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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-215879 **DATE:** December 26, 1984

MATTER OF: Electrochimica Corporation

DIGEST:

1. Selection of Source Evaluation Board members falls primarily within the discretion of the procuring activity, and thus will not be questioned by our Office absent evidence of actual bias.
2. We will question contracting officials' assessments of the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of the procurement statutes or regulations. Moreover, the determination of a competitive range is primarily a matter of administrative discretion which we will not disturb absent a clear showing that the determination is unreasonable.
3. Protest that agency improperly awarded contract allegedly after a receiving notice of GAO protest is denied because alleged deficiency is a procedural one that does not affect the validity of the award.

Electrochimica Corporation (ELCA) protests the Department of the Navy's failure to include it within the competitive range under Request for Proposals (RFP) No. N60921-84-R-0029 and the subsequent award of the contract to Honeywell. We deny the protest.

The contract is for a two-phased research and development effort regarding lithium rechargeable batteries. In the first phase, the contractor is to derive in detail the technology to satisfy specific battery performance criteria outlined in the solicitation. This phase includes, for

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instance, research into cathode and electrolyte composition, cell construction and fabrication techniques, and identification of the approach to be used in implementing the technology. (The terms "cathode" and "anode" refer, respectively, to the negative and positive poles of a battery; "electrolyte" is the solution in which the poles are immersed. In general terms, the anode and cathode, composed of different materials, react chemically with the electrolyte to produce electricity.) In phase 2, the contractor is to apply the technology developed in the first phase to the design and development of prototype batteries. Performance of phase 2 is contingent upon successful completion of phase 1.

The eight proposals submitted were evaluated by a five-member Source Evaluation Board (SEB) comprised of four employees of the Electrochemical Division of the Naval Surface Weapons Center and one employee of the Office of Naval Research. All five members hold doctorate degrees. The SEB assigned numerical scores for each of three major factors: technical, corporate experience and personnel. Cost was not scored. The RFP stated that estimated cost was to be compared to technical competence to determine the combination of most probable cost and technical/management approach that would be most advantageous to the government.

ELCA proposed to research two broad approaches to battery technology which, taken together, involved the investigation of four cathodes, four anodes, and ten electrolytes. ELCA's proposal identified three key staff members and one part-time consultant to be used for this effort. The SEB considered both of ELCA's proposed approaches to be unproven and regarded ELCA's proposed effort as too ambitious and thinly staffed. In addition, the SEB noted that ELCA appeared to lack a "dry room" and certain test equipment which the SEB considered important.

In contrast, Honeywell offered one low risk technical approach and one high risk technical approach concentrating on advancing cathode technology. The SEB considered Honeywell to offer a good mix of competent personnel in addition to a part-time consultant and viewed Honeywell's complement of technical facilities and equipment to be

excellent. The narrative evaluation for EIC, the only other vendor in the competitive range, reflects a similar assessment by the SEB.

Honeywell received a point score of 88 with estimated costs of \$550,284. EIC received a point score of 86 with estimated costs of more than \$1 million. The remaining six offerors received point scores from 57 to 72. ELCA received a point score of 59 with estimated costs of \$491,897.

ELCA first contends that the Navy's selection of the particular five SEB members was improper and that at least four of the SEB members were biased against ELCA. ELCA seems to be arguing that since four of the SEB members were from the same office and that office allegedly was biased toward a particular technical approach, it was improper to "load" the board with that bias. ELCA has not shown that the Navy improperly selected its SEB members. Selection of SEB members falls primarily within the discretion of the procuring activity, and thus will not be questioned by our Office absent evidence of actual bias. Maximus, B-195806, Apr. 15, 1981, 81-1 CPD ¶ 285. Because ELCA merely alleges that four of the five SEB members worked together and that they favored a particular technical approach, it has not met its burden of proving bias. In this respect, the record shows only that the SEB viewed ELCA's approach as risky and unproven, a judgment clearly within the SEB's discretion.

ELCA next contends that it was improperly omitted from the competitive range. We will question contracting officials' assessments of the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of the procurement statutes or regulations. This is because the determination of the competitive range is primarily a matter of administrative discretion which we will not disturb absent a clear showing that the determination is unreasonable. JGMA Development Corp., B-200754, Mar. 30, 1981, 81-1 CPD ¶ 234.

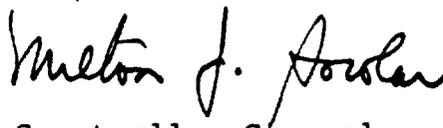
In arguing that the SEB erred in evaluating its proposal, ELCA offers information not originally included in its proposal. Otherwise, ELCA merely disagrees with the SEB assessment of the value and viability of ELCA's

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proposal. The fact that the protester does not agree with an agency's evaluation of its proposal does not render the evaluation unreasonable. PRI, Inc., B-210714, Mar. 26, 1984, 84-1 CPD ¶ 345. Further, it is a basic principle of negotiated procurements that proposals must be evaluated solely on the basis of information furnished with them. Georgetown Air & Hydro Systems, B-210806, Feb. 14, 1984, 84-1 CPD ¶ 186. Therefore, we cannot say that either the SEB's evaluation or the Navy's decision to exclude ELCA from the competitive range was unreasonable.

Finally, ELCA contends that the Navy, knowing that ELCA was in the process of filing a protest, improperly rushed to award the contract to Honeywell in an attempt to circumvent the procedures for awarding a contract while a protest is pending at our Office. The record does not show any preaward protest to GAO. Rather the record shows that ELCA merely notified the Navy that it would protest to us, if necessary, and that the Navy awarded the contract several days later. Further, the Navy advises that it followed the procedures for award of a contract while a GAO protest is pending by determining that award was required notwithstanding the protest. See Federal Acquisition Regulation, § 14.407-8(b), 48 Fed. Reg. 41,102, 42,184 (1983) (to be codified at 48 C.F.R. § 14.407-8(b)). In any event, we have held that the alleged deficiency is a procedural one which does not affect the validity of the award. See Martin Tool and Die Inc., B-208796, Jan. 19, 1983, 83-1 CPD ¶ 70.

The protest is denied.

for 
Comptroller General
of the United States