



Comptroller General  
of the United States  
Washington, D.C. 20548

495.000

REDACTED VERSION\*

# Decision

**Matter of:** Trandes Corporation  
**File:** B-256975.3  
**Date:** October 25, 1994

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Frank, Harris, Shriver & Jacobson, for ManTech Advanced  
Systems International, Inc., an interested party.  
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Esq., Department of the Navy, for the agency.  
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Office of the General Counsel, GAO, participated in the  
preparation of the decision.

## DIGEST

Agency's failure to consider in its cost evaluation of a time-and-materials contract for engineering services the cost of unpriced "other direct cost" items proposed by an offeror that the solicitation required to be priced renders the agency's evaluation unreasonable.

## DECISION

Trandes Corporation protests an award to ManTech Advanced Systems International, Inc. under request for proposals (RFP) No. N00604-93-R-0056 issued by the Department of the Navy, Fleet and Industrial Supply Center, Pearl Harbor, Hawaii, for engineering, installation, and support services for electronic and communications equipment; and systems on board naval vessels and on shore stations worldwide. The protester challenges the evaluation of proposals and the source selection decision.

We sustain the protest.

The Navy issued the RFP on June 18, 1993, contemplating award of an indefinite-delivery/indefinite-quantity, time-and-materials contract for a base period with four 1-year

\*The decision issued October 25, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

options. The RFP stated that source selection would be on a best value basis with technical factors being given predominant weight. The RFP stated that proposals would be evaluated for cost realism, fairness, and reasonableness.

The RFP price schedule included a contract line item number (CLIN) for each of the specified 36 labor categories required under the contract along with an estimate of the total hours of work (and overtime) for each CLIN. The offeror was to propose a fixed hourly burdened labor rate for each CLIN, which was to include direct labor cost, as well as fringe benefits, overhead, general and administrative (G&A) expenses, and "all other charges against the contract (unless otherwise [provided for])." The RFP required that the contractor furnish the necessary tools and equipment, including designated computer equipment and software, necessary to perform the contract statement of work (SOW). The RFP also contained for each contract year 3 CLINs for direct costs not included in the labor rates: (1) materials, (2) travel, and (3) per diem, and designated "[n]ot to exceed" amounts for each CLIN of (1) \$200,000, (2) \$75,000, and (3) \$75,000, respectively.<sup>1</sup> In the proposal instructions, these designated amounts were reaffirmed as those to be utilized in determining the total evaluated price, except that the costs for travel and per diem were added together and set forth as \$150,000 in "other direct costs." The RFP also provided the following instructions to offerors for submitting cost proposals:

"1. Should an offeror anticipate any other direct costs to this contract (e.g., computer costs, relocation, etc.), such costs shall be clearly delineated in the Standard Form 1411 cost proposal and shall be included in addition to the amounts cited above in evaluation of cost.

"2. Material estimated above is for incidental material and other defined requirements in the performance work statement.

"3. Any offeror having an accounting system which includes, within overhead or G&A, the cost elements set forth above shall specifically state this fact within the Standard Form 1411 cost proposal. This will preclude these costs from being unduly considered in the Government's cost evaluation." (Emphasis in original.)

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<sup>1</sup>The amended RFP had only a 6-month base period so that the Material and Other Direct Costs were reduced for the base period to \$100,000, \$37,500, and \$37,500, respectively.

The Navy received three proposals, including those of Trandes and ManTech, by the due date of August 23. ManTech's cost proposal included a document entitled "General Statements," which was said to explain the cost elements included in its proposal. The cost elements described therein included elements of the proposed burdened labor rates [DELETED] as set forth in ManTech's proposal, as well as travel, per diem, and the following elements that are at issue here:

" Material[.] Direct material costs are defined as [DELETED]

"Other Direct Costs[.] Other Direct Costs include [DELETED]

"[DELETED]"

Mantech submitted prices for the 36 direct labor CLINs<sup>2</sup> and did not take exception to the designated "not to exceed" amounts for the Material, Travel, and Per Diem CLINs. ManTech did not propose a dollar value for the "Other Direct Costs" or for [DELETED] that it described in its "General Statements," or otherwise indicate that these costs were included in any other CLIN (e.g., the loaded labor rates), except that it did propose a separate yearly charge for [DELETED]--which, as indicated above, was one of Mantech's defined "Other Direct Costs."

The Navy evaluated proposals and conducted written discussions with all three offerors. While during discussions the Navy apprised Mantech that it could not separately charge for [DELETED] the Navy did not address the designation or descriptions of Material, Other Direct Costs, and [DELETED] in ManTech's "General Statements." In response to these discussions, [DELETED]. In its best and final offer (BAFO), ManTech incorporated the same "General Statements" defining its cost elements, but did not price the "Other Direct Costs" or [DELETED].

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<sup>2</sup>[DELETED]

All three offerors timely submitted BAFCs. The Navy's BAFC evaluation results are as follows:

	<u>Total Score<sup>3</sup></u> <u>(Max. 70 pts.)</u>	<u>Price</u>
Offeror A	{DELETED}	{DELETED}
ManTech	{DELETED}	7,037,939
Trandes	{DELETED}	{DELETED}

The Navy determined that all offerors could acceptably perform the contract and determined that ManTech's proposal offered the best value to the government. The agency provided the following rationale for recommending ManTech for award:

"They are the lowest priced proposal and  
{DELETED}.

The agency awarded the contract to ManTech on April 1. This protest followed.<sup>4</sup>

Trandes alleges that the price proposed by ManTech does not realistically represent the probable cost to the government because ManTech's "General Statements" portion of its cost proposal permits it to direct charge material costs and

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<sup>3</sup>During the course of this protest, the agency determined that its evaluation method for rating corporate experience was irrational. The scores listed here reflect this post-award score correction. This correction {DELETED} but the agency determined that the corrected scores did not change the source selection decision.

<sup>4</sup>Trandes initially alleged that the agency failed to consider the firm as a small disadvantaged business (SDB) concern eligible for application of the SDB evaluation preference provided for in the RFP. After receiving an adverse ruling from the Small Business Administration (SBA) regarding its size status, Trandes withdrew this protest allegation. ManTech alleges that Trandes intentionally misrepresented its size status in its proposal which should disqualify Trandes from eligibility for award, and thus Trandes should not be considered an interested party eligible to pursue this protest. While the SBA had found that Trandes was not a small business concern, as Trandes certified, the record does not show that Trandes intentionally misrepresented its size or SDB status, such that it should be disqualified from award consideration. See Verify, Inc., 71 Comp. Gen. 158 (1992), 92-1 CPD ¶ 107. Therefore, Trandes is considered to be an interested party. 4 C.F.R. §§ 21.0(a), 21.1(a) (1994).

other direct costs not reflected in the CLIN prices of the contract. Trandes asserts that the Navy's failure to account for these unpriced costs in ManTech's cost proposal was unreasonable.<sup>5</sup> We agree and sustain Trandes' protest on the basis that ManTech's proposal is at least ambiguous with respect to whether it would separately charge for the additional costs described in the "General Statements" in its proposal. By accepting ManTech's proposal, and by accepting ManTech's proposed price without reconciling it with ManTech's "General Statements," the agency did not perform a proper cost analysis.

As indicated above, the RFP defined and stipulated the fixed total prices per CLIN for "Material," "Travel" and "Per Diem," by which all offerors' costs would be evaluated. The RFP also stated that the direct labor CLIN costs should include all other charges against the contract, except as otherwise provided in the contract. The RFP instructed offerors to specifically identify other direct costs proposed but not covered by the CLINs, as well as to identify where elements of the stipulated fixed prices were included in the proposed labor rates so that the agency could adjust its cost evaluation accordingly. The RFP also designated equipment that the contractor was to provide to perform the contract work; however, the RFP is unclear what equipment costs should be part of the burdened labor rates or within the designated \$200,000 in "Material" costs.

ManTech's cost proposal included an extensive list of "Other Direct Costs" and [DELETED]. These costs include [DELETED] as well as other items that the record indicates are necessary to accomplish the day-to-day contract work. ManTech did not propose a price for these designated "Other Direct Costs," even though by its own terminology, these costs are distinct from, and unrelated to, the stipulated amounts for the pre-costed "Material," "Travel," and "Per Diem" CLINs. Nor is there any indication in the cost or pricing data supporting ManTech's loaded labor rates that these costs were accounted for in the loaded labor rates (except for the [DELETED])--in this regard, the only elements reflected in ManTech's loaded labor rates were [DELETED] which ManTech defines as being different from its "Other Direct Costs."

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<sup>5</sup>The purpose of a cost realism analysis evaluation by an agency under a time-and-materials contract is to determine the extent to which the offerors proposed rates and other costs are realistic and reasonable; we will not disturb the agency's determination absent a showing that it was unreasonable. Koba Assocs., Inc., B-252356, Mar. 25, 1993, 93-1 CPD ¶ 267.

Thus, by including its "General Statements," ManTech's proposal could be reasonably read as charging these "Other Direct Costs" to the Navy separately and directly, rather than including these costs in its loaded labor rates or as part of any other CLIN. In other words, we think that ManTech's BAFO could be read as essentially taking exception to the terms of the RFP by not offering the items included in its "Other Direct Costs" and [DELETED] elements within the RFP CLINs, and instead proposing that the Navy would have to pay an additional price for these items, notwithstanding that the RFP required the contractor to provide these items. Thus, by including its "General Statements," Mantech rendered its proposal ambiguous as to how these required items would be charged. The Navy accepted ManTech's cost proposal without seeking any clarification of the ambiguity.

The Navy and ManTech contend that ManTech's "General Statements," rather than stating additional costs, merely identify the types of costs generally included in ManTech's cost accounting system. ManTech's "General Statements" identify [DELETED] elements of cost and the composition of each element is defined. The [DELETED] are the only elements in the ManTech's proposed fixed loaded labor rates, as is confirmed by ManTech's cost or pricing data supporting these rates. The [DELETED] element, "Travel," is a direct cost and includes the subcategory of "Per Diem"--"Travel" and "Per Diem" are CLINs for which the RFP stipulated "not to exceed" fixed dollar amounts. The [DELETED] element is Material, which also has a stipulated "not to exceed" fixed

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'As indicated above, it is not entirely clear how the Navy intended for costs for equipment necessary to accomplish the day-to-day work of the contract to be paid (whether as part of the burdened labor rates or as part of the "Material" CLIN or in some other manner), or even whether offerors submitted their CLIN pricing on the same basis. In this regard, Trandes states, without rebuttal from either the Navy or ManTech, that the costs for equipment required to perform the RFP SOW designated in Mantech's "Material" and "Other Directs Costs" were generally contemplated by the Navy and the RFP to be part of the burdened labor rate CLINs. This stands in contrast to ManTech's apparent accounting for these costs, which reflects an expectation that it expects to be directly reimbursed for the cost of this class of items. On a time-and-materials contract, where, as here, the equipment necessary to perform the day-to-day work under the contract is known and defined, we would expect that such equipment should generally be included in overhead and other costs typically included in the burdened labor rates. See generally Federal Acquisition Regulation (FAR) § 16.601.

dollar amount. The [DELETED] elements are "Other Direct Costs" and [DELETED] both of which describe direct costs, which are arguably chargeable to this contract separate from and in addition to Material, Travel and Per Diem. In this regard, as discussed above, ManTech's "General Statements" does not define these last two elements of proposed costs as falling under any of the priced CLINs, nor does Mantech's cost proposal otherwise price these elements. Thus, ManTech's proposal is at best ambiguous as to whether it has offered the items included in "Other Direct Costs" element in its priced CLINs.

The Navy also offers a DCAA audit as support for its evaluation of ManTech's cost proposal. However, the record contains no representation from DCAA that ManTech's proposed price includes the cost of the additional elements in question. Rather, DCAA's audit findings [DELETED].<sup>7</sup> The Navy did subsequently request DCAA for "assistance in determining the reasonableness of the proposed cost for [the schedule of prices] of [the RFP]." DCAA declined comment on ManTech's labor rates because it had insufficient information. It did review [DELETED]. Such a report, though not a recommendation of price unreasonableness, fails to provide any basis for the agency to conclude that ManTech had accounted for its "Other Direct Costs" in its CLIN pricing and would suggest that close scrutiny should have been given the import of ManTech's "General Statements." Under the circumstances, the Navy may not reasonably rely upon the absence of a specific notice from DCAA warning of unpriced costs to find that ManTech's proposal priced all elements of cost.<sup>8</sup>

Based on the foregoing, we find that Mantech introduced an ambiguity into its cost proposal,<sup>9</sup> and therefore the agency unreasonably evaluated ManTech's proposal as the lowest priced proposal. Thus, the agency's source selection decision, which states low price as a major reason for selection, is unreasonable. See Versar, Inc., B-254464.3, Feb. 16, 1994, 94-1 CPD ¶ 230 (cost evaluation and source

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<sup>7</sup> [DELETED]

<sup>8</sup> [DELETED]

<sup>9</sup>Trandes also states, without rebuttal, that ManTech has included in its definition of "Material" contained in its "General Statements" equipment necessary to accomplish the day-to-day contract work, when the RFP contemplated that these equipment costs be included in the burdened labor rates. See footnote 6, infra. In addition, ManTech [DELETED].

selection was unreasonable where agency failed to consider additional costs not properly reflected in awardee's cost proposal).

The agency could and should have accounted for Mantech's "General Statements" during discussions. In addition, as previously stated, the RFP does not clearly define how costs were to be allocated among the CLINs. We recommend that the Navy determine how the costs should be allocated under the RFP CLINs and apprise offerors of this basis. The agency should also reopen price and technical discussions with the competitive range offerors to address such matters as the discrepancy in Mantech's cost proposal, and request revised BAFOs.<sup>10</sup> If evaluation of revised BAFOs results in award to an offeror other than Mantech, the Navy should terminate the contract to Mantech, including any option exercised to extend the term of the contract, and award accordingly. We also find that Trandes is entitled to recover the reasonable costs of filing and pursuing the protest, including attorney's fees. 4 C.F.R. § 21.6(d)(1). The protester should submit its certified claim for protest costs directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

Comptroller General  
of the United States

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<sup>10</sup>Trandes made numerous other allegations concerning the technical evaluation and discussions. Much of the documentation supporting the evaluation is sparse. Specifically, much of the documentation simply contains numbers with no comments supporting the numbers, e.g., in the areas of best value performance and availability of labor force. When evaluated weaknesses and deficiencies are documented, as required by FAR §§ 15.608 and 15.612(d)(1), meaningful technical discussions should be conducted.