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# Decision

**Matter of:** Bode Cellmark Forensics, Inc. d/b/a Bode Technology

**File:** B-423754; B-423754.2

**Date:** November 21, 2025

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## DIGEST

Protest challenging the issuance of a Small Business Innovation Research (SBIR) program phase III sole-source contract is denied where the record demonstrates that the agency is procuring work that derives from, extends, or completes efforts performed under prior SBIR contracts.

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## DECISION

Bode Cellmark Forensics, Inc., doing business as Bode Technology, a small business of Lorton, Virginia, protests the award of contract No. 70CMSD25D00000001 to SNA International, LLC, a small business of Alexandria, Virginia, by the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), to provide staff and resources to implement a rapid deoxyribonucleic acid (DNA) testing program for ICE enforcement and removal operations. The protester contends that the agency improperly awarded the indefinite-delivery, indefinite-quantity contract as a noncompetitive small business innovation research (SBIR) program phase III award.

We deny the protest.

## BACKGROUND

This protest concerns ICE's requirement for assistance implementing a rapid DNA testing program to identify fraudulent familial relationship claims made by individuals entering or attempting to enter the United States. Agency Report (AR), Tab 2, Statement of Work (SOW) at 1. The scope of work includes program management, use of DNA reach-back support services (RBSS) software, and the provision of a RBSS support center for rapid DNA end-user assistance. *Id.* at 2; Contracting Officer's Statement (COS) at 1. The agency's requirement also includes "all resources needed to implement a DNA testing program," including training and supplies for processing and testing samples (*e.g.*, processing instruments, test kits, swabs, and supply kits). SOW at 2; COS at 1. After reviewing its program needs and SNA's prior SBIR efforts, ICE decided to meet the requirement by awarding an SBIR phase III contract to SNA. COS at 2; Memorandum of Law (MOL) at 2. The contract has a 2-year ordering period, and the estimated value of the contract is \$28,478,648. AR, Tab 7, Source Selection Decision (SSD) at 1.

The SBIR program is designed to increase the participation of small business concerns in federally funded research or research and development. See SBIR Program Act of 1982, 15 U.S.C. § 638 (the "SBIR statute"). The program has three phases. Under phase I, firms competitively apply for an award to test the scientific, technical, and commercial merit and feasibility of a concept. 15 U.S.C. § 638(e)(4)(A). If this is successful, a firm may be invited to apply for a phase II award to further develop the concept. *Id.* § 638(e)(4)(B). A phase III award is defined as work that "derives from, extends, or completes efforts made under prior funding agreements under the SBIR program." *Id.* § 638(e)(4)(C). Under this phase, firms are expected to obtain funding from non-SBIR government sources or the private sector to develop the concept into a product for sale in private sector or military markets.

By way of background, in 2019, DHS awarded SNA an SBIR phase I contract to develop a DNA reach-back concept of operations for DHS components. AR, Tab 8, Award Memorandum at 1. The purpose of the contract was to analyze the feasibility of developing a reach-back capability to review results and support fielded rapid DNA systems using DNA store/match/share capability. *Id.* SNA's proposed approach consisted of three major elements: DNA RBSS software (referred to as DNAConnect),<sup>1</sup> a DNA RBSS support center, and DNA RBSS accredited laboratory operations. *Id.*

In 2020, DHS awarded SNA an SBIR phase II contract to design and operationalize the DNA RBSS, including DNAConnect, the DNA RBSS support center, and the DNA RBSS accredited laboratory. *Id.*

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<sup>1</sup> The agency states that DNAConnect "is a module of the DHS [store/match/share] software platform that [DELETED]." AR, Tab 8, Award Memorandum at 1.

On March 26, 2025, after identifying SNA's prior SBIR efforts as relevant to the agency's current requirement to implement a rapid DNA testing program for ICE enforcement and removal operations, ICE sent SNA a request for proposal. COS at 1-2. After receiving and evaluating SNA's proposal, the agency awarded the SBIR phase III contract to SNA on May 14. *Id.* at 2.

On May 23, Bode filed a protest with our Office, arguing that ICE improperly awarded the contract on a sole-source basis, contending, generally, that the DNA testing equipment and services being procured did not derive from, extend, or complete the efforts made by SNA under its prior SBIR efforts. COS at 2. We dismissed the protest as academic after the agency advised our Office of its intent to take corrective action by reviewing its requirements and acquisition documentation, changing its requirements as necessary, and making a new award determination. *Bode Cellmark Forensics, Inc.*, B-423560, June 11, 2025 (unpublished decision).

Subsequently, during the voluntary corrective action, ICE revised the SOW, requested a revised proposal from SNA, evaluated SNA's revised proposal, and issued a new award memorandum. COS at 3. In reviewing SNA's revised proposal, the agency found that the proposed rapid DNA solution derived from and extended the research, architecture, and technical design developed under SNA's phase I and II contracts. AR, Tab 7, SSD at 2. The agency wrote that SNA's prior SBIR efforts "envisioned a scientifically rigorous and operationally scalable framework to support Rapid DNA testing in the field through a centralized forensic reach-back model," and those efforts provided the "foundation for what is now a fully operational software solution." *Id.*

On July 14, ICE confirmed its previous award determination and Bode filed this protest on July 23. COS at 3.

## DISCUSSION

Bode raises various arguments challenging the propriety of the SBIR phase III award.<sup>2</sup> While our decision here does not specifically discuss each and every argument, or permutation of the arguments raised by Bode in its submissions to our Office, we have considered all of the protester's assertions and find none furnishes a basis for sustaining the protest.<sup>3</sup>

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<sup>2</sup> In its initial protest, Bode argued it was impermissible for ICE to consolidate development of the reach-back capability with the acquisition of DNA testing capability. Protest at 20-21 (*citing* 10 U.S.C. § 2305(a)(1)(A)). Before filing the agency report, ICE requested dismissal of the allegation, asserting that ICE is not subject to the statute on which Bode's argument was premised. Req. for Partial Dismissal at 1-2. Bode then withdrew the protest allegation. Resp. to Req. for Partial Dismissal.

<sup>3</sup> For example, Bode argues that the phase III award exceeds the scope of the solicitation issued for the SBIR phase I award. Protest at 12-18. As the intervenor notes, Bode cites no legal authority for the proposition that a phase III award is limited  
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At the outset, we note that contracting agencies have broad discretion to determine their needs and the best way to meet them. *Crewzers Fire Crew Transport, Inc.*, B-402530, B-402530.2, May 17, 2010, 2010 CPD ¶ 117 at 3. We have recognized this discretion with respect to the SBIR program, and in reviewing the propriety of a phase I or II SBIR award, we have found that our review is limited to determining whether the agency violated any applicable regulations or solicitation provisions or acted in bad faith. *Wang Electro-Opto Corp.*, B-418523, June 4, 2020, 2020 CPD ¶ 187 at 5; *U S Positioning Grp., LLC*, B-294027, June 21, 2004, 2004 CPD ¶ 133 at 3.

With respect to SBIR phase III, the SBIR statute and policy guidance provide relatively limited requirements to justify an award. The relevant portion of the statute states that the SBIR program will include,

where appropriate, a third phase for work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program in which commercial applications of SBIR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal Government, by follow-on non-SBIR Federal funding awards[.]

15 U.S.C. § 638(e)(4)(C)(i). The statute further states that “[t]o the greatest extent practicable, Federal agencies . . . shall . . . issue, without further justification, Phase III awards relating to technology, including sole source awards, to the SBIR . . . award recipients that developed the technology.” *Id.* § (r)(4)(B).

The policy directive defines SBIR phase III work in a similar manner. SBIR/Small Business Technology Transfer (STTR) Policy Directive (May 2023) § 4(c) (“Phase III

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to the scope of work articulated in the solicitation issued for phase I. Intervenor Comments at 7. Our Bid Protest Regulations require that a protest include a sufficiently detailed statement of the grounds supporting the protest allegations, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), and 21.5(f). Allegations that facially do not demonstrate improper agency action are legally insufficient. *See, e.g., Eagle Hill Consulting, LLC*, B-421938.2, B-421938.3, Dec. 20, 2023, 2023 CPD ¶ 288 at 4; *INNOVIM, LLC*, B-419912, B-419912.2, Sept. 21, 2021, 2021 CPD ¶ 331 at 5-6.

As stated above, the SBIR statute provides that an agency may issue a phase III SBIR award for “work that derives from, extends, or completes efforts made under *prior funding agreements* under the SBIR program.” 15 U.S.C. § 638(e)(4)(C) (emphasis added). The SBIR statute does not require a phase III award to derive from, extend, or complete efforts as described in a prior SBIR solicitation. As such, we dismiss as legally insufficient the protester’s allegation that the phase III award exceeds the scope of the phase I solicitation.

refers to work that derives from, extends, or completes an effort made under prior SBIR/STTR Funding Agreements”). The policy directive clarifies that a federal agency may enter an SBIR phase III agreement at any time with an SBIR phase II awardee. *Id.*

Given these limited requirements and the significant discretion afforded to agencies in this area, the core issue we must resolve regarding Bode’s protest of the phase III award is whether ICE reasonably concluded that SNA’s proposed solution derives from, extends, or completes efforts made under prior SBIR awards.

#### ICE’s “Actual Requirement” and SNA’s Prior SBIR Efforts

The protester contends that the phase III award does not derive from, extend, or complete SNA’s prior SBIR efforts because ICE’s “actual requirement” is for rapid DNA testing services--and not RBSS software and a DNA RBSS support center. Comments & Supp. Protest at 12-13. In making this argument, Bode focuses on the agency’s actions prior to taking corrective action in response to Bode’s first protest. Namely, the protester points to a prior version of the SOW, which did not reference DNACConnect, and a March 2025 email in which the contracting officer stated the agency needed to “procur[e] DNA machines and test kits . . . that can be used for rapid DNA testing.” *Id.* at 12 (*quoting* AR, Tab 21, Agency Due Diligence Emails at 4). Bode asserts that this information demonstrates that ICE’s objective was to acquire DNA machines and test kits, and although the revised SOW references DNACConnect, this “tenuous connection to SBIR-developed work” cannot be used to support a phase III award. *Id.* at 13. ICE responds that the phase III contract “plainly derives from SNA’s prior SBIR efforts.” MOL at 9. The agency notes that the SOW requires SNA to use DNACConnect and the DNA RBSS support center developed under its prior SBIR efforts. *Id.*

We are not persuaded by the protester’s arguments. The agency’s actions prior to the voluntary corrective action and the scope of work described in a prior version of the SOW are not relevant to the propriety of the protested award. This protest pertains to the July 14 award to SNA, and this award decision was premised on the revised version of the SOW, which expressly references the technologies developed under SNA’s prior SBIR efforts. See AR, Tab 7, SSD; AR, Tab 8, Award Memorandum. This version of the SOW requires “use of the DNA RBSS Software (DNACConnect) for reach-back support services,” and it requires the contractor to “provide an RBSS Support Center for Rapid DNA end-user assistance.” SOW at 2. With respect to the RBSS support center, the SOW provides: “CONTRACTOR shall modify the DNA RBSS End-user Support Center Operations Manual, which derived from, and extends its previous SBIR efforts, as necessary to complete the requirements of this contract.” *Id.* at 3. Additionally, the SOW states: “CONTRACTOR shall use the DNA RBSS software, also known as[] DNACConnect, which derives from and extends the CONTRACTOR’s previous SBIR efforts contract effort as part of performing the requirements[.]” *Id.* at 4.

In other words, at a minimum, the SOW for the instant award extends SNA’s prior SBIR efforts because it requires the use of elements developed during SNA’s prior SBIR

efforts. SOW at 2-4. The protester asks us to focus on ICE actions taken prior to the first award and an obsolete version of the SOW and find the agency's "actual requirements" are machines and test kits. The agency's "actual requirements," however, are set forth in the SOW for the award, and that SOW establishes that the phase III award derives from, extends, or completes efforts from SNA's prior SBIR effort. In sum, the protester's arguments are not supported by the record, and this protest allegation is denied.<sup>4</sup>

#### Authority Under the SBIR Statute

In a similar vein, the protester alleges that ICE exceeded its authority under the SBIR statute in awarding the phase III contract to SNA because the majority of the contract price will be used to purchase commercially available machines, test kits, and consumable items from a third party--as opposed to the DNA RBSS software and RBSS support center developed under SNA's prior SBIR contracts. Protest at 18-20; see also Comments & Supp. Protest at 13-14.

Our Office considered and rejected a similar argument in *Digital Force Technologies, Inc.*, B-423319, May 19, 2025, 2025 CPD ¶ 115. In *Digital Force*, the protester argued that the agency improperly used SBIR phase III authority to award a contract because only a single component of the system to be acquired derived from, extended, or completed the relevant prior SBIR efforts, and many of the other components were commercially available items. We rejected the protester's arguments, noting the protester did not point to any statute, regulation, or other legal authority stating that an agency may not use SBIR phase III authority to procure a system where only a component of the overall system derives from, extends, or completes a prior SBIR effort. *Id.* at 13-14. We analyzed the relevant legal authorities and found there is no requirement in the SBIR statute or the policy directive that the entirety of a phase III solution must be derived from prior SBIR efforts. *Id.* at 14-15.

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<sup>4</sup> To the extent that Bode asks us to disregard the revised SOW as a pretext for making a phase III award, we decline to infer an improper motive with respect to the agency's actions. See Comments & Supp. Protest at 10-11, 13. As we have explained, government contracting officials are presumed to act in good faith, without unfair or biased motivations. *Career Innovations, LLC*, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8 (noting that government officials are presumed to act in good faith, and that we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition). Absent anything in the record to substantiate Bode's claims, and given the presumption of good faith, we find the allegation lacks merit. See, e.g., *Henry's Aerial Serv., Inc.; Evergreen Flying Servs., Inc.*, B-414238.7, B-414238.9, Aug. 10, 2017, 2017 CPD ¶ 257 at 8 (denying protest that cancellation of a solicitation was a pretext to avoid resolving protests where nothing in the record supported the protester's allegation).

Here, ICE sought a contractor to assist with the implementation of a rapid DNA testing program. SOW at 1. The testing program requires both SNA's SBIR-derived technology and commercially available items. Specifically, as discussed above, the SOW requires the use of the SNA's DNAConnect software and a RBSS support center, which SNA has developed under its prior SBIR efforts. *Id.* at 2. Additionally, as the protester claims, the DNA testing program requirement also requires the use of commercially available supply items such as processing instruments, test kits, swabs, and supply kits. While the agency's requirement may include these additional commercial supply items, it does not negate the fact that central elements of the agency's DNA testing program requirement also includes technology derived from SNA's prior SBIR efforts.

Bode has not identified any language in any applicable statute, regulation, or other legal authority that prohibits an agency from using a phase III award to acquire SBIR-developed components with commercially available items where the SBIR-derived components utilize commercially available items.<sup>5</sup> Nor has the protester identified any authority that limits portions of the contract price that may be used to procure commercially available items needed for performance. To the extent the protester asks our Office to find that an agency exceeds its authority under the SBIR statute if the commercial items account for a majority of the contract price, the statute does not establish the type of price test advanced by the protester. Accordingly, we deny Bode's argument that the phase III award was improper because the award includes commercially available items.<sup>6</sup>

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<sup>5</sup> As noted above, in its initial protest, Bode asserted ICE was prohibited from consolidating development of the reach-back capability with the acquisition of DNA testing capability. Protest at 20-21 (*citing* 10 U.S.C. § 2305(a)(1)(A)). The protester withdrew the protest allegation after the agency argued that ICE was not subject to the statute in question. Resp. to Req. for Partial Dismissal.

<sup>6</sup> In a corollary argument, Bode complains that ICE's corrective action in response to its May 2025 protest was unreasonable because instead of curing the errors alleged in its prior protest, the agency revised the SOW to clarify that it was acquiring DNA machines and test kits, as well as the elements SNA developed under its prior SBIR efforts, to implement the DNA testing program. Comments & Supp. Protest at 11; *see also* Supp. Comments at 3-6. The protester suggests that the only reasonable corrective action available to ICE was to limit the procurement to demonstrating reach-back capability in fielded rapid DNA systems. Comments & Supp. Protest at 7. We deny this protest ground. As the agency argues, and we agree, the details of implementing corrective action are within the sound discretion and judgment of the contracting agency, and our Office will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Supp. MOL at 2; *The Severson Grp., LLC, B-418673.2 et al.*, Aug. 17, 2020, 2020 CPD ¶ 275 at 4. As discussed herein, an agency may use SBIR phase III authority to procure a system where aspects of the overall system derive from, extend, or complete a prior SBIR effort, and other aspects of the system do not derive from, extend, or complete the

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In sum, we have considered the protester's various challenges to the propriety of the SBIR phase III award, and we find none of the allegations provides a basis to sustain the protest. Bode has not provided any reason to question the reasonableness of ICE's conclusion that SNA's proposed solution derives from, extends, or completes efforts made under prior SBIR awards.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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effort. *Digital Force, supra*. Accordingly, the agency's corrective action was not unreasonable.