

Richman



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sechan Electronics, Inc.

File: B-233943

Date: March 31, 1989

DIGEST

1. Unfair motives will not be attributed to government procurement officials on the basis of inference or supposition; the mere fact that an offeror slightly reduced its best and final offer to a price just below its competitor's initial price does not establish that there was any improper price disclosure by the procuring agency.
2. In a negotiated procurement, the decision to request best and final offers from all offerors is discretionary and there is nothing improper in conducting discussions where the agency reasonably considered them to be warranted.
3. A statement allegedly made at a debriefing conference which is contradicted by other evidence in the record does not establish that an award decision was based solely on an extremely small price differential.
4. Allegation that the value of certain government furnished property made available to the awardee was underestimated is not for consideration where, even if the protester's calculations are correct, the alleged cost change would not offset the awardee's technical superiority, and would not affect the award determination.

DECISION

Sechan Electronics, Inc., protests the award of a firm-fixed-price contract for 11 conversion kits for the Armored Box Launch Weapons Control System, to McDonnell Douglas Missile Systems Company, under request for proposals (RFP) No. N00019-88-R-0098, issued by the Naval Air Systems Command, Department of the Navy. Sechan alleges that it should have been awarded the contract on the basis of initial offers, under which Sechan submitted the low-priced proposal; that discussions were conducted without any legitimate reason, during the course of which Sechan's

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initial price allegedly was disclosed to McDonnell Douglas; and that Sechan's best and final offer was actually lower priced than McDonnell Douglas', but that the Navy miscalculated the rental value of certain government furnished property (GFP) which was available rent-free to McDonnell Douglas.

We find the protest without merit.

The solicitation was issued on July 7, 1988, for conversion kits to correct problems that the Navy had experienced in the operation of the Armored Box Launch Weapons Control System, which McDonnell Douglas had designed. McDonnell Douglas had also designed and was in the process of producing 8 such conversion kits for the Navy, and the Navy had obtained the technical data package for the protested procurement under that McDonnell Douglas conversion kit contract.

The current RFP evaluation section provides that award will be made to the offeror whose proposal, cost and other factors considered, is evaluated to best meet the needs of the government. Evaluation factors are listed in descending order of relative importance, with price stated to be most important and higher than the areas of technical, program management and prior experience. Technical is indicated to be more important and significantly higher than program management and prior experience, which are stated to be of equal importance.

A pre-proposal conference was held on July 21, 1988, and, after the issuance by the Navy of written responses to vendor questions and of two amendments, initial proposals were received from Sechan and McDonnell Douglas only, by the September 12 closing date. Sechan's initial price of \$19,206,267 was approximately 3 percent lower than McDonnell Douglas' initial price; the proposals were rated substantially equal technically; and both offers were determined technically acceptable and within the competitive range. However, both offerors failed to address areas in the statement of work which the Navy technical review team considered vital to performance of the contract. In addition, the chairman of the technical review team desired to perform a site survey of Sechan's facility in order to verify manufacturing aspects of Sechan's proposal because, having had no prior contracts with Sechan, the Navy was not familiar with Sechan's production facility. This site survey was performed in October and did not result in any change in the evaluation of Sechan's proposal.

In November, letters containing items for discussion were sent to both offerors, the written responses to which were considered unsatisfactory by the technical review team. Accordingly, on November 18, oral discussions were held with both McDonnell Douglas and Sechan. During these discussions, McDonnell Douglas was advised that it had not submitted the RFP-mandated cost information on the rent-free use of government-furnished property (GFP) in its possession, which was required on or before the due date for best and final offers (BAFOs). On November 22 the Navy requested BAFOs from both offerors by November 30. Upon receipt of BAFOs, the technical review team performed a new technical evaluation, as a result of which the technical scores for both proposals were increased. Based on this evaluation, McDonnell Douglas' BAFO was technically rated almost 10 percent higher than Sechan's. McDonnell Douglas reduced its BAFO price to \$19,190,924; Sechan's BAFO price of \$19,206,267 remained unchanged from its initial offer.

Section M, clause 1.0 of the RFP provides for the adjustment of the proposed price to eliminate any competitive advantage, should it exist, due to the rent-free use of GFP by any offeror. To facilitate this adjustment, clause L-32 of the RFP requires offerors to provide cost information concerning GFP usage in sufficient detail to permit calculation of the rental value of such GFP. Based on the cost information supplied by McDonnell Douglas in its BAFO, the Navy calculated the rental value of McDonnell Douglas' GFP, in accordance with Federal Acquisition Regulation (FAR) § 52.245-9, at \$12,636.17. When this amount was added to McDonnell Douglas' BAFO price, McDonnell Douglas' final evaluated total price became \$19,203,560, which remained just slightly lower than Sechan's final price of \$19,206,267.

A Navy procurement review board met during the first week of December to evaluate the relative cost and technical merit of the two proposals and recommended award to McDonnell Douglas on the basis that its offer was most advantageous to the government, price and other factors considered. On December 13, the source selection authority adopted the findings of the board, and on December 13, 1988, award was made to McDonnell Douglas. After a December 20 debriefing, Sechan filed this protest with our Office.

Sechan's allegation that it should have received the award on the basis of initial offers and that discussions (during which Sechan alleges that its initial price was improperly disclosed to McDonnell Douglas by the Navy) should not have been conducted is made in the context of a general allegation that the Navy was biased because it had predetermined

to award the contract to McDonnell Douglas. However, unfair motives will not be attributed to government procurement officials on the basis of inference or supposition. Consolidated Group, B-220050, Jan. 9, 1986, 86-1 CPD ¶ 21. In support of the alleged price disclosure, Sechan merely points to the fact that McDonnell Douglas' final price was decreased to an amount just slightly below Sechan's initial offer. However, McDonnell Douglas' price reduction was, in fact, relatively small (approximately 3 percent), not massive as Sechan insists, and other than Sechan's speculation that its price was improperly disclosed--a proposition which both McDonnell Douglas and the Navy dispute--there is no evidence in the record to support Sechan's allegation that there was any disclosure, or that the Navy's selection procedure was affected by a desire to award to McDonnell Douglas, regardless of cost or technical merit. See Evaluation Technology, Inc., B-232054, Nov. 15, 1988, 88-2 CPD ¶ 477.

Sechan's allegation that it should have received the award on the basis of initial proposals is based on a false premise concerning the propriety of such an award. First, the agency has provided a reasonable basis for its decision to conduct discussions, i.e., to permit both offerors to remedy omissions and provide technical clarifications, and in order to conduct a site survey of Sechan's production facility. Moreover, there is simply nothing improper in an agency's requesting a BAFO in a negotiated procurement. Braswell Shipyards, Inc., B-233287; B-233288, Jan. 3, 1989, 89-1 CPD ¶ 3. While the FAR permits agencies to make an award on the basis of initial proposals under certain conditions, an agency may choose to hold discussions if it believes that it would be in the government's best interests to do so. See FAR § 15.610 (FAC 84-16); Discount Machinery & Equipment, Inc., B-231068, June 24, 1988, 88-1 CPD ¶ 608. The decision to award on the basis of initial proposals is strictly discretionary, id., and, in fact, the more usual sequence of events in a negotiated procurement includes at least one request for revised offers; it is the award on the basis of initial proposals that is less frequent and, by law, can only be done in limited circumstances. See 10 U.S.C. § 2305(b)(4) (Supp. IV 1986).

Sechan has raised numerous questions regarding the Navy's calculations of the rental value of McDonnell Douglas' GFP. However, Sechan's entire argument in this regard is based on its assumption that Sechan would have received the award had its price been evaluated as low. Sechan states that it was so advised by a named, knowledgeable Navy procurement

official at the debriefing. However, even if such an impression was, in fact, conveyed at the debriefing, the record contains no evidence that the minuscule price difference between the two proposals was determinative.^{1/}

On the contrary, the record establishes that the agency decision was primarily motivated by the far more significant technical evaluation differential, under which McDonnell Douglas' proposal received a score almost 10 percent higher than Sechan's. In making its evaluation, the agency used a scoring matrix under which cost constituted approximately half of the total possible score, and technical, program management, and prior experience accounted for the remaining half, with decreasing weights which were consistent with the RFP. Because of the closeness of the respective BAFO prices, the scoring differential under price was virtually negligible with McDonnell Douglas receiving a score less than 1/10th of 1 percent higher than Sechan. However, McDonnell Douglas' overall score was almost 6 percent higher than Sechan's, due to its higher ratings under the other categories.

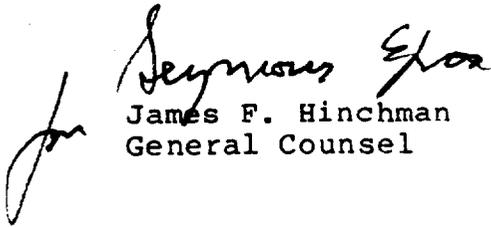
Sechan's BAFO received a narrative rating of excellent in only 2 of 6 technical categories, and a score of good in the remainder. McDonnell Douglas' BAFO received virtually all excellent ratings in the technical categories, and no rating below good. Similarly, under the program management and prior experience categories, Sechan received all good ratings while McDonnell Douglas received a majority of excellent ratings and no rating below good. Overall, Sechan did not receive a higher narrative or point rating than McDonnell Douglas under any category, while McDonnell Douglas received higher ratings than Sechan in a majority of the categories, and was rated equal in the remainder. The evaluation documents reasonably substantiate these rating differentials, based in large measure on McDonnell Douglas' implemented production capacity versus Sechan's lack of direct experience in performing the type of effort required under the RFP.

Because of this significant difference in the evaluation scores, we need not address the various arguments which Sechan raises with respect to the GFP rental value calculations. In its most optimistic analysis, Sechan hypothesizes

^{1/} The primary function of a debriefing is not to defend or justify selection decisions but to provide unsuccessful offerors with information that would assist them in improving their future proposals. Raven Services Corp., B-231639, Aug. 23, 1988, 88-2 CPD ¶ 173.

that the GFP adjustment should be almost \$100,000 higher than the \$12,636.17 amount applied by the Navy. However, as the agency points out, even if this were the case, McDonnell Douglas' technical superiority would still be dispositive. Using the scoring formula which was applied under the RFP, it would require a GFP cost adjustment in excess of \$450,000 to offset McDonnell Douglas' higher technical score. Accordingly, Sechan has not demonstrated any prejudice even if it is correct with respect to the GFP rental value calculations.

The protest is denied.

A handwritten signature in cursive script, appearing to read 'James F. Hinchman', is written over the typed name and title.

James F. Hinchman
General Counsel