

**Matter of:** Trataros Construction, Inc.

**File:** B-254600

**Date:** January 4, 1994

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Timothy Yarger for the protester.  
Richard V. Gonzales, Esq., Department of Transportation, for the agency.  
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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#### **DIGEST**

A bid containing an apparent obvious mistake for one major line item of construction services was properly rejected where this line item price was significantly lower than the other bidders' prices and the government estimate, and the bidder declined to provide the agency with requested documentation that would support its asserted claim that the bid was correct as submitted.

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#### **DECISION**

Trataros Construction, Inc. protests the rejection of its low bid under invitation for bids (IFB) No. DTMA91-93-B-00020, issued by the Maritime Administration (MARAD), Department of Transportation, for construction services to upgrade the heating plant at the United States Merchant Marine Academy, Kings Point, New York.

We deny the protest.

The IFB contemplated the award of a fixed-price contract for a base year and 1 option year to perform various construction services in renovating and upgrading the heating plant system at the United States Merchant Marine Academy. Offerors were informed that the government would evaluate bids by adding the total price for all options to the total price for the base requirement and would make a single award.

The bid schedule contained 13 contract line items and subitems (CLIN) for the base and option year services. The base year (CLIN No. 0001) was for the construction of the Delano Boiler Plant Building and the 5 base year options in CLIN No. 0002 were to construct fixtures in that building and connections within the Delano plant system as follows: (1) mechanical/electrical systems; (2) fuel oil tanks; (3) automation system; (4) mechanical equipment rooms; and (5) distribution piping. The option year work consisted of two items: No. 0003AA--construction of the O'Hara Plant System and No. 0003AB--construction of the Fulton Plant System. CLIN No. 0004 included options for 5 additional items of related work as well as spare parts and spare equipment; these options could be exercised during either the base or option year.

MARAD received 11 bids, ranging from \$5,780,000 to \$9,800,000. Trataros submitted the low bid at \$5,780,000 and Maric Mechanical the next low of \$6,345,000.<sup>2</sup> Shortly after bids were received, MARAD notified Trataros that it was the apparent low bidder and requested that it verify its "intended bid price for each [CLIN]." Although Trataros expressly verified its bid prices for each CLIN and stated that there were no mistakes in its bid prices, the contracting officer suspected a mistake in Trataros's price for its CLIN No. 0003AB price of \$595,000 because it was substantially lower for this CLIN than the prices of the other bidders that ranged from \$1,176,241 to \$2,700,000 and the government estimate for this CLIN of \$1,750,000. MARAD informed Trataros of its suspicions and requested that Trataros verify its CLIN prices and "furnish any evidence you may have to support the existence or nonexistence of the suspected mistake." Trataros again verified its bid, stating that there were no mistakes in its bid prices. Trataros did not provide any further documentation to support its bid verification, but stated that it should receive the award since it had verified the accuracy of its bid

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<sup>1</sup>This project involves converting the Academy's heating system from a distributed system with a single boiler plant at Fulton Hall to a decentralized system with three primary boiler plants at Delano, Fulton and O'Hara Halls, and individual boiler rooms in several outlying buildings.

<sup>2</sup>The agency states that the second low bid of \$6,047,000 evidenced three mistakes and that bidder was therefore allowed to withdraw. Maric Mechanical is the third low bidder.

The contracting officer rejected Trataros's bid as materially unbalanced<sup>3</sup> and because Trataros's CLIN No. 0003AB price was obviously mistaken; in this regard, the architect and engineering firm that performed the construction design work for MARAD informed the contracting officer that Trataros's bid price for CLIN No. 0003AB was "insufficient to cover the extensive work involved with this item. Their quoted amount will not cover the cost of materials alone for this item."<sup>4</sup>

Trataros protests that the agency unreasonably rejected its bid as containing a mistake in its price for CLIN No. 0003AB. Trataros asserts that it made no mistake and affirms its promise to perform the contract work at the price it bid.

MARAD argues that Trataros cannot perform the contract work for the price bid for CLIN No. 0003AB, and therefore Trataros's bid price must be mistaken, despite Trataros's repeated and continuing verifications of its price. In this regard, the agency states that it requested that Trataros demonstrate that its bid price for CLIN No. 0003AB was not mistaken, and that Trataros failed to provide any evidence, apart from its bid verification. Accordingly, the agency contends that under FAR § 14.406-3(g)(5) Trataros' bid may be rejected as mistaken.

Where it is clear that a mistake has been made, the bid cannot be accepted, even if the bidder verifies the bid price, denies the existence of a mistake, or seeks to waive an admitted mistake, unless it is clear that the bid as submitted and intended would remain low. Atlantic Servs., Inc., B-245763, Jan. 30, 1992, 92-1 CPD ¶ 125. FAR § 14.406-3(g)(1) provides that a contracting officer shall immediately request a bidder whose bid contains a suspected mistake in bid to verify the bid and that the "action taken to verify bids must be sufficient to reasonably assure the contracting officer that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder." FAR § 14.406-3(g)(5) then provides:

"Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider

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<sup>3</sup>We need not address the reasonableness of the agency's rejection of Trataros's as materially unbalanced since, as discussed below, it had a reasonable basis to reject the bid as containing a mistake.

<sup>4</sup>No award has been made pending our resolution of this protest.

the bid as submitted unless (i) the amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or (ii) there are other indications of error so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders."

A contracting officer's decision to reject an apparently mistaken bid under the authority of the above quoted FAR provision is subject to question only where it is unreasonable. Pamfilis Painting, Inc., B-237968, Apr. 3, 1990, 90-1 CPD ¶ 355; see also Gore's Sec. Agency, Inc., B-240969.2, Nov. 6, 1991, 91-2 CPD ¶ 430; Zeta Constr. Co., Inc., B-244672, Nov. 5, 1991, 91-2 CPD ¶ 428.

We conclude that the contracting officer's decision to reject Trataros's bid under FAR § 14.406-3(g)(5) was reasonable. In this case, notwithstanding that its price for CLIN No. 0003AB was far out of line with the other prices received for this item as well as the government estimate and it was so apprised of these facts, Trataros did not furnish evidence regarding the suspected mistake, despite the agency's request for such documentation. Trataros's price for CLIN No. 0003AB is significantly less than the other bidders' prices and the government estimate. Indeed, the architect engineer confirms that Trataros's price for this item is not even sufficient to cover the cost of materials for this work. Trataros does not dispute that its bid for this work is very low; it now states that it may have made an unspecified "error in judgment" with regard to this item (although it continues to "stand by its bid"). Under the circumstances, the agency could reasonably request substantiation from Trataros that its bid was without error. See Contract Servs. Co., Inc., 66 Comp. Gen. 468 (1987), 87-1 CPD ¶ 521. Trataros has provided no evidence, other than its verification, that it did not make a mistake on this item, even when the importance of such information became apparent during the course of the protest. We think that the contracting officer reasonably concluded the line item price is so out of line with the other bids received and the government estimate that acceptance would be unfair to other bidders. FAR § 14.406-3(g)(5).

Further, by not furnishing evidence to contradict what appears to be a mistaken bid price, Trataros effectively elected, after bid opening, to stand by its bid as opposed to claiming or admitting a mistake, because this serves its best interests. Permitting such an election is not fair to

the other bidders whose prices have been disclosed at bid opening. 37 Comp. Gen. 579 (1958).

The protest is denied.

Robert P. Murphy  
Acting General Counsel