



**G A O**

Accountability \* Integrity \* Reliability

**Comptroller General  
of the United States**

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

# Decision

**Matter of:** Photonics Optics Tech, Inc.

**File:** B-402967

**Date:** July 28, 2010

---

Tien-Hsin Chao for the protester.

Larry M. Anderson, Esq., Department of the Air Force, for the agency.

Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## **DIGEST**

Protester's challenge to agency's decision not to fund protester's proposal under phase II of a solicitation issued pursuant to the Department of Defense Small Business Innovation Research program is denied where agency's evaluation documentation reflects various weaknesses, and protester has failed to show that the agency's evaluation was unreasonable.

---

## **DECISION**

Photonics Optics Tech, Inc., of Valencia, California, protests the Department of the Air Force's decision not to fund its Phase II proposal under the Department of Defense (DOD) Small Business Innovation Research (SBIR) program pursuant to solicitation No. FY08.3

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 periodically issues SBIR solicitations listing the research topics for which it will consider SBIR program admission. The program has three phases: phase I, to determine the scientific, technical, and commercial merit of ideas; phase II, to perform the principal research and development effort resulting in a well-defined, deliverable prototype; and phase III, during which the small business must obtain private and public funding to develop the prototype into a viable commercial product for sale to military and/or private

sector markets. Only firms that are awarded phase I contracts are eligible to participate in phase II or phase III. Solicitation No. FY08.3 ¶¶ 1.1, 1.2.

The solicitation at issue was published in July 2008 and listed various topics, including topic No. AF083-264, entitled “Mobile Low-power Multipoint Laser Doppler Vibrometer”; thereafter, Photonics was awarded a phase I contract for this topic.<sup>1</sup>

In October 2009, the agency advised Photonics that it could submit a phase II proposal, which the solicitation provided would be evaluated against 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. 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.

Solicitation No. AF08.3 ¶ 4.3

In December 2009, Photonics submitted its phase II proposal, which was thereafter evaluated.<sup>2</sup> The agency’s evaluation documentation shows that Photonics’ proposal reflected various strengths, but also contained multiple weaknesses under each of the evaluation criteria.

For example, in evaluating technical merit, the agency recognized the innovativeness of Photonic’s proposed approach, but also expressed concern regarding the “relative immaturity” of the proposed technology, concluding that Photonic’s proposal did not

---

<sup>1</sup> The agency states that this SBIR topic is to “[d]evelop a prototype solution to test structural integrity [of aircraft components],” and further explains that the projected prototype will “assist in [the] evaluation of design integrity, fault diagnosis, and structural health of flying vehicle[s].” Agency Report (AR) at 32.

<sup>2</sup> The record indicates that no other firms submitted phase II proposals for topic No. AF083-264, “Mobile Low-power Multipoint Laser Doppler Vibrometer”; similarly, Photonics did not submit a proposal for any of the other topics listed in the solicitation.

“identify challenges of [its] proposed approach” and should have “addressed how the proposed approach would integrate into the overall systems used for T&E [testing and evaluation].” AR at 46, 47, 56.

With regard to the evaluation criterion providing that assessment of personnel qualifications would include consideration of the ability to commercialize the results of the research and development efforts, Solicitation No. AF08.3 ¶ 4.3, the agency concluded: “There is little evidence in the proposal that the company has any experience or personnel with knowledge in the area of finance, marketing and/or commercialization.” AR at 57.

Finally, the agency criticized Photonic’s proposal on the basis that it failed to identify potential competitors and “cited estimates on market potential/growth but did not substantiate where the numbers came from.”<sup>3</sup> *Id.* Overall, the agency concluded that, while Photonics’ proposal was “very innovative” and reflected various other strengths, there were also substantial risks associated with its proposal, including the potential for product commercialization. Accordingly, the agency declined to fund the proposal. *Id.* at 58.

Photonics was subsequently notified of the agency’s decision; this protest followed. Photonics primarily asserts that the decision not to fund its proposal was “arbitrary,” and expresses general dissatisfaction with the agency’s evaluation.<sup>4</sup>

Where an agency is conducting an SBIR procurement, it has substantial discretion to determine whether it will fund a proposal. *See, e.g., RDAS Corp.*, B-294848, Dec. 23, 2004, 2004 CPD ¶ 253 at 2. 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. *Id.*; *R&D Dynamics Corp.*, B-285979.2, Nov. 14, 2000, 2000 CPD ¶ 193 at 4.

---

<sup>3</sup> The solicitation required that offerors’ commercialization strategies discuss, among other things, “[w]ho are your competitors,” and “what is your estimate of the market size.” Solicitation No. FY08.3 at ¶ 3.7.

<sup>4</sup> Photonics also asserts that “[t]he evaluators may be biased,” and questions whether the evaluation of proposals under other solicitation topics, for which Photonics did not submit a proposal, were performed properly. Protest at 1. It is well-established that bias will not be attributed to procurement officials on the basis of inference or supposition. *See, e.g., Midwest Metals*, B-299805, July 17, 2007, 2007 CPD ¶ 131 at 3 n.2. Here, Photonic’s suggestion regarding bias falls far short of this standard. Further, Photonics’s speculation regarding the agency’s evaluation of proposals under other topics, for which Photonics did not submit a proposal, provides no basis for sustaining its protest. *See* 4 C.F.R. § 21.0(a)(1) (2010).

In responding to the agency's various criticisms, Photonics expresses its general disagreement with the evaluation, but fails to specifically address some of the criticisms, and otherwise fails to establish that the agency's assessments were unreasonable. For example, regarding the agency's criticism that Photonics' proposal failed to address "how the proposed approach would integrate into the overall systems used for T&E," Photonics states:

Since the sensor will be the first one ever built, [Photonics] would expect to interact closely with the Air Force during the course of the development. [Photonics] will work with the [Air Force testing and evaluation] team to perform tech demo and tests at the end of the project.

Photonics Response to AR at 4.

Similarly, regarding the agency's criticism that Photonics' proposed personnel lacked experience in the areas of finance, marketing and/or commercialization, Photonics states:

[Photonics] has successfully managed the previous Phase I work under the current management frame work. Based on this successful experience, [Photonics] expects to continue the finance/management performance during the course of Phase II.

Id.

Finally with regard to the criticism that the proposal failed to substantiate Photonic's estimates regarding market potential, Photonics responds:

[Photonics] is confident that due to the innovativeness of [its proposed product] over the state-of-the-art technology, the product will attract continued government and industrial investment to develop the full-fledged commercial product.

Id. at 5.

Based on our review of the agency's evaluation record, along with Photonics' various responses, we reject Photonic's assertion that the agency's decision not to fund Photonics' proposal was arbitrary or otherwise unreasonable. To the contrary, as discussed above, the agency identified and documented its assessment of various weaknesses in Photonic's proposal, consistent with the solicitation's evaluation

criteria. Photonics complaints regarding those assessments constitute mere disagreement with the agency decision and, as such, provide no basis for sustaining its protest.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel