

DECISION



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

11978 Rogers
Proct

FILE: B-194100

DATE: November 9, 1979

MATTER OF: Joule' Maintenance Corporation DL603309

DIGEST:

[Protest of Agency Determination That Proposal Was Not in Competitive Range]

Determination of whether proposal is in competitive range, especially with respect to technical considerations, is matter of agency discretion which will not be disturbed unless there is clear showing of abuse of discretion.

Joule' Maintenance Corporation (Joule) protests the exclusion from the competitive range of its proposal to operate and maintain an Environmental Protection Agency (EPA) laboratory under request for proposals (RFP) WA 78-B149. AGC00024

For the following reasons, Joule's protest is denied.

Joule proposed to provide preventive maintenance, mechanical systems operation and other statement of work categories on a job-shop basis. A job-shop operation is one in which there are no assigned contractor personnel at the Government facility. Instead, personnel are assigned on a per job basis from the contractor's plant. Joule claims that, because no manpower staffing technique was prescribed in the RFP or in the preproposal conference, EPA acted unfairly in the evaluation of proposals in according a preference to proposals for full onsite staffing. Joule contends that, at the least, EPA should have given it a chance to explain the merits of its staffing technique.

At the preproposal conference, EPA explained that the RFP represented a "totally new approach to the method, both quantitative and service wise, for the operation of [the] facility." Because the

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approach was new, EPA said it could not prescribe a minimum number of personnel or a pattern of staffing. In fact, EPA explicitly stated that "each contractor is expected to review our situation and make his own determinations regarding staffing needed to do the best possible job within the limitations of the statement of work."

Indications that EPA was thinking in terms of onsite staffing were present in both the RFP and the preproposal conference. The RFP stated that EPA "will provide suitable space on-site for location of Contractor's administrative staff. Also approximately 2000 feet of shop and office space will be made available." The following exchange at the preproposal conference also assumes that the contractor's staff would be located onsite:

"QUESTION: You have not ascertained yet where the contractor will be located or whether he will be sprayed all over the facility?

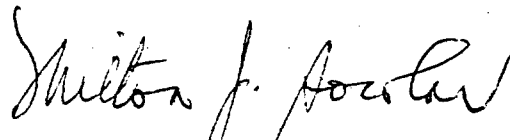
"ANSWER: No, because rather than to try to predetermine what the contractor's staff would be and therefore gauge the amount of space, we made no effort to do that."

Thus, EPA's preference for onsite staffing was manifested prior to the receipt of proposals.

Further, the evaluators downgraded the Joule proposal because they considered the job-shop basis unsatisfactory. It would have placed EPA in competition with Joule's other customers and Joule's service personnel might not be available when needed because of attention to other customers. In light of this deficiency and other shortcomings in the proposal, it was scored at 580. The proposals in the competitive range were scored 770, 810 and 860.

Discussions are not required where a proposal is outside the competitive range. Audio Technical

Services, Ltd., B-192155, April 2, 1979, 79-1 CPD 223. The determination of whether a proposal is in the competitive range, especially with respect to technical considerations, is a matter of administrative discretion which will not be disturbed unless there is a clear showing of abuse of discretion. Audio Technical Services Ltd., supra; MEI-Charlton, Inc., B-179793, February 26, 1974, 74-1 CPD 104. Review of the technical evaluation and the resulting technical scores confirms that there was a reasonable basis to exclude Joule from the competitive range. Thus, the contracting officer did not abuse his discretion by refusing to negotiate with Joule.



For The Comptroller General
of the United States