



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Virginia Accelerators Corporation

**File:** B-271066

**Date:** May 20, 1996

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Maxine Cade, Esq., Cade & Vaughn-Carrington, for the protester.  
Joseph H. Orens, for Berkeley Research Associates, Inc., and Sam V. Nablo, Ph.D., for Electron Processing Systems, Inc., the intervenors.  
Capt. David P. Harney, and Mark H. Rutter, Esq., Department of the Army, for the agency.  
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Protest against award to highest technically evaluated offerors, instead of protester, under Small Business Innovative Research Program solicitation is denied where there is no showing of agency bad faith or of violation of regulations, and award decision was consistent with the terms of the solicitation.

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## **DECISION**

Virginia Accelerators Corporation (VAC) protests the Department of the Army's rejection of its proposal submitted under Department of Defense Fiscal Year 1995 Small Business Innovation Research Program (SBIR) solicitation No. 95.3, Topic No. A95-101.<sup>1</sup> VAC maintains that the Army improperly evaluated proposals.

We deny the protest.

The solicitation sought SBIR proposals for 126 different topics. Topic No. A95-101, at issue here, sought proposals for innovative research into cleaning flue gas (to remove sulfur dioxide, nitrous oxides and other contaminants) using irradiation with fast electrons in the electron beam dry scrubbing process. The Army received 15 proposals. Based on the evaluation, VAC's proposal was ranked ninth, with a total score of 75 out of a possible 100 points. The Army made award to Berkeley

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<sup>1</sup>The SBIR program requires federal agencies to reserve a portion of their research requirements for small businesses. Agencies enter into funding agreements in the form of grants, cooperative agreements or contracts with small businesses after receiving and evaluating proposals submitted in response to a solicitation.

Research Associates, Inc., based on that firm's highest-rated proposal's score of 100 points, and to two other firms--Electron Processing Systems, Inc. and L&W Research, Inc.--based on their proposals' scores of 94 and 85.

VAC challenges the Army's technical evaluation, arguing that Berkeley's proposed electron beam generator will not produce sufficient power to be of use for electron scrubbing, and that the agency failed to recognize that VAC's proposed approach was the most promising one. VAC attributes the allegedly erroneous evaluation to a lack of qualified agency evaluators; according to the protester, "[t]he heart of VAC[s] protest is that [the Army] did not use experts in the field of electron beam scrubbing to evaluate proposals."

Where an agency is conducting an SBIR procurement, it has the discretion to determine which proposals it will fund. In light of the agency's discretion, we limit our review of awards under SBIR procurements 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; Noise Cancellation Technologies, Inc., B-246476; B-246476.2, Mar. 9, 1992, 92-1 CPD ¶ 269. The selection of individuals to serve as evaluators also is within the discretion of the contracting agency and we will not review the qualifications of board members absent a showing of possible bad faith or a conflict of interest. Geographic Resource Solutions, B-260402, June 19, 1995, 95-1 CPD ¶ 278; Solid Waste Integrated Sys. Corp., B-258544, Jan. 17, 1995, 95-1 CPD ¶ 23.

VAC has provided no evidence (and the record does not otherwise show) that the Army's actions--including the selection of evaluators and the evaluation itself--were motivated by bad faith or conflict of interest, violated any applicable regulations, or were inconsistent with the terms of the solicitation. On the contrary, the record clearly shows that the evaluation of proposals and resulting proposal selection were proper.

The solicitation advised that the topic would focus on research into "compact" sources of electron beam generation for use in cleaning up fossil fuel emissions from such sources as maritime vessels, tractor trailers, locomotives, small power plants, refuse incinerators and other small contributors to atmospheric pollution. The Army primarily downgraded VAC's proposal because its approach, although offering the potential for efficiently producing a high average power electron beam, also produced a higher level of X-rays than the other proposed approaches and, as a result, would require shielding in the form of lead or earthen berms. In order to provide the required shielding, VAC proposed to bury the system underground. The agency determined that the required shielding rendered VAC's proposed system impractical for cleaning such mobile emission sources (outlined in the solicitation) as maritime vessels, tractor trailers, and locomotives. In addition, the agency downgraded VAC's proposal because VAC's proposed electron beam generator could not be efficiently scaled down to meet the solicitation requirement for a

compact source of electron beam generation while still preserving the beam characteristics that are optimal for cleaning omissions.

These evaluation judgments clearly were consistent with the stated objectives for the research topic, and clearly were based on the contents of VAC's proposal; as there is no showing of bad faith, conflict of interest or regulatory violation, we have no basis to object to the awards.<sup>2</sup>

The protest is denied.

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<sup>2</sup>Further, since as a result of the evaluation of its proposal VAC was ranked ninth and therefore is not in line for an award here, it is not an interested party to challenge to the evaluation of Berkeley's proposal. See Dick Young Prods. Ltd., B-246837, Apr. 1, 1992, 92-1 CPD ¶ 336.