



Comptroller General
of the United States
Washington, D.C. 20548

11421

Decision

Matter of: Quantum Magnetics, Inc.

File: B-257968

Date: November 30, 1994

Nancy O. Dix, Esq., Gray Cary Ware & Freidenrich, for the protester.
David P. Metzger, Esq., and Gena E. Cadieux, Esq., Davis, Graham & Stubbs, L.L.C., for SQM Technology, Inc., an interested party.
William R. Medsger, Esq., William T. McMurry, Jr., Esq. and William C. Reed, Esq., Department of the Air Force, for the agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's decision not to fund protester's proposal for Phase II effort under Small Business Innovation Research Program procurement was proper where the record shows that the evaluation and selection decision was reasonable and compliant with applicable regulations and solicitation provisions.

DECISION

Quantum Magnetics, Inc. protests the Air Force's failure to award it Phase II funding for a project the firm proposed under the Department of Defense (DOD) Small Business Innovation Research (SBIR) program. Quantum contends that its proposal for the design, production, and test of a High Temperature Superconducting Quantum Interference Device ("HTS SQUID") Magnetometry system to be used for the non-destructive inspection of aircraft during aircraft maintenance operations would have been funded if the Air Force had evaluated its proposal properly.

We deny the protest.

The solicitation was issued under the DOD SBIR program in the fall of 1992. The SBIR program is conducted pursuant to the Small Innovation Development Act, 15 U.S.C. § 638 (1988), which requires federal agencies to reserve a portion

of their research and development efforts and authorizes them to award "funding agreements" to small businesses based upon evaluation of proposals submitted in response to solicitations issued pursuant to the Act. The program is made up of three phases. Under Phase I, small business firms with strong research and development capabilities in science and engineering are invited to submit proposals to conduct research on one or more topics specified in the DOD annual SBIR program solicitation. Under Phase II, firms that received Phase I awards are permitted to submit proposals to compete for further development work on the topic. Phase III contemplates that, unlike Phases I and II, private funds will be used to pursue commercial applications of the research or development.

The objective for the project at issue was to design, build, and test an HTS SQUID magnetometry system to detect subsurface structural defects in the metallic skin of aircraft. Phase I of the project included the design of the complete system, based upon information obtained from Air Force logistics personnel and aircraft manufacturers and upon investigation of HTS SQUIDS; HTS coil configurations; and cryogenic systems. Under the Phase II effort, the complete system is to be constructed; assembled; and tested on standard defect structures, as well as on Air Force equipment. The solicitation advised that Phase II awards would be made on the basis of results from the Phase I effort and the scientific and technical merit of the Phase II proposal. Phase II proposals were to be evaluated for, among other things, scientific/technical quality; the principal investigator's qualifications; and the anticipated benefits of the work.

Nine firms submitted Phase I proposals from which Quantum and SQM were selected for award. After completing the Phase I research efforts, both firms submitted timely Phase II proposals. The proposals were evaluated by the Program Manager in the Directorate of Physics at the Air Force Office of Scientific Research (AFOSR), who praised both proposals as having different strengths and stated in his evaluation report that he could easily recommend funding either one. However, since he was required to rank the proposals, he identified the SQM proposal as his first choice. After this initial review, the proposals were evaluated by technical reviewers at the Oklahoma City Air Logistics Center. Both of these evaluators recommended funding both proposals. Finally, the Director of Physics and Electronics at AFOSR performed his own technical review of the proposals, on the basis of which he recommended only SQM's proposal for funding. A list of proposals for eight different research topics including SQM's Phase II proposal was forwarded to the Director of AFOSR for final award selection. SQM's proposal was one of the six that were

chosen.¹ Upon being advised that its proposal had not been selected, Quantum protested that the Air Force evaluated the proposals improperly, failing to follow the evaluation criteria established in the solicitation, and that the rejection of Quantum's proposal was the result of bias and bad faith.

Quantum alleges that SQM was ineligible to compete for the Phase II award because it failed to complete the final report that was among the required tasks under Phase I. Quantum observes that the solicitation advised offerors that Phase II offers would be evaluated on the basis of the offerors' Phase I results as well as the Phase II proposals; in light of the alleged failure to complete the report for Phase I, Quantum contends that SQM's proposal should not have been more highly rated in the Phase II evaluation than Quantum's. However, we find no requirement in the solicitation that the Phase I final report be submitted prior to the submission of the Phase II proposal. The introduction to the "Method Of Selection and Evaluation Criteria" states only that "a 2-page written assessment of Phase I results will have been forwarded . . . to Air Force [headquarters] for use in subsequent funding decisions on Phase II proposals." This language does not, nor does any of the RFP evaluation and selection criteria, require a final report as part of the evaluation process for Phase II. Further, the record shows that SQM reported its Phase I results in its Phase II proposal, and that agency evaluators were able to review SQM's Phase I results during the Phase II selection process, and concluded that SQM's Phase I work was technically sound. The record includes documents describing the degree to which SQM had met the Phase I objectives at the time of Phase II proposal submission, which show that the firm had met the Phase I objectives precisely. SQM also subsequently submitted its final Phase I report, which was considered by the Director of AFOSR in the final award evaluation. Accordingly, this allegation is without merit.

Quantum next argues that the Air Force failed to follow the evaluation criteria set forth in the solicitation because it did not consider the likelihood of SQM being able to carry out the work and consequently had no basis for ranking SQM's proposal more highly than Quantum's. In support of this argument, Quantum has submitted the opinion of a consultant, disagreeing with the technical assessment and conclusion of the agency's evaluators. The record shows, however, that the evaluators did, in fact, focus on the likelihood of a successful practical application when they evaluated each of the proposals. The AFOSR Program Manager who performed the

¹No contract has yet been awarded under Phase II.

initial evaluation, concluded that SQM's proposal and technical team were "more likely to produce a practically usable product." While Quantum's consultant disagrees with some of the technical bases of the Air Force's analysis, our review of the record shows that the Program Manager's analysis was based on his considered assessment of the competing proposals as measured by the evaluation criteria established in the solicitation.

The AFOSR Program Manager identified several major technical innovations in SQM's proposal in his evaluation report, stating that he considered these approaches to designing a system that can find corrosion and cracks in airframes at depth to be unique. The evaluation report describes SQM's approach to measuring both the size of a subsurface flaw and the depth at which it was located--which were integral goals of the project--to be "truly unique even within the community of SQUID sensing," and includes detailed scientific analysis to support the technical evaluation. The fact that the protester's technical consultant and the Air Force's technical experts who analyzed the technical approaches of the offerors arrived at differing conclusions regarding their relative technical merit does not invalidate the reasonableness of the Air Force's evaluation. 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 technical innovation and has as its objective the development of new technology. It is precisely because of the experimental and creative nature of this type of procurement that the contracting agency is given substantial discretion in determining which proposals it will fund. See, e.g., Noise Cancellation Technologies, Inc., B-246476; B-246476.2, Mar. 9, 1992, 92-1 CPD ¶ 269.

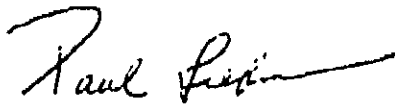
Here, the record shows that the evaluators and selection official clearly believed that both technical proposals were of high quality. This made the selection decision close, and the Air Force Program Manager in fact states that "there are outstanding features of both designs, and if I were to design an ideal system, it would include elements of each design," and that "[his] goal [was] to have two awards made" However, on this record, we cannot say the agency's decision to fund SQM's proposal was unreasonable; conversely, we note that if the agency had selected Quantum's proposal, we do not believe that this would have constituted an abuse of discretion either.

Quantum also alleges that the evaluation was tainted by bad faith, contending that the AFOSR Program Manager has a long-standing dislike of Quantum that arose during Quantum's

performance of a contract approximately 6 years ago, which prevented him from evaluating Quantum's proposal objectively.

The record does not support the allegation of bad faith. The Program Manager states that he has been disappointed by Quantum's performance in a SQUID-related development project in the past, and that 4 years ago, he told Quantum scientists that he believed the firm's failure in that project to deliver working instruments had undermined confidence in SQUID-based instruments for the type of application that was involved. However, he also refers to several projects, including the Phase I portion of this procurement, in which he ranked Quantum's proposal highest in his evaluation. In addition, his evaluation report and memoranda in this Phase II procurement are very favorable to Quantum; he praised the strengths in Quantum's proposal and stated that he would not hesitate to fund both proposals. His slight preference for SQM's approach is supported by reasonable technical conclusions. Under these circumstances, we find no basis to conclude that the Program Manager acted in bad faith, which requires a showing that the procuring official acted with specific and malicious intent to harm the protester. See Twehous Excavating Co., Inc., B-208189, Jan. 17, 1983, 83-1 CPD ¶ 42.

The protest is denied.

For 
 Robert P. Murphy
 Acting General Counsel