



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** ManTech Environmental Technology, Inc.

**File:** B-271002; B-271002.2; B-271002.3

**Date:** June 3, 1996

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## **DIGEST**

1. Under solicitation which does not require identification of most proposed personnel until after contract award, where offer included self-styled "staffing plan" in which personnel do not match those identified in cost proposal, protest alleging material misrepresentation is denied where there is no evidence that offeror did so intending to mislead the agency and the agency did not credit the staffing plan in performing its technical evaluation.
2. Agency's acceptance of awardee's proposed uncompensated overtime rates is unobjectionable, and does not constitute a relaxation of the specifications where solicitation does not prohibit uncompensated overtime, agency properly evaluates it, and agency ensures that contract provides for receipt of its value.
3. In procurement for services under level-of-effort, cost reimbursement solicitation where awardee proposes to hire as many employees of long-term incumbent as possible, but includes a cost proposal under which more than half of the listed positions are "new hires" at substantially lower "entry level" salary rates, protest of cost evaluation is sustained where agency simply accepted proposed rates without taking any reasonable steps to verify new hire rates or otherwise to adjust rates to reflect most probable cost.

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## **DECISION**

ManTech Environmental Technology, Inc. protests the award of a contract to Dynamac Corporation under request for proposals (RFP) No. C500182T1, issued by the Environmental Protection Agency (EPA) for technical support services. ManTech raises a number of evaluation issues, primarily contending that the EPA failed to properly evaluate the realism of Dynamac's proposed costs.

We sustain the protest.<sup>1</sup>

## **BACKGROUND**

The RFP sought proposals to provide on-site technical support services at the EPA's environmental research laboratory in Corvallis, Oregon. According to the RFP, this is a sophisticated, multi-disciplinary research laboratory that performs state-of-the-art research in a variety of environmental areas. The successful offeror must furnish the necessary materials, supplies, and services of qualified scientists and laboratory technicians to perform support on a work assignment basis. The RFP contemplated the award of a cost-plus-award-fee contract for a base period with four option periods. Award was to be made to the responsible offeror whose proposal was most advantageous to the government.

The RFP called for technical proposals to be comprised of a number of elements including technical approach, technical management, and resumes and publication samples for the three key personnel. The RFP did not call for offerors to identify personnel to fill non-key positions, but did detail the necessary qualifications for four professional levels (P-1, P-2, P-3, and P-4) and three technician levels (T-1 through T-3). For example, a P-4 professional was required to have a typical title of project leader or chief engineer, a Ph.D degree or equivalent, and 10 or more years of experience. A T-3 technician was expected to have 6 or more years of experience. The RFP identified 10 categories of professionals at the P-3 and P-4 levels with additional qualifications. An attachment to the RFP identified 54 categories of personnel along with the estimated level of effort in terms of work years (defined as 2,080 hours per year). Proposals were evaluated on the basis of cost and four technical factors: demonstrated corporate experience (150 points); demonstrated qualifications of key personnel (200 points); quality of proposed program management plan (450 points); and adequacy of quality assurance plan (200) points.

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<sup>1</sup>We have considered all the issues raised by ManTech and found only one to have merit. Of the remaining issues, our decision discusses those which the protester's submissions emphasized.

With regard to cost, offerors were required to submit cost or pricing data in support of the proposed cost, a current financial statement, including a balance sheet, and other cost-related information. As to direct labor, offerors were required to attach support schedules indicating the types or categories of labor together with labor hours for each category indicating the rate of compensation either by category or by individual. If individual rates were proposed, offerors were required to furnish employee names for each position so proposed. All offerors were required to use the same identified labor categories and level of effort, indicating how many of the 2,080 hours per year were charged as direct hours (productive working hours) and how many were charged as indirect (paid absences such as holidays, vacation, and sick leave). The number of any necessary new hires also was required to be included.

Cost was to be evaluated in accordance with Part 31 of the Federal Acquisition Regulation (FAR), "Contract Cost Principles and Procedures." Cost also was to be evaluated for realism as it relates to the offeror's demonstration that the proposed cost provides an adequate reflection of its understanding of the RFP's requirements. In this regard, section L of the RFP discussed in detail the evaluation of compensation for professional employees. The RFP noted that recompetition of service contracts sometimes resulted in the lowering of compensation for professional employees which could be detrimental in obtaining the quality of professional service necessary for contract performance. Thus, offerors were required to submit a total compensation plan setting forth salaries and fringe benefits. The RFP explained that the government would consider the compensation proposed in terms of its impact upon recruiting, retention, and realism. It suggested that supporting information would include data, such as recognized national and regional compensation surveys and studies of professional, public, and private organizations used in establishing the total compensation structure. Offerors were warned that compensation that was unrealistically low "may be viewed as evidence of failure to comprehend the complexity of the contract requirements" or a lack of sound management judgment.

ManTech, Dynamac, and two other offerors submitted proposals by the August 8, 1995, closing date for receipt of proposals. A technical evaluation panel (TEP) reviewed the initial proposals and, based on this evaluation, the source selection official (SSO) determined that the proposals of ManTech, Dynamac, and a third offeror should be included in the competitive range. The agency conducted discussions with these three offerors and reevaluated the proposals on the basis of the offerors' responses. Under the final evaluation, ManTech's technical proposal was scored at [deleted] points and Dynamac's proposal at [deleted] points, out of a possible 1,000 points.

The TEP then reviewed the cost proposals and the EPA had the Defense Contracting Audit Agency (DCAA) review the proposals. The agency also had a cost advisory report prepared by its own cost evaluators. The agency conducted cost discussions with the offerors and requested best and final offers (BAFO). After evaluation of the BAFOs, the source evaluation board met to discuss the award decision. The board considered the relative merits of the ManTech and Dynamac proposals and concluded that the technical differences in the proposals were minor, while the negotiated costs were significant. The board recommended award to Dynamac.

The SSO agreed with the board and selected Dynamac for award. The SSO specifically found that the primary technical difference between the proposals was [deleted]. In view of the significant cost difference [deleted], the SSO concluded that it would not be in the government's best interest to pay that cost premium in order to acquire ManTech's technical expertise. On January 26, 1996, EPA awarded the contract to Dynamac and ManTech filed its initial protest. On January 31, the agency determined to continue performance notwithstanding the protest on the basis that to do so was in the best interest of the government. ManTech subsequently amended its protest twice based on later obtained information.

#### EVALUATION OF DYNAMAC'S PROPOSAL

ManTech alleges that the evaluation of Dynamac's technical and cost proposals was flawed because of alleged misrepresentations contained in Dynamac's proposal. In particular, ManTech points to Dynamac's inclusion of a "staffing plan" in its technical proposal which listed personnel different from those listed in Dynamac's BAFO cost proposal.<sup>2</sup> For example, the staffing plan identifies highly qualified, named personnel for 44 of the 54 RFP labor categories, while the cost proposal identifies named personnel for only 24 of the 54 categories. Of these 24, only 15 names are the same as those identified in the technical proposal, and not all of them are proposed for the same category in both proposals. The balance of the categories in the cost proposal are listed as "new hires" with direct labor rates

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<sup>2</sup>ManTech also alleged misrepresentations associated with Dynamac's explication of its financial status. ManTech points to the omission of qualifying footnotes from Dynamac's financial statement and a misrepresentation as to a Dynamac Cost Accounting Standards Board disclosure statement concerning a proposed change to Dynamac's indirect rate structure. Information submitted by Dynamac and the EPA make clear that the omitted footnotes were of no import to the substance of the financial statement and the proposed indirect rate structure has been approved by Dynamac's administrative contracting officer. Accordingly, these allegations are without substance.

generally lower than those for the Dynamac personnel listed in both proposals. From this, ManTech alleges that Dynamac proposed the higher qualified personnel in its technical proposal in order to obtain a higher technical score and then used less qualified and lower paid personnel in its cost proposal to obtain a more favorable cost evaluation.<sup>3</sup>

An offeror's misrepresentation concerning personnel that materially influences an agency's consideration of its proposal generally provides a basis for proposal rejection or termination of a contract award based upon the proposal. See CBIS Fed. Inc., 71 Comp. Gen. 319 (1992), 92-1 CPD ¶ 308 (misrepresentation of personnel availability). A misrepresentation is material where an agency has relied upon the misrepresentation and that misrepresentation likely had a significant impact on the evaluation. Harris Corp.; PRC Inc., B-247440.5; B-247440.6, Aug. 13, 1992, 92-2 CPD ¶ 171.

Here, the RFP required the identification of personnel in the cost proposal only where an offeror proposed individual (instead of categorical) labor rates apart from the three key personnel. The RFP contains no requirement for identification or evaluation of specific personnel in the technical proposal. All other (non-key) personnel were to be proposed after award of the contract. Dynamac identified its key personnel in both its technical and cost proposals and the agency evaluated their qualifications and based Dynamac's evaluation score only on the key personnel. While the evaluators reviewed the "staffing plan" included in the technical proposal, they did not give Dynamac any identifiable credit for the qualifications of the listed personnel. Some evaluators noted favorably Dynamac's intent to hire incumbent employees, but there is nothing in the record which suggests that they raised Dynamac's score based on the staffing plan. On the contrary, in response to the protest, the chairman of the TEP explains that Dynamac's proposal would have received the same score absent the staffing plan. Dynamac explains that the staffing plan was only intended to show the expertise of

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<sup>3</sup>In a related argument, ManTech contends that Dynamac proposed a project administrator, but omitted any proposed cost for the position. Dynamac and the agency explain that the position's functions are administrative and are not full time. The cost of the position was included under the secretary to the program manager, the job category title identified in the RFP. The responsibilities of the project administrator and secretary are being fulfilled by an administrative assistant to the program manager. Accordingly, this allegation provides no basis to find that Dynamac engaged in any misrepresentation.

members of its current personnel pool, who could be made available for use on the contract for times of peak workloads, temporary assignments, or special projects.<sup>4</sup> Under these circumstances, we find no material misrepresentation by Dynamac.<sup>5</sup>

#### UNCOMPENSATED OVERTIME

ManTech also raises several issues concerning Dynamac's use of uncompensated overtime (UOT).<sup>6</sup> In ManTech's view, the use of UOT was not allowed by the solicitation and thus the agency's acceptance of it represented an improper

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<sup>4</sup>A close reading of Dynamac's technical proposal tends to support this explanation. For example, the exhibit containing the plan is described as representing an estimate of the distribution of tasks based on the RFP requirements. However, other language in the proposal, denomination of the listing as a "staffing plan" and reference to "proposed Dynamac staff," does create ambiguity as to the purpose of the "plan." This is especially so when considered in conjunction with the apparently inconsistent list of personnel in the BAFO cost proposal. Since we sustain the protest because of flaws in the cost realism evaluation, and further discussions may be held, the agency may wish to resolve any possible ambiguity in this regard through those discussions.

<sup>5</sup>ManTech has also alleged that the agency improperly modified the level of effort for this contract by transferring personnel and assignments formerly performed under the predecessor contract. According to ManTech, by transferring highly paid personnel, the agency effectively reduced the cost associated with Dynamac's proposal. Had ManTech known of these transfers, it claims that it could have reduced its costs as well. These allegations are without merit. The EPA explains that the personnel transferred were former ManTech employees performing tasks which were no longer appropriate for this contract. The level of effort and the skill mix required to perform this contract did not change. We also find no merit in ManTech's claim that Dynamac violated the terms of the contract by hiring two former ManTech employees as consultants without obtaining prior EPA approval. The clause on which ManTech relies as requiring EPA approval was deleted pursuant to a class deviation issued prior to contract award. These personnel changes are merely a matter of contract administration which our Office does not review. 4 C.F.R. § 21.5(a) (1996).

<sup>6</sup> "Uncompensated overtime" refers to the overtime hours (hours in excess of 8 hours per day/40 hours per week) incurred by salaried employees who are exempt from coverage of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (1994). Under the Act, exempt employees need not be paid for hours in excess of 8 hours per day or 40 hours per week.

relaxation of the specifications. ManTech further argues that even if UOT could be proposed, the agency did not properly evaluate Dynamac's proposed UOT; ManTech also asserts that Dynamac deliberately attempted to double count the effect of the UOT. We find no merit in any of these allegations.

In order to establish a projected hourly labor rate, an offeror must divide the employee's projected salary by the expected number of hours to be worked. The usual method is to divide the employee's annual salary by 2,080 hours (40 hours per week x 52 weeks). If an offeror proposes more than 2,080 as the denominator, then the excess is UOT. The use of UOT reduces the employee's hourly rate which, in a competitive environment, could provide the offeror with a competitive cost advantage.

Here, the RFP advised offerors that the level of effort was to be proposed in workyears. While the RFP stated that a workyear was "considered" to be 2,080 hours, less any non-productive hours, it did not set this as the only acceptable workyear. The RFP specifically contemplated the proposal of "non-standard" workyears based upon "different base work weeks." The RFP did not prohibit the use of UOT and we are unaware of any law or regulation prohibiting the use of UOT. Thus, the agency's consideration of the UOT in Dynamac's proposal did not represent an improper relaxation of the specifications for one offeror. See General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, aff'd American Management Sys. Inc.; Dep't of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492.

We also find the agency's method of evaluating Dynamac's UOT unobjectionable. Dynamac proposed 44 hours per week for many of its personnel with 4 hours representing a 10-percent level of UOT. In proposing its direct rates, Dynamac reduced them by a factor of 10 percent to represent the lower effective labor rates. In evaluating Dynamac's direct labor proposal, the agency used a standard 2,080-hour workyear without increasing it by 10 percent. ManTech argues that Dynamac will be reimbursed on the basis of workyears, and since Dynamac's workyear is longer, the government will not get the benefit of the lower labor costs suggested by the effective rates.<sup>7</sup>

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<sup>7</sup>ManTech also alleges that Dynamac attempted to obtain double credit for its UOT. In its BAFO, Dynamac proposed its effective direct labor rates (reduced by the 10-percent UOT) and on its summary page also identified the number of overtime hours which the agency would receive at no cost. This issue is without merit. As explained by Dynamac, it intended only to propose the reduced rate hours and, by mistake, listed additional hours at no cost in its proposal cost summary. It is plain from the record that the agency did not evaluate the additional number of hours and their inclusion did not affect Dynamac's cost proposal. While the agency

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ManTech's argument is based on a faulty premise. While the agency has estimated the level of effort in workyears, the RFP indicates that the agency will be billed on the basis of hours worked and not workyears; under the terms of the RFP and the awarded contract, when the agency issues a work assignment, it estimates the number of hours required and the contractor submits a proposal of the number of hours it needs to perform. Thus, the record reflects that the government will have control over the number of hours worked and will be billed on the basis of these hours, and accordingly will be in a position to realize the advantage of Dynamac's lower effective labor rates.

#### EVALUATION OF DYNAMAC'S COSTS

When an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs of contract performance and proposed fees are not considered controlling since an offeror's estimated costs may not provide valid indications of final actual costs that the government is required, within certain limits, to pay. See FAR § 15.605(c); General Research Corp., *supra*. The purpose of a cost realism analysis under a level-of-effort, cost reimbursement-type contract is to determine the extent to which an offeror's labor rates are realistic and reasonable. Sociometrics, Inc., B-261367.2; B-261367.3, Nov. 1, 1995, 95-2 CPD ¶ 201. While an agency is not required to conduct an in-depth cost analysis or to verify each and every item in conducting a cost realism analysis, it must perform sufficient analysis to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. See CACI, Inc.-Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make this cost realism determination, our review is limited to determining whether the agency's cost realism analysis is reasonably based and not arbitrary. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

ManTech contends that the agency's cost evaluation was deficient because the agency failed to conduct any meaningful cost realism analysis of Dynamac's significantly lower proposed costs. For example, Dynamac's overall proposed costs are significantly lower than the independent government cost estimate ([deleted]) and the costs proposed by the other offerors ([deleted] percent lower than ManTech's proposal). Further, although the technical proposal reflects Dynamac's intent to hire "as many of the incumbent staff as possible," the direct labor rates

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<sup>7</sup>(...continued)

intended to award a contract based on the number of hours estimated in the RFP, the award documents include the additional hours. The agency states that it will amend the contract to eliminate the additional hours in order to reflect the hours evaluated and the intended award.

proposed for "new hires" are lower than those paid incumbent ManTech personnel and lower than current Dynamac personnel in comparable positions.

In support of the reasonableness of its cost realism analysis, the EPA relies upon its cost advisory report, DCAA audit results, pre/post negotiation memorandum, and source selection decision. The three EPA generated documents all rely on the written and oral results of the DCAA audit which purportedly found Dynamac's direct labor rates to be realistic. However, the audit and cost advisory report were qualified, and information on which they were based was incorrect.

Where, as here, the agency sets the level of effort and identifies the specific categories of personnel necessary to perform, the primary inquiry in a cost realism analysis should be the realism of direct labor rates. Sociometrics, Inc., supra. Determining that the rates are realistic depends upon a finding that personnel, at the proposed rates, meet the requirements of the RFP, i.e., that qualified personnel can be employed and retained at those rates. Here, the cost evaluators stated that their review was based on "adequate cost and pricing data" consisting of a verbal audit report from DCAA, contractor information, and other information contained in agency files. With regard to direct rates, the report states that the "proposed labor rates are actual 1995 rates for a specific individual in each category." Based upon conversations with the cognizant DCAA office, the cost evaluators concluded that the labor rates were acceptable for government pricing purposes. The pre/post negotiation memorandum and source selection decision include determinations of cost realism based upon the DCAA audit and its verification of direct rates.

However, EPA's cost evaluators qualified their recommendations by stating that they did not assess whether the personnel, at the rates proposed, met the RFP requirements.<sup>8</sup> The report also was prepared without the benefit of the cost evaluators being apprised that the TEP had concerns about the low Dynamac rates. In this regard, the TEP had noted that the rate proposed for a P-3 (second highest) level ecologist "seems very low" and that all the new hires were listed at low rates suggestive of entry level positions. The TEP was concerned that "quality people cannot be hired at these rates" and observed that only a few existing employees worked at the rates suggested for new hires.

Further, notwithstanding the agency's reliance on DCAA, there is no evidence that the cost evaluators considered DCAA's qualification of its general recommendation that the proposal was acceptable as a basis for negotiation of a fair and reasonable

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<sup>8</sup>In response to the protest, the agency has submitted a statement from the TEP chairman which explains that the panel discussed the lower proposed rates, but did not feel that Dynamac would be unable to hire qualified new staff at these rates. However, there is nothing in the record to explain how the evaluators came to this conclusion notwithstanding their expressed concerns.

price. These qualifications included DCAA's need for technical assistance in mapping the proposed labor rates to the RFP and evaluating Dynamac's weighted labor rates.<sup>9</sup> DCAA had requested assistance from the agency in determining whether the personnel, at the rates proposed, were appropriate for the positions identified in the RFP. While the agency did not provide any assistance, Dynamac advised DCAA that its proposal manager had reviewed the RFP and had selected qualified individuals to propose. DCAA verified that the labor rates for named individuals represented actual Dynamac 1995 labor rates.

While this DCAA assessment provides a reasonable basis for accepting labor rates for named individuals, EPA accepted DCAA's limited statement as verification of all direct rates. Since Dynamac had provided verifiable personnel rates for less than half of the 54 labor categories listed in its cost proposal, it was unreasonable for the agency to rely on this aspect of the audit to support a finding of cost realism for all direct rates. Further, there is no indication that the agency attempted to assess the realism of the new hire rates. The EPA explains that it had received oral information from DCAA indicating that DCAA had verified the new hire rates as well. However, during the protest, the agency learned that the DCAA auditor had confused this audit with another Dynamac audit she was conducting at about the same time. She did not verify the new hire rates proposed for the EPA contract, believing that it was unnecessary because the other audit had verified the proposed rates. There is nothing in the record to indicate whether the rates or any other aspects of the verified audit were in any way similar to this contract audit. Thus, there is no way to gauge the reasonableness of the auditor's conclusion in this regard.

While agencies may ordinarily rely on the advice of DCAA when performing a cost realism analysis, see NKF Eng'g, Inc.; Stanley Assocs., B-232143; B-232143.2, Nov. 21, 1988, 88-2 CPD ¶ 497, this does not mean that contracting officials are thereby insulated from responsibility for error. See PAI, Inc., 67 Comp. Gen. 516 (1988), 88-2 CPD ¶ 36. A contracting officer's determination based on incorrect information is not rendered reasonable because the incorrect information was

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<sup>9</sup>DCAA's audit was also qualified due to a (then) unapproved change to Dynamac's indirect rate structure. The auditors also noted that Dynamac had previously underestimated its indirect cost and questioned Dynamac's general and administrative (G&A) rate. Dynamac had proposed a [deleted] percent rate based on the anticipated award of this contract. DCAA noted that, currently, the G&A rate was [deleted] percent and thus recommended that EPA negotiate a ceiling on the rate. The EPA followed this recommendation and included a [deleted] percent ceiling. However, subsequent to the DCAA recommendation, Dynamac proposed a [deleted] percent G&A rate in its BAFO. In considering the realism of Dynamac's costs, the agency did not adjust the cost proposal to reflect the potential increase in G&A.

supplied by another organization such as the DCAA. American Management Sys., Inc.; Dep't of the Army--Recon., supra.

Apart from relying on the DCAA audit information, written and oral, EPA apparently conducted no other cost realism analysis of Dynamac's direct labor rates. For example, the agency did not conduct any independent review of the reasonableness of the proposed rates, question any of the rates in discussions, or seek substantiation of the rates through market surveys or historical cost data from similar contracts. See Sociometrics, Inc., supra; The Warner/Osborn/G&T Joint Venture, B-256641.2, Aug. 23, 1994, 94-2 CPD ¶ 76. Further, the record does not include any of the "other" information on which the evaluators said they relied and, at the time of the agency's cost review, Dynamac had not submitted any information, such as labor market surveys, to support its proposed new hire rates.<sup>10</sup> Contrary to what the evaluators accepted from DCAA, not all of the proposed labor rates represented 1995 Dynamac rates and most of the new hire rates were lower than those proposed for comparable personnel currently employed by Dynamac. In this regard, more than half of the 30 new hires proposed were at the P-3 level--requiring 6-12 years of experience, with a masters degree or equivalent--at a labor rate of less than [deleted] per hour. While the agency maintains that the fringe benefits proposed by Dynamac are competitive, there is no evidence that any meaningful tradeoff analysis was made to determine whether the benefits package offset the low new hire rates. Under these circumstances, placing complete reliance on the DCAA's report was unfounded and unreasonable and does not constitute a meaningful cost realism analysis.<sup>11</sup>

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<sup>10</sup>During the protest, Dynamac has submitted information indicating that it has hired more than 100 personnel at the P-1 through P-4 levels at rates comparable to what is included in its proposal. In fact, these average salary rates are between [deleted] higher than the rates proposed in Dynamac's BAFO. In addition, in response to the protest, the agency found that the proposed new hire rates were comparable to the actual rates paid to "some of Dynamac's current employees in similar labor categories." Taken together, we do not believe these post hoc approximations alone are sufficient to establish the realism of the proposed rates. This is especially so in view of information submitted by the protester on labor rate information on former ManTech employees, hired by Dynamac. Of 53 incumbent personnel hired by Dynamac, 41 were hired at higher rates than the new hire rates in Dynamac's BAFO.

<sup>11</sup>ManTech also contends that the agency should have determined that Dynamac's low rates indicated that Dynamac did not understand the scope of the contract and should have received a lower score on its technical proposal. However, apart from the low rates, ManTech has identified nothing to indicate that Dynamac does not fully understand the contract requirements. The agency states that it has no

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The agency and Dynamac argue that ManTech was not prejudiced because, at most, a more detailed cost realism analysis would have resulted in an upward adjustment of Dynamac's costs only by approximately [deleted] million. The agency's SSO and contracting officer both assert that if the difference in cost between Dynamac and ManTech was approximately [deleted] million, the technical advantage attributable to ManTech's proposal would not be worth the cost premium. ManTech argues that with a proper cost realism analysis, using realistic new hire rates, Dynamac's costs would rise by more than [deleted] million, making the cost difference only [deleted] million. We have reviewed all three cost adjustments made by the parties and find that none provides an adequate substitute for the proper realism analysis the agency should have performed initially.

The analyses are all based on the direct labor rates of the personnel identified on the staffing plan included in Dynamac's technical proposal. However, Dynamac states that the staffing plan was not intended as representative of the personnel it intended to provide for contract performance, and the agency essentially concurs in this position. Accordingly, the recalculations are all based on a false premise, and, in any event, make certain assumptions which do not necessarily result in an accurate substitute. The only thing that is apparent is that Dynamac's realistic costs are higher than those it proposed, but it is not clear how much higher they should be.

Accordingly, we sustain the protest on this basis. We recommend that the agency conduct a reasonable and complete cost realism analysis of Dynamac's direct and indirect costs. If necessary, the agency should conduct additional discussions to resolve any possible ambiguity concerning the purpose of Dynamac's "staffing plan." If the agency determines that Dynamac's proposal no longer represents the best value, it should make the award to another offeror. We also recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The

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<sup>11</sup>(...continued)

question regarding Dynamac's understanding of the requirements and has concluded that Dynamac is capable of employing qualified personnel. While its proposal of low rates casts doubt on the realism of those rates, it does not necessarily indicate that Dynamac is not qualified to perform. Thus, we find this contention without merit.

protester should submit its detailed and certified claim for its costs directly to the agency within 90 days after receipt of this decision. Bid Protest Regulations, 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Comptroller General  
of the United States