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Comptroller General
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Orbas & Associates

**File:** B-255276

**Date:** February 23, 1994

William L. Bruckner, Esq., Corona & Balistreri, for the protester.
Rita M. Liotta, Esq., Diane D. Hayden, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.
Tania L. Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Agency's decision to reject bid due to suspected mistake was reasonable where the bid price is significantly lower than both the other bid prices submitted and the government estimate, and where the bidder failed to submit sufficient documentation or explanation to support its bid calculations, creating a reasonable doubt that the bid price included all costs associated with the work required by the solicitation.

## DECISION

Orbas & Associates protests the rejection of its bid and the award of a contract to Arntz Builders under invitation for bids (IFB) No. N62474-92-B-3497, issued by the Department of the Navy for the construction of a child development center at Travis Air Force Base in Fairfield, California. The Navy rejected Orbas's bid because the bid price was so low that it appeared a mistake had been made, and the firm failed to provide sufficient documentation or explanation to support its bid price.

We deny the protest.

The solicitation, issued on August 11, 1993, required bidders to submit a lump sum price for the bid base item, the furnishing of all labor, materials, and equipment to complete the site work and construction of the new child development center, as well as prices for each of three options: option No. 0001, an additional parking area; option No. 0002, outdoor play-yard equipment; and option No. 0003, selected food service equipment. The IFB stated that the government would evaluate the bids for award by adding the total price for all options to the total price for the basic requirement, and that award would be made to the total low bidder; the evaluation of options would not obligate the government to exercise those options.[1]

The agency received 10 bids by the September 14 bid opening; the bids received from Orbas and the third low bidder, Arntz,[2] were as follows:

| | Orbas | Arntz | Government Estimate |
|---|---|---|---|
| Base Bid | $2,396,000 | $3,163,000 | $2,860,000 |
| Option 1 | 110,000 | 48,174 | 44,000 |
| Option 2 | 110,000 | 68,900 | 177,000 |
| Option 3 | 134,000 | 12,500 | 14,000 |
| Total | $2,750,000 | $3,292,582 | $3,095,000 |

A comparison of the bids with each other and with the government estimate revealed that Orbas's total bid was about 11 percent lower than the government estimate, and about 16 percent lower than Arntz's third-low bid. Orbas's base bid was about 16 percent lower than the government estimate, and about 24 percent lower than the third-low bid. Further, while Orbas's base bid was lower than all of the other bids and the government estimate, its bid prices for option Nos. 0001 and 0003 were significantly higher than those prices bid by other bidders or the government estimate. As a result, on September 15 the Navy sent Orbas a letter asking the firm to review its bid for possible mistakes because it was significantly lower than the other bids and the government estimate; the abstract of bids was included as an attachment. The Navy also asked Orbas to confirm its bid, if appropriate, and to provide a cost breakdown of the bid, by specification section, by September 17.

The contracting officer telephoned Orbas on both September 17 and 20 concerning the status of Orbas's bid review, and was told that the firm would not confirm its bid without approval from its bonding company. Orbas agreed to call the contracting officer on September 20 with the results of a meeting with that bonding company. When no

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[1]The solicitation informed bidders that the contracting officer could exercise the options by written notice within 90 days from the date of receipt of bids.

[2]On September 15, the apparent second-low bidder, who submitted a total bid price of $3,207,400, was permitted to withdraw its bid based upon an alleged computational error of $159,000.

call was received, the contracting officer telephoned Orbas that day and was again informed that no confirmation could be provided until the meeting with the bonding company was concluded; he was also told that the bonding company had advised Orbas to withdraw its bid. Orbas agreed to call the contracting officer at 2 p.m. that day with a definitive answer. When no call was received, the contracting officer called Orbas. During the ensuing conversation, Orbas asked if the agency intended to award the base bid plus all options, and was told that no decision had been made. Orbas then stated that there was an error in its bid, in that some of the costs included in option No. 0003 should have been included in the base bid item. Orbas finally indicated that it would confirm its bid when it received an answer from the bonding company, by September 20 or 21. The agency did not receive any communications from Orbas on either of these days.

By telefacsimile of September 23, Orbas stated that, while it did not appear that a mistake had been made, the bonding company was still reviewing the bid and a response would be forthcoming on that day or the next. In response, the agency sent a telefacsimile that same day in which it recounted its numerous attempts to obtain bid confirmation, and set a deadline of 12 p.m. on September 24 for a proper response. If the bid was confirmed, a bid verification meeting would be held on September 27. Orbas confirmed its bid on September 24 and provided what it called a "summary worksheet," a contract history, and references. The bid verification meeting was rescheduled for September 28, and the firm was reminded to bring the originals and copies of all worksheets/data used in the development of the bid.

At the bid verification meeting, Orbas's representative stated that the five-page, undated "summary worksheet" given to the agency was created for the post-bid opening meeting with the firm's bonding company, and that he had no original worksheets at hand.[3] In an attempt to identify the reasons for the substantial price differential, the Navy had prepared a spreadsheet outlining a number of unexplained disparities between Orbas's "worksheet" costs and its bid prices, between Orbas's bid and the government estimate,

[3]This assertion appears to conflict with the statement, found in the protester's comments, that "the summary worksheets . . . are the worksheets that Orbas used to calculate its bid." We note that the term "summary worksheet" is the one used by Orbas. In spite of the implication that this "summary worksheet" might summarize other data and/or worksheets, Orbas states that it is the only documentation that exists in support of the bid calculations.

and within Orbas's "summary worksheet" itself. The determination and findings written in connection with this matter states that Orbas's representative at the bid verification meeting could not answer the agency's specific questions.[4] The representative alleged that an obvious mistake had been made concerning the base bid and option No. 0003, in that a major portion of division 11, food service equipment, was excluded from its base bid and erroneously included in option No. 0003. Orbas's representative stated that the firm anticipated being awarded all three options in order to correct this mistake; the parties also discussed correcting the error by moving the erroneous amount, said by Orbas to be approximately $120,000, from option No. 0003 to the base bid. While supporting documentation to substantiate this error was requested, as discussed above, Orbas's representative stated that he had no original worksheets at hand.

Based on the significant price disparities between Orbas's bid and the other bids received and the government estimate, the unsubstantiated alleged mistake, and the failure of the firm to substantiate its bid calculations both before and during the bid verification meeting, the contracting officer rejected Orbas's bid as mistaken pursuant to Federal Acquisition Regulation (FAR) § 14.406-3(g)(5). Award was made to Arntz on September 29 for the base bid and option Nos. 0001 and 0002; this protest followed. Performance of the contract has been suspended pending resolution of this protest.

Orbas asserts that, aside from the alleged mistake discussed above, its bid did not contain any mistakes. Since it unequivocally confirmed its bid and submitted a worksheet in support of that bid, the protester contends, it is entitled to award as the low bidder.

After the opening of bids, a contracting officer is to examine all bids for mistakes. Where he has reason to believe that a mistake may have been made, he is to ask the bidder to verify the bid, calling attention to the suspected mistake. FAR § 14.406-1. A significant disparity between the low bid and the other bids received or the government estimate is sufficient to place a contracting officer on notice of a mistake and to create a duty to request a bid verification. FAR § 14.406-3(g)(1); TLC Fin. Group, B-237384, Jan. 26, 1990, 90-1 CPD ¶ 116.

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[4]Orbas's representative at the bid verification meeting attests that he answered the questions asked.

Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider 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. FAR § 14.406-3(g)(5).

A contracting officer's decision to reject an apparently mistaken bid under the authority of FAR § 14.406-3(g)(5) is subject to question only where it is shown to be unreasonable. See Pamfilis Painting, Inc., B-237968, Apr. 3, 1990, 90-1 CPD ¶ 355; TLC Fin. Group, supra. 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, both as submitted and intended, would remain low. Trataros Constr., Inc., B-254600, Jan. 4, 1994, 94-1 CPD ¶ ___; Atlantic Serv., Inc., B-245763, Jan. 30, 1992, 92-1 CPD ¶ 125. Acceptance of such clearly erroneous bids would be unfair to other bidders. See 51 Comp. Gen. 498 (1972); Atlantic Serv., Inc., supra; Panoramic Studios, B-200664, Aug. 17, 1981, 81-2 CPD ¶ 144; FAR § 14.406-3(g)(5). Clearly erroneous bids subject to rejection include those based upon a misinterpretation of solicitation requirements. See, e.g., Atlantic Servs., Inc., supra; Innovative Refrigeration Concepts, B-242515, Mar. 27, 1991, 91-1 CPD ¶ 332; Martin Contracting, B-241229.2, Feb. 6, 1991, 91-1 CPD ¶ 121.

The contracting officer's decision to reject Orbas's bid was reasonable. The record demonstrates a number of unexplained price disparities between Orbas's "worksheet" and its bid, between Orbas's bid and the government estimate, and within Orbas's "worksheet" itself. These unexplained disparities, along with the unsubstantiated mistake alleged by Orbas, create reasonable doubt that the bid price included all costs associated with the work required by the IFB. Further, despite repeated requests from the Navy, Orbas failed to provide either original worksheets/data or sufficient explanations to support its bid calculations.

The spreadsheet prepared by the agency indicates a concern with the unexplained disparities between Orbas's "worksheet" costs and its bid prices. The most significant of these is the locus of Orbas's alleged mistake: Orbas's bid price for option No. 0003 is 841 percent higher than the total cost for this item listed on its "worksheet," $10,300. Orbas contended during the bid verification meeting that about $120,000 of its bid for option No. 0003 should have been included in its bid for the base item instead. However, while Orbas now apparently offers to stand by its initial bid, the record indicates that acceptance of Orbas's bid may be prejudicial to the other bidders because it is not clear that as corrected Orbas's bid would have been low. Orbas did not and has not furnished any explanation as to how this mistake occurred, nor is there any probative evidence in support of the amount of the asserted mistake or the contention that that amount properly belongs in the bid for the base item. While bid correction based on the amount of the alleged mistake claimed by Orbas would still leave it the low bidder, there is no probative evidence showing that the bid necessarily would have been low had the protester priced the bid correctly, as there is no documentation or explanation sufficient to allow the contracting officer to discern Orbas's intended bid. That being so, acceptance of the bid would be unfair to the other bidders and its rejection was therefore proper under FAR § 14.406-3(g)(5). See Atlantic Servs., Inc., supra; Veterans Admin.--Advance Decision, B-225815.2, Oct. 15, 1987, 87-2 CPD ¶ 362; Panoramic Studios, supra. Moreover, the absence of any explanation in support of this alleged mistake raises the question whether Orbas's bid price for the base item included all costs associated with the work required for the IFB. See Pamfilis Painting, Inc., supra.

The agency was also concerned with the disparities between the costs listed on Orbas's "worksheet" and the figures listed as subcontractor bids on that "worksheet." For example, while Orbas's "worksheet" lists a total cost of $134,500 for food service equipment, the notation written in the margin beside this figure indicates a "materials bid" of $181,000, a difference of 35 percent. Orbas has provided no explanation for how the total cost for this requirement could be so much less than the materials cost. Further, Orbas's "worksheet" lists a total cost of $10,900 for a gas line at the site, an amount 105 percent below the subcontractor bid of $22,317 noted in the margin, and the "worksheet" lists a total cost of $55,000 for exterior insulation and finish systems, an amount 35 percent below the subcontractor bid of $74,500. These unexplained discrepancies also raise questions as to whether Orbas's bid price included all costs associated with the work required by the solicitation.[5] Finally, the total

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[5]Orbas's representative at the bid verification meeting attests that he told the agency that the reason for the lower bid was that the firm would not subcontract various sections of work, but would perform them in-house, thus eliminating the subcontractors' overhead and profit. We agree with the agency that this explanation alone does not (continued...)

estimated cost for the bid is listed on the final page of the "worksheet" as $2,031,020. However, when the figures listed in the total cost column are added together, the total cost is $2,249,945, a difference of $218,925.[6] It is unclear from the record how the addition of this amount into the total estimated cost for the bid would have affected the total bid price.

A bid may be rejected as mistaken where there is a price disparity between the bid and the other bids received and the government estimate, and where the bidder has failed to furnish sufficient documentation to substantiate its bid calculations when so requested. See Pamfilis Painting, Inc., supra; Veterans Admin.--Advance Decision, B-225815.2, Oct. 15, 1987, 87-2 CPD ¶ 362. Despite several opportunities to explain the price disparities, Orbas elected to submit only a "worksheet" that was created after bid opening and thus not relied upon for the preparation of the bid, whose limited information did not enable the agency to determine why the significant price disparities existed or whether the bid included all the cost elements required under the solicitation. Further, Orbas chose to ignore the agency's requests for an explanation of its bid calculations, and was unable to substantiate these calculations at the bid verification meeting. Even now, in its submissions filed during the pendency of this protest, Orbas does not take the opportunity to substantiate its bid calculations. Under the circumstances, we think that Orbas has failed to produce sufficient documentation or explanation to substantiate its bid, and that the contracting officer's action in rejecting that bid as mistaken under FAR § 14.406-3(g) was reasonable.

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[5](...continued)
sufficiently explain the discrepancies and ensure that the bidder understood and accounted for the requirements of the IFB, especially in light of the fact that the "summary worksheet" was prepared after bid opening, and the firm failed to provide any other substantiating documentation.

[6]It appears that the protester failed to include the costs listed on page one of the worksheet, as those costs amounted to $218,925.

Orbas complains that since the agency has cited no specific mistake in its bid other than the one discussed above,[7] it is not clear that a mistake has been made. However, the scant information provided by the protester during both the bid verification process and the pendency of this protest; the unanswered questions raised by the "summary worksheet," which was prepared after bid opening and thus not relied upon in the preparation of the bid; and the unsubstantiated mistake alleged by the protester, present indications of error so clear as to reasonably justify the conclusion that acceptance of the bid would be unfair to other bona fide bidders, as it is not clear that the bid, both as submitted and intended, would remain low. <u>See</u> FAR § 14.406-3(g)(5). Acceptance of the bid under these circumstances effectively would allow the bidder to decide, after bid opening, whether to stand by its bid, or to admit a mistake, as its own best interests dictate. Permitting such an election is not fair to other bidders whose prices have been disclosed at bid opening. <u>Trataros Constr., Inc.</u>, <u>supra</u>.

The protest is denied.

Christine S. Melody

for Robert P. Murphy
Acting General Counsel

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[7]The protester implies that it should be allowed to correct its bid to account for this alleged mistake, as correction would not displace another bidder. However, as discussed above, at a minimum there is no clear and convincing evidence of the manner in which the mistake occurred, or the intended bid. <u>See</u> FAR § 14.406-3(a).