



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ManTech Advanced Systems International, Inc.;
Department of the Navy--Reconsideration

File: B-256975.4; B-256975.5

Date: December 14, 1994

DECISION

ManTech Advanced Systems International, Inc. and the Department of the Navy request reconsideration of our decision, Trandes Corp., B-256975.3, Oct. 25, 1994, 94-2 CPD ¶ _____, sustaining Trandes Corporation's protest of an award to ManTech 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.

We deny the requests for reconsideration.

We sustained Trandes's protest because the Navy failed to consider in its cost evaluation the import of "Other Direct Cost" items identified, but not specifically priced, in ManTech's cost proposal. We stated that ManTech's cost proposal was at best ambiguous as to how ManTech proposed to charge the Other Direct Costs specifically identified in its cost proposal, and that the Navy could and should have addressed this issue during discussions. We found that the agency's source selection, in large part based on price, was therefore unreasonable.

On reconsideration, ManTech generally alleges that we erred in finding its proposal ambiguous, that the protester was not prejudiced even if ManTech's proposal was ambiguous, and that our recommendation for agency corrective action was not limited to the basis for sustaining the protest. The Navy alleges on reconsideration that ManTech's proposal was not ambiguous as the agency interpreted ManTech's "Other Direct Costs" as being included among the costs falling under the material, travel or per diem contract line items (CLIN), and that ManTech's proposed loaded labor cost CLINs included all allowable costs and were reasonable.

Under our Bid Protest Regulations, a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which a reversal or modification of the initial decision is warranted, as well as specify any errors of law made or information not

previously considered that warrants reversal or modification of our decision, 4 C.F.R. § 21.12(a) (1994). Mere disagreement with our decision does not meet this standard, R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Here, although ManTech stated its disagreement with our finding that its proposal was ambiguous, it has presented no argument detailing the errors in either our factual or legal analysis. Rather, ManTech generally alleges that neither the agency nor ManTech considers ManTech's proposal to be ambiguous. This is nothing more than a general disagreement with our decision and is not a basis upon which we will reconsider the decision.

The agency's request for reconsideration likewise fails to rise above mere disagreement with our decision. The agency states that if ManTech wished to be paid for direct costs under the contract, it had to disclose them in its offer, and that ManTech's proposed labor costs included all allowable costs and were essentially fixed for the term of the contract. Our decision explained in great detail that ManTech's Other Direct Costs were identified separately from its proposed costs for the labor rate, material, travel and per diem CLINs, and that ManTech did not disclose how the Other Direct Costs, which were for items required to perform the contract work, would be recovered. Here too, the Navy does not identify any errors of law or fact in our analysis of those matters. The Navy's general disagreement with our decision is not a basis for reconsideration.

The agency also alleges that just because ManTech identified separate categories of costs in its proposal does not mean that they are allowable costs under the contract. We agree. The Navy did not, either during the protest or in its request for reconsideration, identify which of the Other

¹The agency now submits Trandes's cost data detailing that firm's proposed labor rates. The agency states that it intended to submit these documents into the record during the protest pendency, but did not do so. Our Office provided the agency with numerous opportunities to supplement the record and provide a complete report. These documents were available to the agency throughout the protest and it could have provided them at the time. We will not now consider piecemeal presentation of documents as a basis for reconsideration. Department of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546. In any event, the cost data supporting Trandes's proposed labor rates do not explain ManTech's proposed costs because, unlike ManTech, Trandes did not specifically identify other direct costs separate from its priced CLINs.

Direct Costs would be allowed or disallowed under the contract nor has ManTech shown where the "Other Direct Costs" were priced.² As our decision stated, ManTech's identification of these additional costs in its proposal created an ambiguity as to how these costs would be charged under the contract. Since ManTech was very specific in identifying these additional costs, which led to the possibility that it may recover these costs outside the priced CLINs, the Navy could have and should have addressed the treatment of these cost during discussions and in its cost analysis.³

ManTech now also generally alleges that the protester was not prejudiced by the defective source selection. ManTech did not make this allegation during the protest. Where an agency clearly violates procurement requirements, a reasonable possibility of prejudice is a sufficient basis for sustaining a protest and we will resolve any doubts concerning the prejudicial effect of the agency's action in favor of the protester. Foundation Health Fed. Servs., Inc.; QualMed Inc., B-254397.4 et al., Dec. 20, 1993, 94-1 CPD ¶ 3. Since we found that the price proposed by ManTech apparently did not include all of the firm's costs chargeable under the contract, no reasonable selection of ManTech could be made using the stated evaluation factors. Nothing in the record permitted reasonable quantification of ManTech's unpriced cost elements. Thus, a reasonable possibility of prejudice was evident from the record. ManTech has not identified with any specificity any facts that would indicate the asserted lack of prejudice, nor has the agency provided any such evidence.

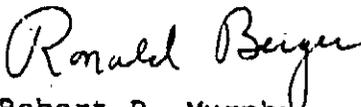
Finally, ManTech disagrees with our recommendation to the agency that it reopen discussions. ManTech claims that the recommendation should be limited to a reopening of discussions solely on cost issues. Once discussions are opened for one offeror after submission of best and final offers (BAFO), discussions must generally be conducted with

²As indicated in our prior decision (and not contested on reconsideration by either the Navy or ManTech), it is not clear that offerors were pricing these costs on the same basis, inasmuch as the RFP was unclear in this matter.

³The Navy also states that "the [Defense Contract Audit Agency] DCAA did not identify [ManTech's Other Direct Costs] as improperly included or excluded." Our decision reached the same conclusion and merely stated that "[u]nder 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."

all offerors in the competitive range and all offerors must be provided an opportunity to submit revised BAFOs, even where the issue prompting additional discussions with the one offeror is unrelated to the proposals of the other offerors in the competitive range. See Microlog Corp., B-237486, Feb. 26, 1990, 90-1 CPD ¶ 227. Here, our decision, in addition to finding the cost analysis flawed, found that the RFP's provisions for allocating costs were unclear; that the record suggested that offerors could not have competed on an equal basis because of this lack of clarity; and that the solicitation should therefore be amended, discussions reopened and revised BAFOs solicited. See Federal Acquisition Regulation (FAR) § 15.611(c). Furthermore, as stated in our prior decision, the agency failed to adequately document its evaluation of technical proposals, which inhibited any determination regarding the reasonableness of the agency's technical evaluations and discussions. Since the problems with this procurement extended beyond the Navy's failure to conduct a proper cost evaluation, our recommendation was properly fashioned to adequately address the apparent procurement deficiencies. See 4 C.F.R. § 21.6(a) and (b); Microlog Corp., supra.

The requests for reconsideration are denied.


for Robert P. Murphy
General Counsel