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# Decision

**Matter of:** Squire Solutions, Inc.

**File:** B-419477.2

**Date:** June 10, 2021

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Alan Grayson, Esq., for the protester.  
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## DIGEST

1. Protest that the agency unreasonably rejected the protester's phase I proposal submitted in response to a Small Business Innovation Research solicitation is denied where agency evaluation did not violate solicitation or procurement regulations and was otherwise reasonable.
  2. Protest alleging that evaluation was tainted by bias on the part of an agency evaluator is denied where the protester has failed to provide any convincing proof to demonstrate that agency evaluators acted in bad faith or were biased.
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## DECISION

Squire Solutions, Inc., a small business of New York, New York, protests the decision by the Department of the Navy not to select its proposal for award under the Department of Defense Small Business Innovation Research (SBIR) program broad agency announcement (BAA) No. SBIRDOD-20-2-BAA, Topic N202-133, which invited phase I proposals for research and development projects regarding multimodal interaction technologies to support small unit leaders. Squire contends the agency's evaluation of its proposal was improper.

We deny the protest.

## BACKGROUND

The SBIR program was established under the Small Business Innovation Development Act of 1982, and is codified in section 98 of the Small Business Act. 15 U.S.C. § 638. The program is designed to increase the participation of small business concerns in federally funded research or research and development (R/R&D). Pursuant to this

authority, certain federal agencies are required to provide a program under which a portion of the agency's R/R&D effort is reserved for award to small business concerns. See 15 U.S.C. §§ 638(e)(4), (f).

The SBIR 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 certain concept. 15 U.S.C. § 638(e)(4)(A). If successful, the firm may be invited to apply for a phase II award to further develop its phase I concept. 15 U.S.C. § 638(e)(4)(B). For phase III, the Small Business Act provides that "where appropriate," there may be a "third phase 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). Under phase III, firms are expected to obtain funding from non-SBIR government sources or the private sector to develop the concept into commercial products or products or services for use by the federal government. *Id.* The protest here concerns a phase I funding decision. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2-4.

The BAA was issued on June 3, 2020, pursuant to the Small Business Administration (SBA) SBIR and Small Business Technology Transfer (STTR) Program Policy Directive.<sup>1</sup> Agency Report (AR), Tab 1, SBA SBIR/STTR Policy Directive, May 2, 2019, at 1-152; Tab 16, BAA at 1, 5. As relevant here, the solicitation anticipated the award of one or more phase I contracts in response to Navy Topic N202-133, Multimodal Interaction Technologies to Support Small Unit Leaders. BAA at 286. The solicitation described the requirement as follows:

This SBIR topic seeks to integrate existing human-machine interface technologies, minimize the amount of extra equipment needed to be carried by the warfighter, and develop a prototype system that allows for graceful transition between [input/output] methodologies based on a number of factors. . . .

PHASE I: Determine requirements for how warfighters will use companion [unmanned systems] in missions, focusing on [Naval Special Warfare] NSW and Marine Corps squad leader use cases. Collect information on various [input/output] methodologies and determine how they can be integrated into a holistic [unmanned systems] control and monitoring system. Phase I deliverables will include: (1) use cases for warfighter and [unmanned systems] teaming, (2) identification of control and monitoring systems for integration, (3) an understanding of the pros and cons of each [input/output] modality and associated human factors principles for design, and (4) mock-ups or a prototype of the system.

BAA at 286.

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<sup>1</sup> For consistency with the record, we refer to the solicitation as a BAA, the responding firms as applicants, and the responses to the solicitation as proposals.

The BAA required applicants to submit a statement of work for phase I which addressed the following:

Provide an explicit, detailed description of the Phase I approach. . . . The Statement of Work should indicate what tasks are planned, how and where the work will be conducted, a schedule of major events, and the final product(s) to be delivered. The Phase I effort should attempt to determine the technical feasibility of the proposed concept. The methods planned to achieve each objective or task should be discussed explicitly and in detail.

*Id.* at 21.

The BAA established that selections for funding would be made on a best-value basis, based on three evaluation criteria: (1) the soundness, technical merit, and innovation of the proposed approach and its incremental progress toward topic or subtopic solution; (2) the qualifications of the proposed principal/key investigators, supporting staff, and consultants; and (3) the potential for commercial applications (government or private sector) and the benefits expected to accrue from the commercialization.<sup>2</sup> BAA at 25. The technical merit criterion was most important, with the qualifications of key personnel and commercialization potential being of equal importance. *Id.* at 172; COS/MOL at 3. The solicitation also notified applicants that the Navy was under no obligation to fund any proposal or any specific number of proposals in a given topic. BAA at 14.

Twenty-seven applicants, including Squire, submitted proposals by the July 2 closing date. AR, Tab 10, Investigation Interviews at 22. The phase I proposals were evaluated by a Navy technical point of contact (TPOC)/topic chair and four technical evaluators. AR, Tab 13, TPOC Declaration, Apr. 7, 2021, at 1. Each of the technical evaluators independently reviewed the proposals against the stated evaluation criteria, and assigned strengths, weaknesses, and adjectival ratings for each criterion. *Id.* The TPOC/topic chair and the technical evaluators then conducted a teleconference to discuss the proposals, after which the technical evaluators provided their reviews to the TPOC/topic chair. *Id.* Finally, the TPOC/topic chair was responsible for synthesizing and elaborating on the distinctive aspects of the proposals, and preparing the evaluation summary and funding recommendation. *Id.*; see AR, Tab 5, Technical Evaluation Report of Squire at 1.

By September 8, after completing its evaluation, the Navy selected four applicants for phase I award. Squire was not selected for award. COS/MOL at 4. On September 18, Squire filed an agency-level protest challenging its non-selection for award. *Id.* On October 9, the agency notified Squire that it would reevaluate Squire's proposal. *Id.*

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<sup>2</sup> Squire alleges that the BAA contained an internal inconsistency regarding the relative importance of the stated evaluation criteria. Protest at 5. Any challenge by the protester, at this point, to an apparent defect in the solicitation, is untimely and will not be considered. 4 C.F.R. § 21.2(a)(1).

On December 2, the Navy completed its reevaluation of Squire's proposal. The technical evaluators found Squire's proposal to be either "satisfactory" or "marginal" under each evaluation criterion, and identified supporting strengths and weaknesses. AR, Tab 5, Technical Evaluation Report of Squire at 2-6. The TPOC/topic chair then concluded that the weaknesses in Squire's proposal (e.g., the limited innovation with little detail addressing the broader technical challenges; the increased risk associated with personnel without key experiences relevant to the topic) outweighed its strengths, and did not recommend Squire for award. *Id.* at 1.

On December 8, the Navy notified Squire that it had completed its reevaluation and again had not selected Squire for a phase I award. On December 18, Squire filed a protest with our Office and alleged the agency's evaluation was unreasonable and involved impermissible bias. Protest, B-419477, Dec. 18, 2020. On January 7, 2021, the Navy informed our Office that it would take corrective action by conducting an investigation into the alleged procurement improprieties and, based on the results thereof, either reevaluate applicants' proposals or cancel the solicitation. AR, Tab 9, Agency Notice of Corrective Action, B-419477, Jan. 7, 2021. We dismissed that protest as academic. *Squire Sols., Inc.*, B-419477, Jan. 8, 2021 (unpublished decision).

On March 4, the agency informed Squire that it had completed its investigation and found no improprieties. AR, Tab 12, Navy Notice of Corrective Action Completion. The Navy also stated that it reaffirmed its prior evaluation results and non-selection of Squire for phase I award. *Id.* This protest followed.

## DISCUSSION

Squire raises two primary arguments: (1) that the agency's evaluation of its proposal was unreasonable and inconsistent with the terms of the BAA; and (2) that one of the agency evaluators was biased and had retaliated against it.<sup>3</sup> Protest at 8-29. We have reviewed all of the protester's arguments and, although we do not address them all, find that none provides a basis on which to sustain the protest.

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<sup>3</sup> Squire also contends the agency's evaluation was, in various regards, inconsistent with the requirements of Federal Acquisition Regulation (FAR) part 15. Protest at 3-4, 7-8. This contention fails to state a valid basis of protest and is dismissed. SBIR procurements are conducted pursuant to 15 U.S.C. § 638 and applicable SBIR policy guidance, and are not governed by FAR part 15. See *Global Aerospace Corp.*, B-414514, July 3, 2017, 2017 CPD ¶ 198 at 8 (finding that although SBIR procurement may utilize competitive procedures, they are not conducted on the basis of "competitive proposals" of which FAR part 15 procedures are the hallmark). Squire also alleges the Navy's evaluation improperly employed a double standard, solely on the basis that it is highly "unlikely that any of the awardees was able to name a Principal Investigator with a background superior to a former SEAL Officer and former NSW Squad Leader." Protest at 13. We find this aspect of Squire's protest to be entirely speculative and, as such, factually and legally insufficient. This allegation is likewise dismissed. 4 C.F.R. §§ 21.1(f), 21.5(f).

## Evaluation of Squire's Proposal

Squire alleges the evaluation of its technical proposal was unreasonable. The protester essentially disputes each and every weakness identified by the agency's technical evaluators as well as the TPOC/topic chair's evaluation summary. Had the Navy conducted a reasonable evaluation, Squire argues, it would have been rated higher and selected for award. Protest at 9-29.

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. 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. *Id.* In reviewing protests against an allegedly improper evaluation, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria. *Science, Math & Eng'g, Inc.*, B-410509, Jan. 7, 2015, 2015 CPD ¶ 31 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. 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. *See, e.g., Wang Electro-Opto Corp., supra; Noise Cancellation Techs., Inc.*, B-246476, B-246476.2, Mar. 9, 1992, 92-1 CPD ¶ 269 at 3.

We have reviewed all of the protester's arguments and find no basis to conclude that the Navy violated applicable solicitation provisions or regulations, or that the evaluation was otherwise unreasonable. We discuss several representative examples below.<sup>4</sup>

For example, under the first evaluation criterion, the agency evaluated the soundness, technical merit, and innovation of the proposed approach and its incremental progress toward the topic solution. The primary objective of the SBIR topic here was the establishment of multiple, human-computer interaction methodologies, and graceful degradation and handoff of these methodologies. BAA at 286; AR, Tab 5, Technical Evaluation Report of Squire at 1.

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<sup>4</sup> As a preliminary matter, we note the evaluation record consists primarily of the technical evaluation report, which contains the findings of the TPOC/topic chair and four technical evaluators. AR, Tab 5, Technical Evaluation Report of Squire at 1-6; see Tab 2, Squire Proposal at 1-27. Additionally, we also refer to the agency's responses to the protest elaborating on the technical evaluation, as we find them to be consistent with the contemporaneous record. COS/MOL; AR, Tab 13, TPOC/Topic Chair Declaration, Apr. 7, 2021, at 1-2.

The evaluators all assigned weaknesses--some with several parts--to Squire's proposal under this evaluation criterion, and concluded generally that the submission lacked sufficient detail. AR, Tab 5, Technical Evaluation Report of Squire at 2 (finding "there is not a detailed amount of information that provides a clear-cut path to developing [the proposed] solution"); at 3 ("The offeror only mention[s] a 'System Management Portal' and does not offer any other description of what it would do, what benefits it provides, or reduction in operator interaction it brings."). The TPOC/topic chair summarized these technical evaluator findings as follows:

The proposal states that research, observation, and end user requirements will identify the most viable solution to this topic. While this is a potential approach, there is not a detailed amount of information that provides a clear-cut path to developing this solution, and the approach to identify other interaction technologies is lacking in detail. For example, while "market research" will examine available input and output systems, there is no defined rubric to evaluate these technologies.

*Id.* at 1; see also AR, Tab 13, TPOC/Topic Chair Declaration, Apr. 7, 2021, at 2 ("A fundamental problem under Criteria A is that Squire did not address the core issue of graceful transition between input/output modalities.").

Squire protests that the assigned weakness was unreasonable. The protester does not generally dispute that its proposal was short on detail regarding phase I technical objectives. Rather, Squire contends that the agency's criticism for lacking sufficient detail might be appropriate for a phase II or phase III proposal, but not as part of a phase I proposal, because "developing this solution is exactly what Phase I funding is supposed to underwrite. . . ." Protest at 12.

We find the agency's evaluation to be reasonable. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements. *Right Direction Tech. Sols., LLC*, B-414366.2, June 13, 2017, 2017 CPD ¶ 202 at 7. An offeror also runs the risk that a procuring agency will evaluate its proposal unfavorably where it fails to do so. *Id.* Here, the agency reasonably found that not only did Squire's proposal lack detail regarding a solution to the SBIR topic, it also lacked sufficient detail regarding the methodology by which Squire would identify and evaluate interaction technologies that might form the basis of a solution. See AR, Tab 13, TPOC/Topic Chair Declaration, Apr. 7, 2021 at 2 ("[N]o system architecture, roadmap or proposed solution is described, depicted, or otherwise noted that would begin to address the [modality] disparities required within the topic call."). The BAA, however, required as part of the phase I submission, "an explicit, detailed description of the Phase I approach," including the planned methods to achieve the determination of technical feasibility of the proposal concept. BAA at 21. In sum, while Squire disputes the amount of detail that the Navy expected as part of phase I topic submissions, we find such disagreement fails to establish that the evaluation was unreasonable or otherwise improper.

As another example, under the second evaluation criterion, the agency was to evaluate the qualifications of Squire's proposed principal/key investigators, supporting staff, and consultants. Here, the agency evaluators concluded that Squire had a strong understanding of Special Operations Forces mission challenges, and a great deal of relevant military experience. AR, Tab 5, Technical Evaluation Report of Squire at 1. However, the agency evaluators also found that with regard to Squire's two identified key personnel--its principal investigator and chief technical officer--the proposal failed to demonstrate any previous experience relevant to this topic in human factors, unmanned systems, control software, and human/human-machine teaming. *Id.* The agency concluded that because of the increased risk associated with key personnel without experience considered critical to the SBIR topic, Squire's proposal was not among the most promising technical and scientific approaches and did not warrant selection. *Id.*

Squire does not dispute that its two identified key personnel do not possess formal human factors training and experience, or a technical background relative to unmanned system or human-computer interface technologies. Rather, Squire argues that insofar as the proposal noted the strong network, resources and support available to the company, including in the areas questioned by the agency evaluators, the Navy's evaluation was improper. Protest at 21.

We find the agency's evaluation here to be reasonable and consistent with the stated evaluation criterion. As set forth above, the record shows the agency evaluators fully considered the qualifications which Squire's principal employees did, and did not, possess. Further, there is no support for Squire's assertion that the agency failed to consider the qualifications of Squire's proposed supporting staff and consultants. Rather, the record reflects the agency reasonably placed greater emphasis on the qualifications of Squire's two key personnel, the individuals which Squire proposed to lead its effort. Quite simply, the agency was not required to overlook the clear lack of experience of Squire's principal personnel relevant to the SBIR topic here merely because of the qualifications of the applicant's proposed supporting staff and consultants, as the protester suggests.

#### Alleged Agency Bias

Squire also alleges that the Navy was biased against the firm. Specifically, the protester contends that a particular technical evaluator, J.H., was biased against Squire, and "blacklisted" the firm from receiving SBIR contract awards.<sup>5</sup> *Id.* at 8-9. In support of its allegation, Squire submitted declarations from two individuals, who were allegedly told by other individuals, of statements made by J.H. which indicated bias against

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<sup>5</sup> Squire also contends that the reason for J.H.'s bias "appears to be that Squire's filing of an agency-level protest was a hostile act toward" the Naval Special Warfare Command's innovation office. Protest at 8.

Squire.<sup>6</sup> Protest, exh. A., Corbett Declaration at 1-2; exh. B, Olson Declaration at 1-2. Squire further argues that to rectify this bias, “the GAO either should direct that award be made to Squire, or that the four awards made to other [applicants] be terminated for convenience and that the acquisition be restarted *ab initio*, independently and in an untainted manner.” Protest at 9. The Navy argues that there was no bias or bad faith in the evaluation, all proposals were evaluated based only on the proposals’ merits, and Squire’s earlier protest--as the protester suggests--was not the reason why Squire’s proposal was determined not to be among the most promising technical and scientific approaches. COS/MOL at 6-7.

With regard to allegations of bias, we note that government officials are presumed to act in good faith, and a protester’s claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof. *Mercury Data Sys., Inc.*, B-413217, Sept. 9, 2016, 2016 CPD ¶ 256 at 6-7. Our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Vehicle Data Sci., Inc.*, B-413205, B-413205.2, Aug. 15, 2016, 2016 CPD ¶ 224 at 5; *Fantastic Data*, B-299076, Feb. 5, 2007, 2007 CPD ¶ 32 at 6. As detailed below, we find no basis to conclude that the agency’s evaluation of Squire’s proposal was tainted by bias, and the protester has failed to provide convincing proof of any such bias or lack of impartiality. To the contrary, the record reflects that Squire’s proposal was not funded due to reasonable and critical concerns related to the evaluation criteria set forth in the BAA.

After Squire raised the allegation of bias in its earlier protest to our Office (B-419477), the Navy decided to take corrective action and investigate the allegation. COS/MOL at 5-6. Specifically, the contracting officer conducted an inquiry into two specific areas: (1) whether there had been a violation of the Procurement Integrity Act (PIA) (41 U.S.C. §§ 2101-2107); and (2) whether there had been a violation of the ethical standards of conduct applicable to all government employees, including the requirement of impartiality (5 C.F.R. § 2635.101). AR, Tab 11, Agency Investigation Report at 1-12; Tab 10, Investigation Interviews at 1-53. As part of this investigation the contracting officer interviewed J.H., the other three technical evaluators, as well as the TPOC/topic chair responsible for reviewing Squire’s proposal.<sup>7</sup> AR, Tab 11, Agency Investigation Report at 2-6. The contracting officer also interviewed 13 additional employees of the office in which J.H. worked. *Id.* at 6-8. All the technical evaluators stated that they provided their respective technical opinions as subject matter experts and that there was no bias in the evaluation process. *Id.* at 2-6. The TPOC/topic chair, who oversaw and controlled the proposal evaluation review, also stated that he never heard J.H.

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<sup>6</sup> Neither of the two declarations submitted by Squire, however, identified the individual or individuals from the agency who allegedly heard J.H. making statements that may have indicated bias against Squire. See Protest, exh. A, Corbett Declaration at 1-2; exh. B, Olson Declaration at 1-2.

<sup>7</sup> The interviews were conducted by means of written responses to a detailed set of questions. AR, Tab 11, Agency Investigation Report at 10-12; Tab 10, Agency Investigation Interviews at 1-53.



make any statements indicating bias against Squire. *Id.* at 5-6; AR, Tab 13, TPOC/Topic Chair Declaration, Apr. 7, 2021, at 1. All of the other interviewees also stated that they were unaware of any bias regarding the SBIR topic here, or that a firm had been “blacklisted” from award. AR, Tab 11, Agency Investigation Report at 6-7, 9. Based on the findings of the investigation, the contracting officer ultimately concluded that no violations of the PIA had occurred, and the allegation of bias could not be substantiated. *Id.* at 9.

We find that the agency conducted a detailed investigation of the protester’s allegations and reasonably concluded that there was no evidence of bias on the part of technical evaluator J.H. or any other government official. As set forth above, the record reflects the contracting officer thoroughly gathered information from all the technical evaluators of Squire’s proposal, including the TPOC/topic chair who oversaw and controlled the agency’s evaluation process, as well as a substantial number of other individuals who may have had knowledge relevant to the protester’s allegations. AR, Tab 11, Agency Investigation Report at 1-12. With respect to J.H., the contracting officer concluded the individual was but one of the five technical evaluators who independently participated in the assessment of Squire’s proposal; that he did not control or direct the actions of the other technical evaluators; and that J.H.’s personal evaluation of Squire was consistent with the assessment of the other evaluators and, on its face, did not reflect bias.<sup>8</sup> AR, Tab 11, Agency Investigation Report at 1-9. Quite simply, the contracting officer’s ultimate determination that there was no evidence of bias, and that Squire’s assertion could not be substantiated, was both reasonable and supported by the record.

Squire argues that the declarations it submitted are convincing proof of bias on the part of J.H. Protest at 8-9. Squire also contends, as evidenced by various agency emails which voiced generally a frustration with the protest process, that all the Navy technical evaluators were in fact incapable of evaluating Squire’s proposal in an impartial manner. Comments at 9-12. We disagree. The protester has provided no convincing evidence of bias on the part of technical evaluator J.H. or bad faith by the agency.

Here, the two declarants for Squire did not possess first-hand knowledge of any information indicating bias. At most, the declarations are statements of what others allegedly heard a third individual say. Moreover, the declarations failed to provide the names of the individuals who allegedly had direct knowledge (or heard) of relevant information (nor did Squire provide this information at a later date). As set forth above, government officials are presumed to act in good faith, and a protester’s claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof. *Sevatec, Inc.*, B-416617 B-416617.2, Nov. 1, 2018, 2018 CPD ¶ 379 at 4-5, *citing Celeris Sys., Inc.*, B-404651, Mar. 24, 2011, 2011 CPD ¶ 72 at 7. We likewise find the substance of the agency’s emails to which Squire cites as support for its claim, falls far short of the convincing proof alleged by the protester.

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<sup>8</sup> In fact, the record reflects that J.H.’s individual rating and ranking of Squire was higher than that of any of the other agency technical evaluators. AR, Tab 5, Technical Evaluation Report of Squire at 1; Tab 10, Agency Investigation Interviews at 3.

Finally, we find Squire's alleged motivation for the alleged agency bias rings hollow. Squire asserts that the reason behind J.H.'s bias was Squire's decision to file the earlier agency-level protest. Protest at 7-8. Squire, however, also asserts that the Navy's reevaluation of the applicant's proposal following the agency-level protest "was not markedly different from the initial evaluation," and "often merely restated, or made minor adjustments to, the initial evaluation." Protest at 7. If the agency's initial evaluation predated any motivation for bias against Squire, and the agency's reevaluation was essentially the same as the initial evaluation as Squire claimed, the protester has failed to explain how the alleged bias affected the evaluation of its proposal.

In sum, we find that the protester has failed to provide convincing proof of any bias or lack of impartiality, and the record reflects that Squire's proposal was not funded due to legitimate concerns related to the evaluation criteria set forth in the BAA.

The protest is denied.

Thomas H. Armstrong  
General Counsel