

Zelkowitz



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** SECHAN Electronics, Inc.

**File:** B-234308

**Date:** June 2, 1989

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## DIGEST

Protest that offer with numerous perceived deficiencies could have been made acceptable during discussions and thus was improperly excluded from the competitive range is denied where, although certain deficiencies might have been relatively easy to correct, the agency reasonably determined that the type and number of deficiencies indicated a lack of understanding of the requirement, and that major revisions would be necessary to assume that an award to the protester would result in acceptable performance.

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## DECISION

SECHAN Electronics, Inc., protests the exclusion of its initial proposal from the competitive range under request for proposals (RFP) No. N00039-88-R-0216(Q), issued by the Space and Naval Warfare Systems Command (SPAWAR), Department of the Navy, for the purchase of shipboard interface units designed to connect voice security equipment to shipboard communication systems. SECHAN principally alleges that the evaluation of its proposal and its exclusion from the competitive range were improper. We deny the protest.

The RFP provided that proposals would be evaluated on the basis of price, technical, and management factors, with price being more important than technical and both price and technical being substantially more important than management. Subfactors for the technical factor, listed in descending order of importance, included technical approach, degree of technical risk, compliance with statement of work, and compliance with technical data requirements. Management subfactors, the first of which was the most important while the other four were of equal importance, were delivery schedule, management, personnel, facilities, and record of past performance. The RFP warned offerors that in the event a proposal was found deficient with respect to any of these nine subfactors, the offer could be excluded from the competitive range on the basis of technical unacceptability

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despite the fact that the overall numerical score might otherwise appear to support an acceptable rating.

Six firms responded to the RFP. A technical evaluation board (TEB) rated and ranked the six offers and in accordance with the RFP's source selection plan forwarded its findings to a contract award review panel (CARP), which in turn reported directly to the source selection official for this procurement. The TEB recommended that SECHAN and one other offeror be found technically unacceptable and excluded from the competition, and that the other four offerors be included in the competitive range. The CARP and the source selection official eventually adopted these recommendations.

SPAWAR found that SECHAN's proposal generally demonstrated a lack of understanding of the solicitation's requirements, as reflected in SECHAN's overall "poor" rating under each of the four technical subfactors and three of the five management subfactors, and its "unacceptable" rating in the most important management subfactor, delivery schedule. In contrast, the four offerors included in the competitive range received substantially higher ratings under the technical and management evaluation factors. Among the areas in which SPAWAR found SECHAN's proposal deficient were its proposed subcontractor's lack of expertise in administering a testing program to ensure the offered equipment's compliance with noise emission requirements (commonly referred to as TEMPEST testing); inappropriate timing of required electrical performance testing; inadequate manning; incompetent planning; noncompliant delivery schedule for production units, lack of security clearance information for proposed facility and personnel, and failure to demonstrate use of automated production equipment. SPAWAR concluded that these significant weaknesses and deficiencies cumulatively rendered SECHAN's proposal unacceptable and that substantial revisions would be necessary to make it acceptable.

SECHAN takes exception to many of these discrepancies found in its proposal and contends that others, due in part to its misunderstanding of the solicitation requirements, were easily correctable and thus did not warrant its exclusion from the competition. Instead, SECHAN argues that it should have been afforded the opportunity to address those deficiencies during discussions. SPAWAR's failure to afford SECHAN this opportunity, the firm maintains, demonstrated the agency's predisposition to eliminate all potential competition in order to ensure award to the incumbent contractor.

In reviewing complaints about the reasonableness of the evaluation of a technical proposal, and the resulting determination of whether an offer is within the competitive range, our function is not to reevaluate the proposal and independently judge the proposal's merits. W&J Construction Corp., B-224990, Jan. 6, 1987, 87-1 CPD ¶ 13. Rather, procuring officials have a reasonable degree of discretion in evaluating proposals, and we will determine only whether the evaluation was unreasonable or otherwise in violation of procurement laws and regulations. Id. We will not disturb an agency's decision to exclude a firm from the competitive range where its technical proposal is reasonably considered so deficient, compared to other proposals, that it would require major revisions to be acceptable. General Exhibits, Inc., B-225721, May 5, 1987, 87-1 CPD ¶ 473.

We find that SPAWAR's evaluation of SECHAN's proposal was reasonable and provided ample justification for excluding SECHAN from the competition. As indicated above, the weaknesses found in SECHAN's proposal were numerous and led to it being rated either "poor" or "unacceptable" in eight out of the nine technical and management subfactors. We would agree with SECHAN that some of the noted deficiencies, viewed separately, do not appear major and that, following discussions, they possibly could have been corrected with relatively minor revisions in SECHAN's technical and management approach. Looking at the deficiencies in the aggregate, however, we think SPAWAR reasonably determined that their cumulative effect demonstrated an overall lack of understanding of the stated requirements, and that the need for numerous changes to make the proposal acceptable warranted eliminating the firm from the competitive range. See HITCO, B-232093, Oct. 11, 1988, 88-2 CPD ¶ 337. Some of the perceived deficiencies are discussed below.

First, SECHAN proposed to perform the required electrical performance and TEMPEST test programs simultaneously during a 2-week period. SPAWAR considered this simultaneous test schedule inappropriate and the 2-week period allotted for its completion inadequate. SECHAN argues that this test schedule was not precluded by the solicitation and that its adoption of this timetable was a valid exercise of its discretion under the terms of the solicitation.

We find nothing objectionable in SPAWAR's conclusion. While the solicitation indeed afforded offerors a great deal of leeway in developing an acceptable design approach, SPAWAR determined that SECHAN's intended use of simultaneous testing and its plan to complete the TEMPEST testing in

2 weeks evidenced a lack of understanding of the nuances of the two distinct test programs. SPAWAR explains in this regard that defects in electrical design very well could be identified during electrical performance testing thereby necessitating a significant redesign effort. Since the results of TEMPEST testing are at least partially dependent on the tested item's electrical system, the conduct of this second test before the satisfactory completion of electrical performance testing would be meaningless. As for the TEMPEST testing schedule, SPAWAR notes that the testing involves a rigorous process to determine an item's compliance with stringent noise emission requirements, and states its position that 2 weeks simply is insufficient to complete the testing. SECHAN has not responded with any explanation as to why it believes SPAWAR's view is incorrect, nor do we otherwise have any reason to question SPAWAR's determination that SECHAN's plan to complete this test progress in 2 weeks was not feasible; indeed, considering the critical nature of this testing and the design changes that could be required based on performance testing, we think SPAWAR reasonably concluded that SECHAN's time frame for this test's performance was inadequate.

SPAWAR also found that SECHAN allowed insufficient time for the completion of first article tests and reports, and did not propose an adequate manning level. Again, SPAWAR found that SECHAN adopted a very tight time schedule which did not allow for contingencies and required the simultaneous performance of certain individual tasks comprising an acceptable first article test. SPAWAR was particularly concerned with SECHAN's ability to complete environmental testing prior to the completion of final function tests and was generally concerned that all the individual tasks, such as fungus and workmanship screening, could not be completed within a 2-week period. As for manning, SECHAN's proposal indicated an intent to utilize only six individuals during periods of peak production whereas SPAWAR, based on its experience in monitoring other contracts, believed that many more employees would be required during these periods.

SECHAN does not refute the agency's position with respect to either of these deficiencies, but simply maintains that these were minor weaknesses that it should have been allowed to correct following discussions. As the record contains no other evidence or argument suggesting that the agency's position is incorrect, we have no basis to question SPAWAR's conclusion regarding SECHAN's first article scheduling and proposed manning.

We conclude that, while SECHAN may be correct that some of the deficiencies could have been eliminated during discussions, SPAWAR reasonably viewed the types and numbers of deficiencies in SECHAN's initial proposal as indicating a more important general lack of understanding of the requirement. In particular, SPAWAR reasonably viewed SECHAN's continued failure to allocate sufficient time to perform various aspects of the required work, coupled with its failure to provide adequate personnel to perform the work, as suggesting that a substantial reworking of the firm's proposal would have been necessary to assure that an award to SECHAN would result in the design and manufacture of an acceptable item. Given these circumstances, SPAWAR properly excluded SECHAN from the competitive range.

The protest is denied.



for James F. Hinchman  
General Counsel