



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Trandes Corporation

File: B-271662

Date: August 2, 1996

Daniel A. Perkowski, Esq., for the protester.

David W. Burgett, Esq., Hogan & Hartson, for ManTech Advanced Systems International, Inc., the intervenor.

Elizabeth Rivera Bagwell, Esq., and Otto A. Thompson, Jr., Esq., Department of the Navy, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A succession of interest in, or a transfer of, a proposal has not occurred where an initial proposal is prepared and submitted by one unincorporated operating unit of the offeror corporation and subsequent revised proposals are prepared and submitted by another unincorporated operating unit of the same corporation, because the legal offering entity under the proposal, i.e., the offeror corporation, has not changed.

DECISION

Trandes Corporation protests an award to ManTech Field Engineering Company (MFE Co.), a division of ManTech Advanced Systems International, Inc. (MASI) 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 communication equipment and systems on board naval vessels and on shore stations worldwide.

We deny the protest.

The Navy issued the RFP on June 18, 1993, contemplating award of an indefinite-delivery/indefinite-quantity, time-and-materials contract on a best value basis for a base period with four 1-year options. The Navy received initial proposals from three offerors, including Trandes and MASI. On April 1, 1994, after conducting discussions, and requesting and receiving best and final offers (BAFO), the Navy awarded the contract to MASI. Trandes protested this award to our Office. We sustained the protest because the agency's cost evaluation was unreasonable. Trandes Corp., B-256975.3, Oct. 25, 1994, 94-2 CPD ¶ 221.

In response to our decision, the agency reopened discussions, amended the RFP, and requested revised proposals. On November 13, 1995, Trandes and MFE Co., a division of MASI, submitted revised proposals, and subsequently, on March 25, 1996, submitted revised BAFOs. On March 29, the Navy awarded a contract under the RFP to MFE Co. The contract award standard form (SF 26) by which the agency executed the award did not identify MFE Co. as a division of MASI. The awardee added the words "a division of [MASI]" to the contract award form, signed and dated the form April 4, and returned it to the Navy.

On April 4, after receiving notification of the award, Trandes filed this protest alleging that MFE Co. is a separate legal entity from MASI, the original offeror, and thus the submission of a revised BAFO by, and an award to, MFE Co. constitutes an unacceptable substitution of offerors. The Navy responds that no substitution of offerors has occurred; that MASI was the entity that submitted the initial proposal and BAFO as well as the revised proposal and revised BAFO.

Trandes filed two subsequent protests challenging the evaluation and source selection process that resulted in the award to MFE Co. After the Navy advised our Office that it was undertaking the corrective action of reopening negotiations in response to these subsequent protests, we dismissed those protests. We did not dismiss the initial protest because this protest argues that the alleged substitution of offerors renders MASI ineligible to continue to compete under the RFP.

The name of an offeror need not be exactly the same in all of the offer documents, although the offer documents or other information available must show that differently-identified offering entities are in fact the same legal entity. Dick Enters., Inc., B-259686.2, June 21, 1995, 95-1 CPD ¶ 286, recon. denied, Dick Enters., Inc.-- Protest and Recon., B-259686.3, Nov. 16, 1995, 95-2 CPD ¶ 223; Mark II, Inc., B-203694, Feb. 8, 1982, 82-1 CPD ¶ 104. In the context of negotiated procurements, this requirement generally prohibits awarding a contract to an ambiguously identified offeror inasmuch as this may not bind any legal entity to the contract obligations, see Dick Enters., Inc., supra, or may evidence an unacceptable transfer or assignment of proposals, or an improper circumvention of the regulations governing the submission of late proposals, see Pedestrian Bus Stop Shelters, Ltd., B-212570, Mar. 20, 1984, 84-1 CPD ¶ 331. The available information must reasonably establish the identity of the offeror, and such information may include records of incorporation, Gem Eng'g Co., B-251644, Mar. 29, 1993, 93-1 CPD ¶ 303, taxpayer identification numbers (TIN) or other identification codes, Mark II, Inc., supra, and other evidence relevant to determining identity. Dick Enters., Inc., supra.

Here, the initial proposal and BAFO undisputedly identified MASI as the offering entity, whereas the record shows that MFE Co., a division of MASI, is identified as

the offeror in the revised proposal and BAFO.¹ MASI itself is an incorporated subsidiary of ManTech International, and is registered as a corporation of Virginia, as is ManTech International. Being a separately incorporated entity, MASI is a separate and distinct legal entity from ManTech International and all other corporations, commercial ventures, or private individuals, see Dick Enters., Inc., supra; Caldwell & Santmyer, Inc., B-260628, July 3, 1995, 95-2 CPD ¶ 1; Pacific Information Management, Inc.-Recon., B-224506.2, Sept. 15, 1986, 86-2 CPD ¶ 306; however, MASI is not a separate legal entity from its own unincorporated divisions and operating units. See Goss Fire Protection, Inc., B-253036, Aug. 13, 1993, 93-2 CPD ¶ 97.

In fact, the record shows that MASI has distinct operating units within its corporate structure which are not themselves incorporated. For example, the operating unit which prepared and submitted MASI's initial proposal and BAFO was MASI's Systems Technology Center, which was not incorporated and thus did not exist as a legal entity apart from MASI. As such, MASI, not the Systems Technology Center, is the undisputed legal offering entity under the proposal submitted prior to Trandes' first protest.

¹The awardee's revised proposal and revised BAFO documents identify the offeror as "[MFE Co.], a division of [MASI]" in both the stationery letterhead and by specific statements in the text of the documents. Wherever the proposal specifically identifies the "offeror," the identification clearly identifies MFE Co. as the offeror and, almost without exception, identifies it as a division of MASI. Also, the corporate organization chart in the revised proposal illustrates that MFE Co. is a part of MASI. Even in the rare instances where MFE Co. was not in some way specifically identified as a division of MASI, the proposal did not represent MFE Co. as something other than a division of MASI. Although the executive summary and the introduction to the technical proposal describe the experience and the resources of ManTech International Corporation (the parent corporation of MASI), and ManTech International stationery is sometimes used, the proposal documentation clearly explains that MASI is part of the ManTech International organizational structure. Such inclusion of the names of corporate affiliates in a proposal does not make the identity of the offeror ambiguous where, as here, it is possible to sufficiently identify the offering entity so that it would not be able to avoid the obligations of the offer. See Cline Enters., Inc., B-252407, June 24, 1993, 93-1 CPD ¶ 492.

Similarly, the record shows that MFE Co. is also an unincorporated division of MASI and, as such, does not exist apart from MASI and can only enter into contracts as the legal entity MASI. In this regard, the revised proposal represented “the offeror” as a corporation incorporated under the laws of the State of Virginia and stated the offeror’s TIN as that of MASI. Also, the individual who submitted and signed the revised proposal and revised BAFO, as well as the contract award document, is the head of MFE Co. and is authorized to execute contracts on behalf of MASI. Furthermore, there is no evidence in the record showing that MFE Co. is incorporated under the laws of any state or otherwise has authority to contract apart from MASI. The variation in names used by MASI or the agency throughout this proposal process was a matter of form, which was nothing more than different ways of referring to the same legal entity; therefore, no succession of interest in, or transfer of, a proposal has occurred here.² See Pedestrian Bus Stop Shelters, Ltd., supra.

Trandes contends, however, that a legal entity by the name ManTech Field Engineering Corporation (MFE Corp.) in fact exists, and that because under the corporation law of the State of Virginia the terms “company” and “corporation” may be used interchangeably,³ the offeror MFE Co. must in fact be MFE Corp., a legal entity different from MASI, such that it could be reasonably concluded that a transfer of the proposal from MASI—the original proposing entity—has occurred. In further support of this contention, Trandes has submitted documentation showing that MFE Corp. is currently registered in the State of Hawaii as a Delaware corporation.

The record shows that no legal entity by the name of MFE Corp. currently exists as a corporation of any state, nor did it exist at any time during the course of this procurement. Although a ManTech company with the name MFE Corp. was incorporated in the State of Delaware in 1982 (prior to the formation of MASI in

²To the extent the identification of the awardee in the contract award form was MFE Co. without also identifying it as a division of MASI can be considered an incorrect identification, it is a minor informality which can be corrected after award, as was done here, because it is clear from the proposal that the offeror is MFE Co., a division of MASI. See Digital Equip. Corp., B-251105, Mar. 8, 1993, 93-1 CPD ¶ 213; Robert McMullan Son, Inc., B-215690, July 23, 1984, 84-2 CPD ¶ 92.

³The protester cites Va. Code Ann. §§ 13.1-630 and 13.1-762 (Michie 1996), which states:

“A. A corporate name shall contain the word ‘corporation,’ . . . ‘company,’ Such words and their corresponding abbreviations may be used interchangeably for all purposes.”

Virginia in 1985), MASI has submitted documentation showing that MFE Corp. changed its name to ManTech Strategic Associates Ltd. in 1992. ManTech Strategic Associates became an incorporated subsidiary of MASI. Later, MASI began using the name MFE Co. to identify the unincorporated division of MASI discussed above. MASI also explains that MFE Corp. is only registered in Hawaii as a Delaware corporation because ManTech Strategic Associates failed to effect a name change in the Hawaii registration, and that ManTech Strategic Associates (under either name) has not conducted any business in Hawaii in several years and now intends to close this outstanding registration without updating the name as soon as clearance on tax issues is received from that state. Trandes has not presented any credible evidence showing that MFE Corp. is an extant legal entity or that it was the entity that submitted the revised proposal and revised BAFO. Thus, regardless of how the State of Virginia actually applies its statute permitting interchange of the terms "company" and "corporation," we do not believe that this statute can be used to create a legal entity where none exists.

The protest is denied.

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