



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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APPELLANT'S MOTION FOR SUMMARY JUDGMENT DENIED;  
RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT GRANTED:  
November 26, 2025

CBCA 8034, 8425

ALL PHASE SERVICES, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Lawrence J. Sklute of Sklute & Associates, Potomac, MD, counsel for Appellant.

Jennifer L. Hedge, Office of General Counsel, Department of Veterans Affairs,  
Pittsburgh, PA, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair), **SHERIDAN**, and **SULLIVAN**.

**SULLIVAN**, Board Judge.

All Phase Services, Inc. (APS) appealed the termination for default of its contract with the Department of Veterans Affairs (VA). In its initial complaint, APS alleged, in part, that its bid contained an unidentified mistake and the contract should be rescinded because the contracting officer failed to discharge his duty to verify the bid that APS submitted. VA moved to dismiss this allegation for lack of jurisdiction or, in the alternative, for partial summary judgment, asserting that the contracting officer acted properly in accepting APS's bid. Based upon evidence that APS submitted after it filed its motion, VA also asserted that APS waited too long to assert a mistake-in-bid. Following the Board's decision that it

possessed jurisdiction, *All Phase Services, Inc. v. Department of Veterans Affairs*, CBCA 8034, 25-1 BCA ¶ 38,893, at 189,321, APS filed a cross-motion for summary judgment, asserting that the contracting officer's actions justified rescission of the contract. Because APS failed to provide clear and convincing evidence of its mistake, we deny APS's motion. Because we find that APS acted unreasonably in waiting to advise VA that it had made a mistake in its bid, we grant VA's partial motion.

### Background

#### I. Bid Verification

In August 2020, VA issued a solicitation for the replacement of roofs at the Buffalo VA Medical Center. Appellant's Statement of Genuine Issues ¶ 1; Appeal File Exhibit 5 at 001995.<sup>1</sup> The solicitation was the second solicitation for the roofing work. Respondent's Statement of Genuine Issues ¶ 11. VA canceled the first solicitation after the lowest bidder, Hugh-All Phase JV LLC, asserted that it had made a mistake in its bid and sought to increase its bid price. *Id.*; Exhibit 324. In response to the second solicitation, APS submitted a bid, dated September 14, 2020, for \$4,832,103. Appellant's Statement of Genuine Issues ¶¶ 3, 5; Exhibit 5 at 1996.

Two days later, the contracting officer asked APS to verify its bid. Appellant's Statement of Genuine Issues ¶ 6; Exhibit 171. In the verification request, the contracting officer noted that the amount of APS's bid was "very similar to that offered in the original solicitation. . . . A SDVOSB firm named Hugh All-Phase JV submitted that bid and subsequently requested approval for a mistake-in-bid. This firm apparently is or was a joint venture to an 'All Phase' company at the same or adjacent address." Exhibit 171. The contracting officer notified APS that it should either "[r]equest permission to correct the bid [in accordance with Federal Acquisition Regulation (FAR)] 14.407-2 or FAR 14.407-3 [or] request permission to withdraw the bid" if APS believed its bid contained a mistake. *Id.* In an internal email communication, the contracting officer noted that APS's bid was \$400,000 higher than the mistaken bid in the prior procurement. Exhibit 258 at 3420.

On the same day, APS requested the bid abstract. Exhibit 320 at 7157.<sup>2</sup> The contracting officer did not provide the abstract. Exhibit 258 at 3420. The contracting

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<sup>1</sup> All exhibits are found in the appeal file (CBCA 8034), unless otherwise noted. Where used, the page numbers are the Bates numbers on the exhibits.

<sup>2</sup> In our earlier decision, we incorrectly stated that APS requested the bid abstract following the second request for verification. *All Phase Services*, 25-1 BCA at 189,321.

officer, in a later internal email, explained that “[APS] did ask for an abstract of bids. I denied that request, with [Office of General Counsel] approval, leaving them the option to request approval on a mistake in bid, withdraw the bid altogether[,] or verify the current bid without the benefit of knowing what all others bid.” *Id.* VA, in response to APS’s statement of undisputed facts, asserts that APS did not ask for the bid abstract; instead, APS requested the bid tabulation. Respondent’s Statement of Genuine Issues ¶ 4. Although APS did ask for a “bid tabulation,” it is clear from the contracting officer’s email that the contracting officer understood that APS sought the bid abstract. Exhibit 258 at 3420.

APS disputes that its firm has any connection to the joint venture that submitted a bid in response to the earlier solicitation. Appellant’s Reply Brief at 11. APS states that the individual who submitted the evidence of a mistake-in-bid in the earlier solicitation is a former employee of APS, but does not state when that individual left APS. *Id.* at 9. The contracting officer noted in his second request for verification that the individual was listed as “responsible for the contract” and had completed the certifications. *See* Exhibit 173 at 0010. It does not appear that those portions of the contract are in the record. We are unable to resolve whether an APS employee had knowledge of the earlier procurement on the current record.

The record contains two offers submitted to APS by its subcontractor. In the first, submitted in May 2020, Innovative Roofing LLC offered to perform the work for \$3.2 million. Exhibit 321 at 8408. In the second, submitted on September 14, 2020 (the same day that APS submitted its bid), Innovative Maintenance offered to perform the work for \$2.95 million. Exhibit 461 at 8445.<sup>3</sup>

Upon receipt of the request for verification, APS personnel reviewed the proposal that Innovative Maintenance submitted but could not determine whether Innovative Maintenance had included all the necessary scope in its bid because it submitted a single dollar amount without any breakout of the scope. Exhibit 325. The next day, APS personnel sent an email to the president of Innovative Maintenance and asked that he confirm that several items were included in the bid. Exhibit 461 at 8446. The request mentioned the need for a conference call the following day (September 18), *id.*, but the record contains no information as to whether APS conducted the conference call, what information was learned, or whether Innovative Maintenance confirmed that its bid contained all of the items. By email on September 18, an employee of APS replied to the contracting officer’s request and verified APS’s bid. Appellant’s Statement of Genuine Issues ¶ 8; Exhibit 172 at 0007.

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<sup>3</sup> Innovative Maintenance and Innovative Roofing are related companies. *See* Exhibit 317 at 7148. Innovative Maintenance submitted the final bid because it had federal contract experience. *Id.*

On September 22, because of ambiguity regarding APS's present responsibility and the employee's authority to represent APS in contractual matters, the contracting officer contacted APS again to ensure that the bid was verified by someone authorized to do so. Appellant's Statement of Genuine Issues ¶ 9; Exhibit 173 at 0010. APS's Chief Executive Officer "reverifi[ed] the bid." Appellant's Statement of Genuine Issues ¶ 9; Exhibit 175 at 0012. APS was awarded the contract at its bid price. Appellant's Statement of Genuine Issues ¶ 20; Exhibit 6 at 2072.

## II. Evidence of the Mistake

As evidence of the mistake, APS provided the declaration of the president of the subcontractor, Innovative Maintenance, dated September 8, 2025. Exhibit 318 (added to the appeal file on September 8, 2025). The president explained that he created two worksheets in preparing his bid to APS for the contract. *Id.* at 1. In the first, the president had line items with costs for the lightening protection system (LP system - \$82,500) to be installed and the roofing for the ambulance entrance (ER Entrance - \$175,000). *Id.* at 7037. The president then created the second worksheet to provide the pricing based on the square footage of the roof. *Id.* at 1. The president failed to include the costs for the LP system and the ER entrance in the second worksheet. *Id.* The president declared that his bid should have been \$3,207,500, with the addition of the amounts for these two items. *Id.* The total of the bid from the first worksheet is \$2,749,375.37. *Id.* at 7037. The total of the bid from the second worksheet is \$3,353,616.78, from which the president deducted \$353,616.78, so the final bid was \$3,000,000. *Id.* at 0014.

The president of Innovative Maintenance stated that he learned of the mistake in the spring of 2021, when he was reviewing the quote that he submitted to APS during the "initial planning stages." Exhibit 318 at 1; Exhibit 317 at 7147 (testified during deposition that he discovered the omission when "mobilizing, walking the job site.") The president declared that he informed APS's project manager "at that time."<sup>4</sup> Exhibit 318 at 2. APS received the bid abstract in September 2023 in response to a Freedom of Information Act (FOIA) request. Exhibit 129 (added to the appeal file on May 31, 2025).

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<sup>4</sup> The person that the president identifies as the APS project manager was in that role as of May 24, 2021. *See* Exhibit 20 at 2292. The president of Innovative Maintenance and the APS project manager attended a pre-construction tour on December 17, 2020. Exhibit 10 at 2161. APS does not dispute that it learned of the mistake from its subcontractor during contract performance. Appellant's Reply to Respondent's Statement of Genuine Issues ¶ 58c.

VA issued two cure notices, the first on March 7, 2023 and the second on August 3, 2023. Exhibits 92, 109. VA also issued two show cause notices, the first on August 18, 2023 and the second on November 30, 2023. Exhibits 116, 120. APS did not mention the mistake-in-bid in any of its responses to these notices. Exhibit 93, 110, 117, and 121. APS first mentioned its mistake-in-bid in its original complaint, filed April 24, 2025, in which it only alleged that “Appellant relied on its roofing subcontractor’s firm quotation that had omitted various items.” Complaint ¶ 23. APS also alleged that it had “recently received” the bid abstract from its FOIA request. *Id.* ¶ 16.

APS’s bid was \$138,159.32 (2.8%) less than the independent government estimate obtained by the VA prior to the issuance of the solicitation. Appellant’s Statement of Genuine Issues ¶ 10; Exhibit 170. APS’s bid was fifty-five and seventy-five percent lower than the second and third lowest offers. Appellant’s Statement of Genuine Issues ¶ 6; Exhibit 129.<sup>5</sup>

### Discussion

#### I. Standard of Proof

To obtain rescission of the contract based upon a mistake-in-bid, a contractor must prove three elements: (1) it made a mistake; (2) prior to award the Government knew or should have known that a mistake had been made; and (3) the contracting officer’s requests for verification did not properly apprise the contractor of the basis for the suspected mistake. *P.T. Service Company*, GSBICA 7589, et al., 85-3 BCA ¶ 18,430, at 92,557. A contractor must prove all three elements. *Turner-MAK (JV)*, ASBCA 37711, 96-1 BCA ¶ 28,208, at 140,797 (appeal denied because the bid verification was inadequate but the contractor failed to prove mistake by clear and convincing evidence). Failure to notify the contracting officer of a mistake-in-bid within a reasonable time can provide the basis for denying the contractor relief. *All-American Poly Corp.*, GSBICA 7104, 84-3 BCA ¶ 17,682, at 88,189.

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<sup>5</sup> APS contends that the government estimate was not reasonable based upon four facts: (1) the estimate was generated in 2019 and, therefore, stale; (2) the estimate was based upon RS Means data from 2019; (3) the estimate was adjusted upward by only 1.13%, which was less than the cost of living adjustment provided by the Social Security Administration in 2020; and (4) VA’s expert opined that there were “staggering price increases for material” in construction due to the COVID-19 pandemic. Respondent’s Statement of Genuine Issues ¶¶ 43, 45. Because of how we resolve the motions, we do not need to decide whether the government estimate was reasonable.

## II. Evidence of Mistake

“A mistake justifying rescission of a contract must be a clear-cut clerical error, or a misreading of the specifications, not a mistake in judgment.” *Ronald L. Duvall v. General Services Administration*, GSBCA 14502, 98-2 BCA ¶ 30,065, at 148,769; 48 CFR 14.407-4(c) (2024) (FAR 14.407-4(c)) (Evidence of a mistake-in-bid must be “clear and convincing.”). “Clear and convincing evidence is a higher standard than a preponderance of the evidence.” *Singleton Enterprises v. Department of Agriculture*, CBCA 1981, 12-1 BCA ¶ 34,924, at 171,734. The evidence must be “sufficient to set the tribunal’s mind at ease. It must engender a feeling of believability. It must be complete as to all material points, and it may not be conflicting, confusing, or unreliable.” *All-American Poly Corp.*, 84-3 BCA at 88,187.

APS’s evidence of mistake fails to meet this standard. The only evidence of mistake is the declaration of the president of APS’s subcontractor, which was signed less than two weeks before final appeal file exhibits were to be submitted. He explains how he neglected to carry the costs of two items (totaling \$257,500) from the first worksheet when preparing the second worksheet for his bid. To meet the standard for clear and convincing evidence of a mistake, the total on the second worksheet should be less than this amount. It is not. First, the burdened total on the second worksheet is greater than the total on the first worksheet. Second, assuming that the total on the first worksheet is not a burdened amount, the non-burdened total on the second worksheet does not equal the total on the first worksheet minus the amounts that the president forgot to carry over.<sup>6</sup> Because APS has not established a mistake based upon “clear and convincing” evidence, we cannot grant summary judgment for APS.

## III. Evidence of What the Government Knew or Should Have Known

To determine whether the Government had constructive notice, the court will examine “whether under all the facts and circumstances of the case ‘there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer.’” *Aydin Corp. v. United States*, 669 F.2d 681, 686 (Ct. Cl. 1982). “Reliance on a government estimate discharges the contracting officer’s detection duty as regards

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<sup>6</sup> The president of Innovative Maintenance also makes a mistake in calculating what his bid should have been. He simply adds the amount of the missing items to the bottom line total. However, as the worksheet shows, burdens would have been applied to those amounts. Since APS is not seeking bid reformation, it does not need to prove what its bid would have been. See *McClure Electrical Constructors, Inc. v. Dalton*, 132 F.3d 709, 711 (Fed. Cir. 1997).

constructive notice of error based upon bid disparity, if such estimate is in line with the bid alleged to be mistaken.” *Id.* at 688-89. The test for what the Government knew or should have known is one of reasonableness. *Wender Presses, Inc. v. United States*, 343 F.2d 961, 963 (Ct. Cl. 1965).

Relying upon *Aydin*, VA argues that the contracting officer reasonably relied upon the government estimate, which was only 2.8% greater than APS’s bid, and that the contracting officer only asked for bid verification “out of an abundance of caution.” Respondent’s Motion for Summary Judgment at 14. The problem is that the contracting officer stated in his verification request that APS’s offer price was similar to the bid in the prior solicitation in which the firm had alleged a mistake. This knowledge gave rise to a duty to verify, *Chernick v. United States*, 372 F.2d 492, 496 (Ct. Cl. 1967), which the contracting officer undertook. Thus, our analysis turns to whether the contracting officer executed that duty properly.

#### IV. Duty of Bid Verification

Regulation provides that, “in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall request from the bidder a verification of the bid, calling attention to the suspected mistake.” FAR 14-407-1. “A mere general request for verification” is not sufficient. *Chernick*, 372 F.2d at 496. Instead, “the request should be as fully informative as possible concerning the pertinent factors indicating to the contracting officer that an error might have been made in the bid.” *United States v. Hamilton Enterprises, Inc.*, 711 F.2d 1038, 1046 (Fed. Cir. 1983). Regulation also provides that the bid abstract shall be made available for public inspection. FAR 14.403(b).

VA moves for summary judgment on this issue, asserting that the contracting officer properly verified the bid prior to accepting it. As noted, VA asserts that the contracting officer requested bid verification “out of an abundance of caution” but provides no other explanation as to why the contracting officer sought verification or what he thought the error might be. The contracting officer noted in the verification request that APS’s bid was similar to the bid from the first solicitation on which the bidder alleged a mistake and internally noted that it was only \$400,000 greater than this prior bid. The contracting officer also assumed, but did not verify, that APS knew of the prior bids based upon its purported participation in the prior procurement as a member of a joint venture. It is disputed whether anyone at APS knew about the bids submitted in the prior procurement. Moreover, APS requested the bid abstract, but VA did not provide it, despite the requirement to make bid abstracts available for public inspection. Failure to advise a bidder of recent purchase prices or the amount of other bids has been held to constitute a failure of the contracting officer’s verification duty. *BDF Tesa Corp.*, GSBICA 8307, 89-3 BCA 21925, at 110,315. We cannot

find on this record that the contracting officer properly carried out his duty to advise APS of the reason it suspected a bid mistake.

APS urges the Board to find that the contracting officer's failure to advise APS of the difference between its bid and the other two bids, which were fifty-five and seventy-five percent higher than its bid, provides sufficient basis for rescission of the contract. Appellant's Reply Brief at 25. While we do find that the contracting officer failed to properly advise APS of the reason that VA sought verification, this failure is only one element of what APS needs to prove.

V. Delay in Asserting Mistake

In its response to APS's cross-motion and reply on its own motion, VA also asserts that APS's delay in asserting its mistake-in-bid should preclude that allegation. Although VA did not make this allegation in its initial brief, APS did not provide the evidence regarding when the mistake-in-bid was discovered until after VA filed its initial brief on May 22, 2025. Also, because the briefs were filed sequentially, APS had the opportunity to and did respond to this argument in its reply brief. Appellant's Reply Brief at 34. Accordingly, we find that VA has also moved for summary judgment on this allegation.

"[A] contractor's responsibility with respect to the discovery of mistakes does not end with the award." *Turner-MAK (JV)*, 96-1 BCA at 140,794. "[A] party that fails to assert its mistake claim within a reasonable time after it learns of its mistake loses its power to avoid the contract." *All-American Poly*, 84-3 BCA at 88,189 (citing Restatement (Second) of Contracts, § 381(2) (1979)). The failure to act on a mistake-in-bid is a violation of the duty of good faith and fair dealing, Restatement (Second) of Contracts, § 154(a), which "extends to the assertion, settlement, and litigation of contract claims and defenses." *All-American Poly*, 84-3 at 88,189 (citing Restatement (Second) of Contracts, § 205 cmt. e).

Based upon the declaration that APS submitted, its subcontractor notified APS of the mistake in spring 2021. Following this notification, APS experienced performance difficulties, including the bankruptcy of its subcontractor, which prompted VA to issue repeated notices regarding APS's failure to make progress. APS obtained the bid abstract in September 2023, after which VA issued its second show cause notice, asking APS why its performance should be excused. Rather than notify VA of the mistake in its bid at any of these points or at any other time, APS waited until after it appealed the termination for default to mention it for the first time in its complaint. This inaction by APS is a violation of the duty of good faith and fair dealing and precludes the grant of the remedy of rescission.

APS argues that its failure to raise the issue earlier is excused by the contracting officer's unconscionable acceptance of its bid despite the evidence of how much lower it was



than the other bids. Appellant's Reply Brief at 34. We disagree. While the contracting officer failed to properly verify the bid, APS still had an obligation to notify VA when it learned of its bid mistake. *See Integrated Systems Group, Inc. v. Social Security Administration*, GSBCA 14054-SSA, 98-2 BCA ¶ 29,848, at 147,744 (declining to grant rescission when, despite evidence that the contracting officer failed to properly verify, contractor failed to raise mistake-in-bid). Having failed to do so, the Board cannot grant rescission now.

Decision

APS's motion for summary judgment is **DENIED**, and VA's motion for partial summary judgment is **GRANTED**. The Board will issue a separate order governing further proceedings in these appeals.

Marian E. Sullivan

MARIAN E. SULLIVAN

Board Judge

We concur:

Erica S. Beardsley

ERICA S. BEARDSLEY

Board Judge

Patricia J. Sheridan

PATRICIA J. SHERIDAN

Board Judge