sector or military markets. See 15 U.S.C. § 638(e)(4); see *also* BAA at 6. Typically, only firms awarded phase I SBIR contracts are eligible to participate in phase II or phase III. See *Wang Electro-Opto, supra* at 2; 15 U.S.C. § 638(e)(4)(B), (C). However, a “phase flexibility” pilot program, presently in effect through fiscal year 2022, permits DOD to make a phase II award without regard to whether the small business was previously provided a phase I award in certain circumstances. 15 U.S.C. § 638(cc); see *also* BAA at 212.

b. The qualifications of the proposed principal/key investigators, supporting staff, and consultants. Qualifications include not only the ability to perform the research and development but also the ability to commercialize the results.

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

Id. at 28, § 6.0 (setting forth the evaluation criteria for phase I proposals); *see id.* at 29, § 7.4 (stating that those criteria applied to phase II proposals).

The Air Force's component-specific instructions stated that "[a] Phase II proposal shall provide sufficient information to persuade the [Air Force] the proposed technology advancement represents an innovative solution to the scientific or engineering problem worthy of support under the stated criteria." *Id.* at 213. The Air Force's component-specific instructions for direct to phase II proposals did not otherwise modify the BAA's evaluation criteria, stating: "[p]hase II proposals will be reviewed for overall merit based on the criteria discussed in the [BAA] [s]ection 6.0 and 7.4." *Id.* at 219.

Included among the Air Force's topics was topic AF212-D003, Applications of AI/ML (artificial intelligence/machine learning) Pitch Day for Trusted Artificial Intelligence (the "applications of AI topic"). *Id.* at 228-229. The applications of AI topic was identified as a direct to phase II topic. *Id.* at 223.

The BAA described the "objective" of the applications of AI topic as follows:

The objective of this topic is to apply existing AI/ML solutions to operational Air Force problems. This topic will reach companies that can complete a feasibility study and prototype validated concepts in accelerated Phase II schedules. This topic is specifically aimed at later stage development rather than earlier stage basic science and research.

Id. at 228. The BAA then provided a list of five "[a]reas of interest under this topic," including the following area of interest:

Real Time Operational AI: Human operators are used across many airfield and flight operations that could potentially be performed or augmented by trusted AI systems. Intelligent systems could assist and reduce air traffic control workload, potentially reducing safe aircraft separation to increase sorties or reduce fuel consumption, while maintaining or improving safety of flight. AI could analyze flight paths, traffic volume/controller work load, range scheduling, etc. to determine the most efficient route/timing from airports to specific airspace, either for dynamic resource allocation or overall system optimization. Artificially intelligent precision approach radars could provide voice guidance for precision approach landings in agile combat operations without dedicated human controllers or modification of aircraft avionics. This emphasis area

explores how real-time trusted AI could be applied to operational systems, either to augment and improve human and system performance or by acting autonomously.

Id. (the “real time operational area of interest”).³

The applications of AI topic also incorporated the BAA’s evaluation criteria, stating that proposals would be evaluated in accordance with sections 6.0 and 7.4 of the BAA, that “[s]electable companies will be provided an opportunity to participate in [an] Air Force Trusted AI Pitch Day,” and that selectees would be notified after the pitch day event. *Id.* at 229.

Proposals under the BAA were due no later than June 17, 2021. *Id.* at 1. The Air Force received 36 proposals in response to the applications of AI topic, including a proposal from Front End. Contracting Officer’s Statement (COS) at 6.

Front End’s proposal was entitled “Physics Informed Machine Learning (PIML) for Operational Optimization of National Security Space Launches.” AR, Tab 6, Protester’s Proposal at 3. Front End identified that its proposal was submitted under the applications of AI topic, and specifically identified the real time operational area of interest. *Id.* at 5. In general, Front End proposed a solution that it claimed would improve the operational efficiency of reusable launch vehicles (RLVs) for national security space launches. *Id.* at 20. Front End proposed to use machine learning, informed by known principles of physics, to [DELETED] and improve inspection and refurbishment of RLVs. *Id.* at 6-7, 20-21; Protest at 6-7.

On July 23, 2021, the Air Force informed Front End that it had not been selected for contract award. Protest, exh. B, Agency Notification Letter to Front End. Front End protested its non-selection to our Office on July 26, 2021. Front End Protest, B-420024, July 26, 2021. Notwithstanding the filing of Front End’s protest the same day, the Air Force proceeded with scheduled “pitch day” presentations from the two highest-rated offerors--Intellisense Systems, Inc. and Global Air Logistics and Training, Inc.--on July 26. COS at 7; AR, Tab 8, Notice to Intellisense at 1; AR, Tab 9, Notice to Global Air Logistics at 1.

On August 5, the Air Force informed our Office that it intended to take corrective action by reevaluating all proposals submitted under the applications of AI topic and making a new award decision. Notice of Corrective Action, B-420024, Aug. 5, 2021. The protester did not note any objection to the agency’s proposed corrective action, and our Office dismissed Front End’s protest as academic on August 9. *Front End Analytics, LLC*, B-420024, Aug. 9, 2021 (unpublished decision).

³ The other four areas of interest were “Putting the Sec in DevSecOps for Machine Learning,” “Automate Routine Battle Management Functions,” “Computer Vision Threat Detection,” and “AI for Tactical / Cognitive Radios (CR).” BAA at 228-229. These areas of interest are not relevant to this protest.

After our Office dismissed Front End's initial protest, the Air Force reevaluated all proposals submitted under the applications of AI topic pursuant to its proposed corrective action. COS at 7. In its reevaluation of the protester's proposal, the Air Force concluded that the proposal was "not germane to a subtopic area and could not be adequately assessed by program office personnel." AR, Tab 14, Evaluation of Front End at 1-2. Under the first evaluation factor (the soundness, technical merit, and innovation of the proposed approach and its incremental progress toward topic or subtopic solution), the evaluator wrote:

The proposed solution and implementation do not directly apply to any emphasis area under topic number AF212-D003. Technical details and maturity information regarding direct application of PIML to one of the specific sub topics would be appropriate for further evaluation. The proposal may be relevant to address solicitations from organizations with purview over Space Launch Vehicles and reuse.

Id. The evaluator assigned Front End's proposal a rating of "poor" on this evaluation factor.⁴ *Id.* at 1. The evaluator also assigned Front End's proposal a rating of "poor" on the other two evaluation factors. *Id.* at 2. The evaluator did not substantively evaluate Front End's proposal on these factors; instead, as the contracting officer explains, these two factors were rated as poor because "they could not be evaluated since the proposal was determined not to be applicable." COS at 8-9.

The agency assigned each proposal a numerical score based on its ratings on each of the three factors. COS at 6-7. See AR, Tab 13, Proposal Ranking Matrix at 1; Addendum to COS at 1 (clarifying that AR, Tab 13 reflects the agency's evaluation after corrective action). The agency designated the two highest-scoring proposals (the same two that had been selected prior to the agency's corrective action) as "selectable." There were twenty-seven proposals that received lower scores than these two proposals but none of these 27 proposals received ratings of poor, and the agency designated these proposals as "selectable unfunded." AR, Tab 13, Proposal Ranking Matrix at 1-2. Six proposals, including Front End's, were deemed "unselectable." *Id.* at 2. The agency's explanation for its evaluation of each of these six proposals included the statement: "While the technology may have potential for DOD applications, [t]he technical capability/solution does not apply specifically to the emphasis areas under topic D003; more applicable implementations would be appropriate." *Id.*

Because the agency deemed the same two offerors selectable after corrective action as it had before, and because these offerors' proposals remained unchanged, the agency concluded that it was not necessary to conduct a second pitch day. Supp. COS at 9. The agency selected these two offerors for award, but has not yet awarded a contract. *Id.*

⁴ The possible ratings for each evaluation factor, in descending order of merit, were excellent, good, marginal, and poor. COS at 6.

On October 19, 2021, the Air Force again informed Front End that its proposal had not been selected for award. AR, Tab 7, Agency Notice to Protester. The contracting officer wrote that the Air Force reviewed Front End's proposal in accordance with the BAA's evaluation criteria, and "[t]he proposal was determined to be not selectable for contract award." *Id.* at 1.

That same day, Front End requested a debriefing. AR, Tab 11, Debriefing Emails at 1. On October 26, the agency provided the protester with a written debriefing that, in part, stated: "while the technology may have potential for [DOD] applications, the technical capability/solution does not apply specifically to the emphasis areas under the topic objective." *Id.* at 3.

On October 29, Front End protested to our Office.

DISCUSSION

Front End challenges the Air Force's decision not to select its proposal for award. The protester argues that the Air Force applied an unstated evaluation criterion because the BAA did not require proposals to be directed towards a specific "area of interest" under the applications of AI topic. Protest at 12; Comments & Supp. Protest at 3-5. In the alternative, Front End contends that the agency unreasonably evaluated its proposal because its proposal was in fact responsive to the real time operational area of interest. Protest at 12-13; Comments & Supp. Protest at 5-6. The protester also alleges that the Air Force unreasonably evaluated its proposal and engaged in disparate treatment of offerors by failing to evaluate its proposal on all three evaluation factors. Protest at 13-14; Comments & Supp. Protest at 9-10. Finally, in a supplemental protest, Front End argues that the agency took unreasonable corrective action in response to its prior protest by not conducting a second "pitch day" and inviting Front End to participate. Comments & Supp. Protest at 12-13.

It is well-established that contracting agencies have substantial discretion to determine which proposals they will fund under an SBIR procurement. *Wang Electro-Opto Corp.*, B-418523, June 4, 2020, 2020 CPD ¶ 187 at 5. Our Office has specifically recognized that, with respect to the SBIR program, contracting agencies have broad discretion to determine their needs and the best way to meet them. *ASRC Fed. Data Network Techs., LLC*, B-418765, Aug. 28, 2020, 2020 CPD ¶ 339 at 6.

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. *Wang Electro-Opto, supra* at 5. A protester's disagreement with the agency's judgment, by itself, does not establish that an evaluation was unreasonable. See *Glatz Aeronautical Corp.*, B-405851, B-405851.2, Jan. 6, 2012, 2012 CPD ¶ 19 at 4. This is particularly true under an SBIR procurement, which is not based on design or performance specifications for existing equipment, but rather emphasizes scientific and technological innovation and has as its objective the development of new technology. *Squire Sols., Inc.*, B-419477.2, June 10, 2021, 2021 CPD ¶ 229 at 5. It is precisely because of the scientific and innovative nature of this

type of procurement that the agency is given substantial discretion in determining which proposals it will fund. *Id.*; *Wang Electro-Opto Corp.*, *supra* at 5.

Against this background, we have reviewed the allegations of Front End's protest. As explained further below, we find no reason to conclude that the agency acted in bad faith, or violated any applicable regulations or solicitation provisions in reaching its conclusion not to select Front End's proposal for award.⁵

Relevance to an Area of Interest as an Evaluation Criterion

Front End first argues that the Air Force applied an unstated evaluation criterion by requiring proposals under the applications of AI topic to relate to one of the five identified "areas of interest." Front End contends that the BAA's stated evaluation factor of "incremental progress toward topic or subtopic solution" is a broad criterion that required the agency to favorably evaluate a proposal that made any degree of progress toward the "topic." See Comments & Supp. Protest at 3. Front End further contends that the word "topic" should be read broadly, such that the Air Force was required to evaluate its proposal favorably as long as it was directed toward the "objective" of "apply[ing] AI/ML solutions to operational Air Force problems," without regard to whether its proposal addressed any of the five specified "areas of interest."⁶ *Id.*

The Air Force responds that the BAA identified five areas of interest under the applications of AI topic, and that both the overarching text of the BAA and the Air Force's component-specific instructions required proposals to be responsive to the topic to which they were directed. COS at 10. See BAA at 4 ("[t]he proposed research . . . must be responsive to the chosen topic"); *id.* at 213 (" . . . proposal[s] shall provide sufficient information to persuade the [Air Force] the proposed technology advancement

⁵ In a supplemental protest, Front End argues that the agency's corrective action in response to its prior protest was unreasonable because the agency did not conduct a second pitch day. Supp. Protest at 12-13. This argument is derivative: Front End could only demonstrate competitive prejudice from the agency's decision not to hold a second pitch day if our office sustained its challenges to the agency's evaluation of its proposal, which we do not, for the reasons explained below. Derivative allegations do not establish independent bases of protest. *Advanced Alliant Solutions Team, LLC*, B-417334, Apr. 10, 2019, 2019 CPD ¶ 144 at 6. We therefore dismiss the supplemental protest.

⁶ The protester also alleges that the phrase "emphasis area," as used by the Air Force's evaluator and in the Air Force's debriefing, is not defined in the BAA. Protest at 11-12. The agency explains that the applications of AI topic uses the phrases "area of interest" and "emphasis area" interchangeably. See, e.g., BAA at 228 ("[t]his emphasis area explores . . ."). We agree, and conclude that the agency's interchangeable use of two synonymous phrases provides no basis to conclude that the agency's evaluation of Front End was unreasonable.

represents an innovative solution to the scientific or engineering problem worthy of support under the stated criteria.”)

In SBIR procurements, as in other procurements, while procuring agencies are required to identify significant evaluation factors and subfactors in a solicitation, they are not required to identify every aspect of each factor that might be taken into account; rather, agencies reasonably may take into account considerations, even if unstated, that are reasonably related to or encompassed by the stated evaluation criteria. *Quimba Software*, B-299000, Jan. 18, 2007, 2007 CPD ¶ 14 at 3.

Front End’s allegation that the Air Force applied an unstated evaluation criterion is, as its core, a dispute regarding the interpretation of a solicitation: did the BAA’s evaluation criteria reasonably encompass a requirement that proposals address one of the “areas of interest” under the applications of AI topic, or was progress towards the broader “objective” sufficient to earn a favorable evaluation?

As a general matter, where a dispute exists as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of the provisions. *Crew Training Int’l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. To be reasonable, an interpretation must be consistent with such a reading. *Id.* Our Office will find unreasonable an interpretation that requires reading certain provisions out of the solicitation. See, e.g., *C&S Corp.*, B-411725, Oct. 7, 2015, 2015 CPD ¶ 311 at 6-7 (“the interpretation advanced by [protester] requires reading the phrase ‘or facilities’ out of the RFP. . .”). Similarly, an interpretation is not reasonable if it fails to give meaning to all of a solicitation’s provisions, renders any part of the solicitation absurd or surplus, or creates conflicts. *Innovative Mgmt. Concepts, Inc.*, B-419834.2, B-419834.3, Sept. 20, 2021, 2021 CPD ¶ 319 at 15.

Here, the applications of AI topic included a specific list of the types of R&D projects that the agency was interested in funding--i.e., the “areas of interest.” See BAA at 228. The protester’s interpretation essentially requires that we read only the “objective” of the topic description--a brief introductory paragraph--and ignore the much longer and more detailed description of the areas of interest. In other words, if the protester is correct the Air Force was required to favorably evaluate any proposal that made progress toward the topic’s stated objective, irrespective of its relevance to an area of interest, then the provisions regarding areas of interest would be given no effect and rendered surplus. By contrast, the agency’s interpretation reads the BAA topic description as a whole and gives effect to each of its provisions. Accordingly, we reject the protester’s proffered interpretation and conclude that only the agency’s interpretation is reasonable. See *C&S Corp.*, *supra* at 6-7.

In this respect, we also note that the protester’s interpretation of the BAA advanced in its protest appears inconsistent with the interpretation that informed its proposal. While the protester now argues that proposals were not required to address any of the specific areas of interest, its proposal in fact identified that it addressed the real time operational area of interest. See AR, Tab 6, Protester’s Proposal at 5. The integrity of the protest

process does not permit a protester to espouse one interpretation or position during the procurement, and then argue during a protest that the interpretation or position is unreasonable or otherwise improper. *IBM Global Bus. Servs.*, B-298833.4, B-298833.5, Mar. 1, 2007, 2007 CPD ¶ 82 at 6. Our office will find a protester's interpretation of a solicitation unreasonable where, as here, it is inconstant with the interpretation that informed the protester's proposal. See *Qwest Gov't Servs., Inc. d/b/a CenturyLink QGS*, B-419597, B-419597.2, May 24, 2021, 2021 CPD ¶ 217 at 6.

For these reasons, we conclude that the agency's interpretation of the BAA is reasonable. Since we find that progress towards one of the areas of interest was contemplated by the solicitation, we think the agency reasonably could consider, consistent with the stated evaluation factors, the extent to which proposals related to those stated areas of interest. See *Quimba Software*, *supra* at 3-4. Accordingly, the agency's downgrading of Front End's proposal for not addressing any specific area of interest under the applications of AI topic does not constitute application of an unstated evaluation criterion.

Evaluation of the Relevance of Front End's Proposal

Front End next argues, in the alternative, that the Air Force unreasonably evaluated its proposal because its proposal was responsive to the real time operational area of interest listed under the applications of AI topic. The protester contends that the reusable space launch vehicles that are the subject of its proposal are similar to "other aerospace platform[s]" in that they, among other things, take off from Earth, execute an airborne mission, land back on Earth, rely on air traffic control and flight planning, and must undergo inspection and refurbishment." Comments & Supp. Protest at 5-6. In this context, the protester contends that the agency should have concluded that its proposal was related to "airfield and flight operations," as described under the real time operational area of interest. *Id.*

The Air Force counters that nothing under the applications of AI topic, and in particular none of the subject matter of the real time operational area of interest, was related to the operational optimization of space launches. COS at 8-10.

As stated above, under SBIR procurements, contracting agencies have broad discretion to determine their needs, the best way to meet them, and which proposals it will fund. *ASRC Fed. Data Network Techs.*, *supra* at 6; *Squire Sols.*, *supra* at 5. 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. *Wang Electro-Opto*, *supra* at 5.

Our review of the record leads our Office to conclude that the agency acted reasonably in concluding that Front End's proposal was not germane to the real time operational area of interest.

First, the description of the real time operational area of interest is clearly directed toward flight within Earth's atmosphere--airplanes and helicopters, as opposed to space

vehicles. The BAA uses words such as “airfield,” “aircraft separation,” “airports,” and “airspace,” which appear to exclude space vehicles.⁷ In this respect, the protester’s citations to documents outside of the BAA describing the interest of DOD components (including the Air Force) in space launch vehicles is not helpful to the protester’s argument, because these documents appear to be consistent in using a different vocabulary to describe space launch vehicles as opposed to aircraft. See Protest at 8. For example, the protester cites a Congressional Research Service report for the proposition that the Air Force has an interest in the space launch market. *Id.* But, that document refers only to “launch vehicles” or “space launch vehicles,” and does not mention the word “aircraft.” See Library of Congress, Congressional Research Service, “Defense Primer: National Security Space Launch,” No. IF11531, Dec. 30, 2020 (referring to “launch vehicles” or “space launch vehicles”).

The issue of “aircraft” versus “space vehicles” aside, Front End’s proposal also does not appear to be directed toward the type of problems for which the Air Force was seeking to fund research under the real time operational area of interest. The examples given under that area of interest are all related to aircraft flight operations: air traffic control workload, the efficiency of flight paths, and voice guidance for precision approach landings. See BAA at 288. Even if the protester is correct that both aircraft and space vehicles, for example, “rely on air traffic control,” see Comments & Supp. Protest at 6, there is nothing in Front End’s proposal that proposes an improvement to this or a similar process. Instead, Front End proposes AI/ML improvements to (1) “[DELETED]” to diagnose defects and improve space vehicle design and (2) inspection and refurbishment using [DELETED]. AR, Tab 6, Protester’s Proposal at 26-28. Based on our review of the record, we agree that the Air Force reasonably determined that the processes to which Front End’s proposal is directed do not appear analogous to the flight operations processes that are the subject of the real time operational area of interest.

Moreover, while Front End attempts in its protest to draw parallels between its proposal and the BAA’s description of the real time operational area of interest, it did not do so in its proposal. See *generally*, AR, Tab 6, Protester’s Proposal. The protester’s proposal makes no mention of air traffic control, takeoff, landing, or flight planning; and, with respect to inspection and refurbishment, the proposal does not explain any similarity between the improvements it discusses and processes that might be applicable to aircraft. *Id.* In short, in all of the areas where the protester now argues that its proposal

⁷ Merriam-Webster defines “aircraft” as “a vehicle (such as an airplane or balloon) for traveling through the air.” Aircraft, Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.meriam-webster.com/dictionary/aircraft> (last visited Jan. 14, 2022). By contrast, it defines “spacecraft” as “a vehicle or device designed for travel or operation outside the earth’s atmosphere.” Spacecraft, Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.meriam-webster.com/dictionary/spacecraft> (last visited Jan. 14, 2022).

was related to the Air Force's stated needs under the real time operational area of interest, the proposal itself was silent.

In an SBIR procurement, as in any procurement, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements. *Squire Sols.*, *supra* at 6. Moreover, the Air Force's component-specific instruction in the BAA specifically instructed offerors that "[a] Phase II proposal shall provide sufficient information to persuade the [Air Force] the proposed technology advancement represents an innovative solution to the scientific or engineering problem worthy of support under the stated criteria." BAA at 213.

Accordingly, the Air Force was entitled to look only to the text of Front End's proposal for an explanation of the proposal's relevance to the chosen topic. Absent such an explanation, we cannot conclude that the agency acted unreasonably when it found Front End's proposal not to be relevant.

In sum, the record here demonstrates that the agency stated its needs under the applications of AI topic, and that it reasonably concluded that Front End's proposal did not demonstrate relevance to the topic. Accordingly, while there may be potential merit to further study of Front End's proposal by the Air Force or other DOD components under another solicitation,⁸ we do not find any bad faith, or violation of applicable regulation or solicitation provision, in the Air Force's conclusion that the protester's proposal was not relevant to this solicitation.

Evaluation of Front End's Personnel and Commercial Potential

Front End next argues that the agency failed to follow the terms of the BAA, and treated offerors disparately, by failing to evaluate its proposal under the second and third evaluation factors--the qualifications of personnel and the potential for commercial application. Comments & Supp. Protest at 6-10. Front End contends that the BAA required the agency to evaluate proposals on all three evaluation factors regardless of any proposal's score on the first. *Id.* at 6-8. The protester further alleges that the Air Force evaluated some proposals on all three factors even where those proposals received ratings of "marginal" on one factor, and that the Air Force's decision not to substantively evaluate Front End's proposal on the last two factors constituted disparate treatment. *Id.* at 8-10.

The Air Force responds that once it determined that Front End's proposal was not relevant to the applications of AI topic, it rated the other two criteria as poor "since they could not be evaluated since the proposal was determined not to be applicable." COS at 8-9. This is consistent with the contemporaneous record: the text of the Air Force's evaluation of Front End's proposal states "[t]his proposal is not germane to a subtopic area and could not be adequately assessed by program office personnel." AR, Tab 14, Evaluation of Front End at 1-2. The Air Force further points out that there were five

⁸ The Air Force concluded that "[t]he proposal may be relevant to address solicitations from organizations with purview over Space Launch Vehicles and reuse." AR, Tab 14, Evaluation of Front End at 1-2.

other proposals found to be not selectable for the same reason as the protester, and that the Air Force treated all of those proposals similarly. COS at 11; see AR, Tab 13, Proposal Evaluation Matrix at 2.

We have reviewed the record and find no basis to sustain the protest because we find no reasonable possibility of prejudice from the agency's actions and no disparate treatment of offerors.

Competitive prejudice is an essential element of every viable protest, and where none is shown or is otherwise evident, we will not sustain the protest. *Joint Mgmt. & Tech. Servs.*, B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7. Here, the agency rated as "not selectable" all six proposals that it found to be irrelevant to the stated areas of interest, including the protester's proposal. See AR, Tab 13, Proposal Evaluation Matrix at 2. This rationale for deeming the protester's proposal not selectable would remain unaffected even if we were to credit the protester's challenges to the agency's decision not to substantively evaluate its proposal on the second and third evaluation factors. In other words, even if the agency had found the protester's personnel to be highly qualified and its proposal to have a high potential for commercialization, the Air Force would still have considered its proposal to be not germane to the topic area, and we see no reasonable possibility that Front End's proposal would have been deemed selectable. In such a circumstance, we will not find competitive prejudice. See *Advanced Software Systems, Inc.*, B-414892.2, *et al.*, Jan. 7, 2019, 2019 CPD ¶ 51 at 8.

Moreover, we find no basis to conclude that the agency treated offerors unequally. See *Jacobs Tech., Inc.*, B-420016, B-420016.2, Oct. 28, 2021, 2021 CPD ¶ 373 at 10 ("It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria."). In this respect, we note that the agency treated all six proposals that it found not germane identically, assigning them an equal score and deeming them not selectable. AR, Tab 13, Proposal Evaluation Matrix at 2. The fact that the Air Force continued its technical evaluation of proposals that it found to make "marginal" progress toward the applications of AI topic, but did not continue evaluating proposals that it found to be entirely irrelevant to the topic, does not evidence disparate treatment.⁹

⁹ In any event, only the two proposals rated as "excellent" on all three evaluation factors were deemed selectable. See AR, Tab 13, Proposal Evaluation Matrix at 1. And, it is worth noting that the first evaluation factor, progress toward the topic, was the most important evaluation factor. See BAA at 28. Accordingly, to the extent that the protester argues that similarities exist between its proposal and proposals rated "marginal" on the first evaluation factor, but still not selected for award, this argument does not demonstrate competitive prejudice. See Comments & Supp. Protest at 9-10.

Accordingly, the agency's decision not to substantively evaluate Front End's proposal on the second and third evaluation factors provides no basis for us to sustain the protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel