



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Joule Maintenance Corp.

**File:** B-224505

**Date:** November 24, 1986

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### DIGEST

1. Where the protester contends that the agency submitted its management study under an Office of Management and Budget Circular A-76 cost comparison more than 2 months late, and the protester's only evidence is its own unsupported statement, but the record indicates that the management study was in fact completed and submitted on time, protester has not carried its burden of proof.

2. Where the protester alleges that the government and contractors were not competing on the basis of the same scope of work which resulted in an erroneous Office of Management and Budget Circular A-76 cost comparison, because the agency's management study was revised without corresponding amendment of the solicitation, but the protester fails to show any specific difference between the work required in the solicitation and that specified in the management study, and the agency issued hundreds of pages of amendments to the solicitation, protester's allegation does not present sufficiently detailed basis for protest.

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### DECISION

Joule Maintenance Corporation (Joule) protests the Department of the Army's determination to perform installation and support services at Tobyhanna Army Depot in-house, rather than to contract out under solicitation No. DAAG38-85-B-0003. This determination was made as a result of a cost comparison that was conducted under the guidance of Office of Management and Budget (OMB) Circular No. A-76. Joule contends that the

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Army did not submit its management study until after the closing date for receipt of technical proposals and that offerors were prejudiced thereby.<sup>1/</sup>

We deny the protest.

The solicitation was conducted using two-step formal advertising procedures. The Army issued a request for technical proposals (RFTP) on February 20, 1985, requiring the submission of step one technical proposals by June 17. Technical proposals, which explained how the bidder intended to perform the tasks described in the Performance Work Statement (PWS), were evaluated for technical acceptability. Firms that had submitted acceptable technical proposals were then invited to submit bids under step two of the procurement, and the low bid was then compared to the Army's in-house cost estimate. Joule alleges that although the Army required technical proposals from interested contractors by June 17, it did not receive any in-house submission, or management study, at that time. Further, the protester alleges that the Army's management study was not completed until August 27.

We will review protests, such as Joule's, concerning agency decisions that in-house performance will be more economical than performance by contract to ascertain whether the agency adhered to the procedures, or ground rules, for determining the comparative costs. Joule Maintenance Corp., B-208684, Sept. 16, 1983, 83-2 C.P.D. ¶ 333. We do so because we believe it would be detrimental to the procurement system if, after the agency induced the submission of offers, there were a faulty or misleading cost comparison which affected the decision to a material degree. See Griffin-Space Services Co., B-214458.2, Sept. 11, 1984, 84-2 C.P.D. ¶ 281.

Our review is thus confined to considering whether the agency complied with the applicable procedures in selecting in-house performance over contract performance. In this respect, the OMB Circular No. A-76 Supplement (Supplement), as revised in August, 1983, requires that cost estimates for government and contractor proposals be based on the same outline of the

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<sup>1/</sup> Although Joule stated in its initial protest that "[t]he grounds for this protest [are] that the Army delayed in submitting its in-house [management] study, cost estimate and cost certification until eleven (11) months after the required date," the protester emphasized in its comments responding to the Army's report that it does not dispute that the Army's cost submission was timely. Therefore, we will only discuss the alleged late submission of the management study.

scope of work and standards of performance, i.e., the solicitation's PWS. The Supplement's Cost Comparison Handbook sets out the methods and procedures necessary to perform the cost comparison study. The Supplement requires that the in-house estimate used in the cost comparison be based on the government's most efficient and effective in-house operation needed to perform the contract. Supplement, pt. I-12 (E)(1). To that end, a management study is required to analyze the operation and to establish the most efficient and effective operation. Id.; see also Dwain Fletcher Co., B-219580, Sept. 27, 1985, 85-2 C.P.D. ¶ 348.

Joule argues that the Army was required to complete and submit the management study before the solicitation was issued and that its failure to do so was "a violation of applicable law and regulation." As support for this claim, the protester cites Army Regulation (AR) 5-20, section 4-17(d), which provides that the "management study and development of the PWS [included in the RFTP] are normally performed concurrently." In addition, Joule cites AR 5-20, section 4-28(a), as providing that "[s]olicitations may be issued at any time after HODA clearance is received, but not until the management study has confirmed that the PWS has been reviewed by the work force and their union . . . ."

We do not believe Joule has provided adequate legal or factual support for this argument.

The regulation first cited by Joule (AR 5-20, section 4-17(d)) does not require the management study to be submitted before the solicitation is issued, but merely expresses that the management study and development of the PWS are usually performed at the same time. The OMB Circular A-76 Supplement, Part III, "Management Study Guide," provides an explanation for why the PWS and management study should be performed concurrently. A job analysis is first conducted jointly by PWS and management study teams; this is to ensure that the management study is based on the performance standards that will be included in the PWS. Once the PWS is in the process of being developed (although not necessarily completely written), the management study can be developed, taking into account the major decisions that have been made on work requirements and performance standards. Supplement, pt. III-1(C)(3).

Since we find no requirement that the management study be completed and submitted before the PWS is issued in the solicitation, as Joule contends, we find no violation of the Army regulation or OMB A-76 procedures.

The second regulation cited by the protester (AR 5-20, section 4-28(a)) requires that the PWS be reviewed by the work force and union, but does not specifically require that the management study be completed and submitted for approval before the PWS is issued in the solicitation. Here, the record indicates that the PWS and Management study teams worked together to produce these two documents, beginning September 22, 1983. Management study field work and most of the study's documentation was completed by the end of 1984. Functional managers and the relevant union were briefed on the management study concepts and recommendations during the first two weeks of January 1985. The record indicates that the union completed its review of the solicitation, including the PWS, on January 25. Since the RFTP was first issued in February 1985, after the PWS had been reviewed, we have no basis to conclude that the Army did not comply with the second regulation cited by the protester.

Joule also argues that the management study is the equivalent of a technical proposal from the government, since it presents the method by which the Army will perform the requirements of the solicitation. Therefore, the protester argues that the management study must be submitted no later than the date when technical proposals are required to be submitted. Joule reasons that the management study and competitive proposals must be guarded against premature exposure to competitors "whether that competitor is the government or the contractors." The protester alleges that here, the Army had access to contractors' technical proposals for 2 months before it submitted its management study and concludes that this was prejudicial to the contractors. Joule contends that a contractor in possession of an advance copy of the government's management study would be able to tailor its technical and cost proposals accordingly in order to submit the lowest proposal. The protester suggests that similarly, the allegedly late submission of the management study allowed the Army to use information from Joule's technical proposal to revise its own management study.

The Army asserts that it did not use any information in the protester's proposal to formulate its most efficient organization in its management study or to compute its in-house cost estimate. The agency contends in its report that the contents of all technical proposals were held separate and disclosed only to the source selection evaluation board and procurement officials directly involved in proposal evaluations. Personnel directly involved with writing the management study never had access to technical proposals submitted by Joule and other contractors. In view of the Army's firm denial that its personnel used information contained in any contractor's proposals in the development or revisions of its

management study and Joule's failure to produce clear and convincing evidence to support its position, we deny this portion of the protest. See Jets, Inc., 59 Comp. Gen. 263 at 266, 267 (1980), 80-1 CPD ¶ 152 at 5-7.

Moreover, Joule has offered no support for its allegation that the management study was submitted on August 27. Joule, as the protester, bears the burden of affirmatively proving its case and this burden is not met where the protester's only evidence is its own statement, which conflicts with the agency's records. See Integrity Management International Inc., B-220004.3, Jan. 17, 1986, 86-1 CPD ¶ 56. The record indicates that the management study was completed and approved by the Depot Commander on June 6, 1985, which was prior to the closing date for receipt of contractors' technical proposals. The Executive Summary of the Management Study is signed and dated June 6, 1985, by the project manager and all but one member of the management study team. The one remaining member signed on July 15, 1985; however, it is clear that the document was completed and ready for signature by June 6, when it was first signed.<sup>2/</sup>

Furthermore, we do not agree with Joule's basic premise that the management study must be subject to the same standards as competitive proposals. In this regard, we have recognized -- that a government estimate provides a standard against which bids and proposals are evaluated and that the government estimate therefore is not subject to the same rules as are bids and proposals, such as the requirement that a bid be responsive or that a proposal be in the competitive range. See Trend Western Technical Corp., B-212410.2, Dec. 27 1983, 84-1 CPD ¶ 25 at 3. We believe the same reasoning applies to distinguish between the government's management study and a competitive proposal, since the purpose of the management study is to establish a standard for the most efficient and effective operation to perform the contract. In this regard, the OMB Circular No. A-76 Supplement characterizes the management study as "the definition of what must be done . . . and the best way of doing it . . . ." Supplement, pt. III-2(E)(1).

Joule also argues that the revisions to the PWS were not reflected in amendments to the RFP, so that contractors and the government were not competing on the basis of the same scope of work. Joule quotes the agency report as stating

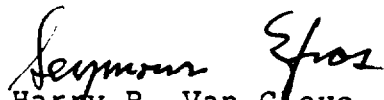
<sup>2/</sup> Although Joule points out in its comments on the agency report that this summary refers to a June 28, 1985, letter and contends that the summary must, therefore, have been written after June 28, the record reveals that the referenced letter was in fact dated June 28, 1984.

that as of May 31, 1985, "the management study and PWS were first deemed to be in agreement." Then, the protester points out, the report indicates that Change No. 1 to the management study was issued on July 31, 1985, to update applicable documentation for workload and staffing data. The protester concludes that "since something occurred to warrant a change in the management study on July 31 [when the management study was revised], there should have been a concomitant change to the RFP." Joule points out that the RFP must spell out specifically what work the offerors are expected to perform and if there are changes, adjustments or ambiguities in the work description in the RFP, the RFP must be amended.

The record reveals that the agency issued nine amendments to the RFTP, dating from April 3, 1985, to February 12, 1986. Together, the amendments comprise over 300 pages and reflect a broad range of revisions including changes in workload data, adjustments in labor hours for work covered by the Service Contract Act and the Davis-Bacon Act, corrections of typographical errors, and others. However, Joule does not identify in its protest which changes allegedly were made to the management study but not to the RFP.

Our Bid Protest Regulations require that a protest contain a detailed statement of the legal and factual grounds for protest. 4 C.F.R. § 21.1(e) (1986); Swager Communications, Inc., B-220000.2, Nov. 21, 1985, 85-2 CPD ¶ 585. We do not believe Joule's general allegation that unspecified changes were made to the management study but not to the PWS is specific enough to meet this standard, particularly in light of the complexity and volume of solicitation revisions present in the record. Joule has not demonstrated that the Army failed to advise offerors of any changes that were made to the RFP, nor has Joule shown how it was prejudiced. The agency report states that any changes to the workload data that were made after the management study was approved were then incorporated into the PWS and transmitted to offerors by amendments to the solicitation. In our view, the protester has presented no specific evidence to the contrary.

To succeed in a cost-comparison protest, a protester must demonstrate both that the agency failed to follow the established procedures and that this failure could have materially affected the outcome of the cost comparison. See Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 C.P.D. ¶ 317. Joule has not done so here. Therefore, the protest is denied.

for   
Harry R. Van Cleve  
General Counsel