

words, Superior intended a bid price of \$171,528.00 for the work of base bid two. However, there is no way to determine this intent from the face of Superior's bid. The face of the bid presents other equally plausible possibilities such as the inadvertent omission of one digit (e.g. an intended bid of \$166,738.00 or \$216,738 or any nearly limitless number of other possible combinations). The Consolidated Procurement Code permits the correction of a mistaken bid under certain circumstances. *See SC Code Ann § 11-35-1520(7) and Reg. 19-445.2085* However, in order to make a correction, the intended bid price must be evident on the face of the bid. *See Protest of Miller's of Columbia, Inc., Case No. 1989-3 ("Although it was evident on the face of the bid that a mistake had been made, that mistake could not be corrected from the information available.") (Footnote 2: "The Procurement Code contemplates correction of mistakes evident on the face of a bid such as a unit price extensions or arithmetic errors.")*. Since Superior's intended bid price is not evident on the face of its bid, Superior's bid mistake is not correctable.

DETERMINATION

After bid opening but before award, a bidder may withdraw an inadvertently erroneous bid upon a written determination by the appropriate chief procurement officer (CPO) or head of the purchasing agency if the project is within the agency's procurement certification, that under the facts withdrawal is appropriate. SC Code Ann § 11-35-1520(7); SC Regulation 19-445.2085(A).

Section 11-35-1520(7) states in part that:

"After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated pursuant to it. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids ... must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency.."

In accordance with Section 11-35-1520(7), the board adopted Regulation 19-445.2085. Regulation 19-445.2085(A) states that:

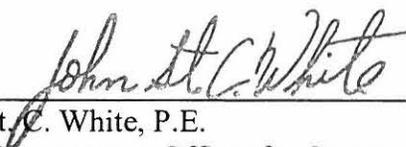
"A bidder or offeror must submit in writing a request to either correct or withdraw a bid to the procurement officer. Each written request must document the fact that the bidder's or offeror's mistake is clearly an error that will cause him substantial loss. All decisions to permit the correction or withdrawal of bids shall be

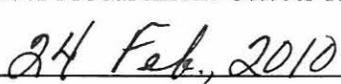
supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency, or the designee of either.”

It is clear from the face of its bid that Superior’s bid price far base bid two is mistaken. Moreover, Superior’s mistake will cause it substantial loss if not allowed to withdraw its bid.

In a bid mistake case, the United States District Court for the District of South Carolina held that “A contract may be rescinded for unilateral mistake... when the mistake is accompanied by circumstances which would make it a great wrong to enforce the agreement and the nonmistaken party may be returned to the *status quo ante*.” National Fire Insurance Company of Hartford v. Brown & Martin, 726 F. Supp 1036, 1039 (D.S.C. 1989), affirmed 907 F.2d 1139 (4th Cir. 1990). While the Court’s holding was based on common law, not statutory and regulatory law, the Court relied on the fact that the contractor would suffer a substantial loss if it was not allowed to withdraw its bid after award but before performance. The Court in Brown & Martin also held that under such circumstances, the contractor could withdraw its bid without forfeiting its bid bond. In this case, DMH has not detrimentally changed its position in reliance on Superior’s bid. On the other hand, to require Superior to honor its mistaken bid will cause Superior substantial loss. Under the circumstances, it is appropriate to allow Superior to withdraw its bid without forfeiting its bid bond.

For the foregoing reasons, the CPOC hereby determines that it is appropriate to allow Superior to withdraw its bid as inadvertently erroneous without forfeiting its bid bond.



John St. C. White, P.E.
Chief Procurement Officer for Construction


Date

Columbia, South Carolina

STATEMENT OF RIGHT TO ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b) states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:

(b) requests for review of other written determinations, decisions, policies, and procedures arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

Copies of the Panel's decisions and additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Requests must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an action before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

RCUD MM0

FEB23 '10 TU 3:41PM

Superior Maintenance and Piping Inc
PO Box 3752
Aiken SC 29802
Email: pipefittersrus@bellsouth.net
Fax: 803-663-7290

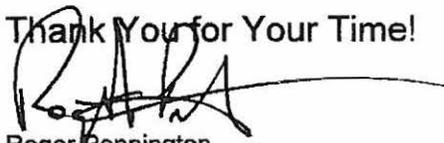
Date: 02-23-10

To: Mr. John White
Ms. Delisa Clark
1201 Main Street. Suite 600
Columbia SC 29201

Re: Dept. of Mental Health

This letter is a request to withdraw our bid if it cannot be accepted at the amount of \$171,528.00. I have done bids in the past and this was an adder. I called Dan Reider of Buford & Goff at 11:00am the morning of 2-18-10 with questions but did not get a call back. This was the reason I quoted the way I did. I quoted base bid 1 at \$154,790.00 and the adder (Bid 2) to be \$16,738.00 for the above total. This is a fair number and the project can be done easily at this amount. I was using York for the chiller and rental, B & L for the electrical and Johnson Controls for the controls. I can give you all the references you need that can back up our work. If you want to save \$40,335.00 I will be glad to do the job and you can use this money somewhere else. I am truly sorry for this mistake and will work with you any way I can. If you wish for me to come to your office and go thru this I will be glad to and show you what I quoted. My cell phone number is 803-645-6193.

Thank You for Your Time!



Roger Pennington



SE-330
Bid Form

2008 Edition

Bids shall be submitted only on SE-330

BID SUBMITTED BY: Superior Maintenance and Piping Inc.
(Bidder's Name)

BID SUBMITTED TO: South Carolina Department of Mental Health
(Agency Name)

FOR PROJECT: J12-9714-DC Crafts Farrow Building #16, Chiller Replacement
(Number) (Name)

OFFER

1. In response to the Form SE-310, *Invitation for Construction Bids*, and in compliance with the *Instructions to Bidders* for the above-named Project, the undersigned **BIDDER** proposes and agrees, if this Bid is accepted, to enter into a Contract with the **AGENCY** in the form included in the Bidding Documents, and to perform all Work as specified or indicated in the Bidding Documents, for the prices and within the time frames indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

2. Pursuant to Section 11-32-3030(1) of the SC Code of Laws, as amended, **BIDDER** has submitted Bid Security as follows in the amount and form required by the Bidding Documents:

Bid Bond with Power of Attorney Electronic Bid Bond Cashier's Check
(**BIDDER** check one)

3. **BIDDER**, by submitting this Bid, affirms that it has carefully examined the Bidding Documents and the other related data identified in the Bidding Documents, has visited the actual location of the Work, has satisfied itself as to all conditions and understands that, in signing this Bid Form, it waives all rights to plead any misunderstanding regarding same and agrees to be bound by the provisions of said Bidding Documents and all statements made therein.

4. **BIDDER** acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into its Bid:

ADDENDUM No: 1

5. **BIDDER** accepts all terms and conditions of the *Invitation for Construction Bids*, including, without limitation, those dealing with the disposition of Bid Security. **BIDDER** agrees that this Bid, including all Alternate Base Bids, may not be revoked or withdrawn after the opening of bids, and shall remain open for acceptance for a period of 60 Days following the Bid Date, or for such longer period of time that **BIDDER** may agree to in writing upon request of the **AGENCY**.

6. **BIDDER** herewith submits its offer to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fees, permits, licenses and applicable taxes necessary to complete the following items of construction work:

6.1 BASE BID WORK (BASE BID NO. 1) (as indicated in the Bidding Documents and generally described as follows):

Replace chiller. Add pumps and controls to convert a manual two pipe changeover system to an automatic two pipe changeover system. Do not provide temporary chiller.

154,790.⁰⁰, which sum is hereafter called the **BASE BID No. 1**.
(enter **BASE BID** in figures only)

SE-330 Bid Form

2008 Edition

TIME OF CONTRACT PERFORMANCE

BIDDER hereby agrees to complete the construction work in accordance with the following schedule:

1. The **DATE OF COMMENCEMENT** shall be established in Form SE-390, *Notice to Proceed*. The **BIDDER** shall not incur any expense chargeable to this Project until the Contract has been executed by both the Agency and the Contractor, and a Notice to Proceed has been issued.
2. The **DATE OF SUBSTANTIAL COMPLETION**, to be documented on Form SE-550A, *Certificate of Substantial Completion*, shall be (120) CALENDAR DAYS from the **DATE OF COMMENCEMENT** set forth in the SE-390, subject to adjustments as provided in the Contract Documents.
3. The **DATE OF FINAL COMPLETION**, to be documented on Form SE-560C, *Certificate of Final Completion*, shall be (30) CALENDAR DAYS from the **DATE OF SUBSTANTIAL COMPLETION**, subject to adjustments as provided in the Contract Documents.

LIQUIDATED DAMAGES AND EARLY COMPLETION AWARD

1. The undersigned further agrees that from the compensation to be paid, the Agency shall retain as **Step One Liquidated Damages** the amount of \$500 for each calendar day the actual construction time required to achieve **SUBSTANTIAL COMPLETION** exceeds the specified or adjusted Contract time for **SUBSTANTIAL COMPLETION**, as provided in the Contract Documents.
2. The undersigned further agrees that from the compensation to be paid, the Agency shall retain as **Step Two Liquidated Damages** the amount of \$100 for each calendar day the actual construction time required to achieve **FINAL COMPLETION** exceeds the specified or adjusted Contract Time for **FINAL COMPLETION**, as provided in the Contract Documents.
3. The undersigned further agrees that in full and complete satisfaction for the best efforts of the undersigned to achieve **SUBSTANTIAL COMPLETION** before the date established above, the Agency shall pay the undersigned an **Early Completion Award** in the amount of 0 for each calendar day the actual construction time required to achieve **SUBSTANTIAL COMPLETION** is less than the originally specified Contract Time for **SUBSTANTIAL COMPLETION**, as provided in the Contract Documents.

AGREEMENTS

By submitting this Bid, **BIDDER** hereby agrees to the following terms and conditions:

1. An incomplete Bid, or information not requested that is written on or attached to this Bid Form that could be considered a qualification of the Bid, may be cause for rejection of the Bid.
2. The failure of the **BIDDER** to indicate a price for an **ALTERNATE BASE BID** shall render the Bid non-responsive. A typed or printed "No Bid", or words of similar meaning, shall render the Bid non-responsive.
3. The **BIDDER** shall list only **SUBCONTRACTORS** (as defined in the Bidding Documents) who are qualified to perform items of work as specified in the Bidding Documents or as required by any material or equipment substitutions approved at the time of bidding. No **BIDDER** whose Bid is accepted shall substitute another entity as **SUBCONTRACTOR** in place of the **SUBCONTRACTOR** listed in the original Bid, except for one or more of the reasons allowed by the SC Code of Laws.
4. The failure of the **BIDDER** to provide the name(s) of listed **SUBCONTRACTORS** in accordance with the SC Code of Laws shall render the Bid non-responsive.
5. Unless otherwise provided in the Bidding Documents, **BIDDER** will provide Performance and Labor and Material Payment Bonds, each in the amount equal to 100% of the Contract Award, as a condition of execution of the Contract. Failure to supply such bonds as required by the Contract Documents shall result in cancellation of the Notice of Intent to Award and forfeiture of the Bid Bond.
6. **BIDDER** agrees to provide all information requested by the **AGENCY** to support the **AGENCY'S** evaluation and determination of the **BIDDER'S** responsibility, including completion of Form SE-350, *Questionnaire for Contractors*. The Questionnaire shall be completed fully and returned to the **AGENCY** within SEVEN (7) DAYS from date of receipt by the **BIDDER** by certified mail. The completed Form SE-350 must be received by the Agency no later than the close of business on the seventh day. Failure by **BIDDER** to supply requested information with respect to responsibility may be grounds for a determination of non-responsibility.
7. The **BIDDER** certifies that it will provide a "Drug-Free Workplace" as that term is defined in Section 44-107-30 of the SC Code of Laws, and shall comply with the requirements set forth in Title 44, Chapter 107.

SE-330 Bid Form

2008 Edition

LISTING OF PROPOSED SUBCONTRACTORS

1. A Subcontractor is an entity who will perform work or render service to the prime contractor to or about the construction site. Material suppliers, manufacturers and fabricators are not Subcontractors and are not to be listed.
2. Bidder must list in its bid the name of only those Subcontractors that will perform the work so identified in the Invitation.
3. If Bidder determines to use its own employees to perform any portion of the work listed below, and if Bidder is qualified to perform such work under the terms of the Bidding Documents, Bidder must list itself in the appropriate place in its bid and not subcontract any of that work except with the approval of the Agency for good cause shown.
4. Bidder's failure to list a Subcontractor for each listed Specialty Subcontractor will render the BID non-responsive.
5. A Subcontractor listed for an Alternate Base Bid must be used for all work if the Alternate Base Bid is accepted.
6. Bidder hereby states its commitment to use the below-listed Subcontractors in the performance of the Subcontractor Specialty work listed:

**SUBCONTRACTOR
SPECIALTY
(COMPLETED BY A/E)**

**SUBCONTRACTOR OR
PRIME CONTRACTOR'S NAME
(MUST BE COMPLETED BY BIDDER)**

**SUBCONTRACTOR'S
SC LICENSE NUMBER
(For Information)**

BASE BID 1

Mechanical

Superior Maintenance and Piping

M 104469

Controls

Johnson Controls

1929

Electrical

B & L Electric Company

94483

BASE BID 2

Mechanical

Superior Maintenance and Piping

M 104469

Controls

Johnson Controls

1929

Electrical

B & L Electric Company

94483

BASE BID 3

BID TABULATION

EX. B

PROJECT: SC Department of Mental Health, Crafts Farrow Building #16, Chiller Replacement
 STATE PROJECT NUMBER: J12-9714-DC
 BUFORD GOFF & ASSOCIATES PROJECT NUMBER: 08027-0-31
 DATE: February 18, 2010 at 2:00 PM

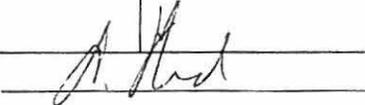
BIDDER'S NAME	W.B. Thomasson	W.O. Blackstone	Waldrop, Inc.	H. R. Allen, Inc.
CONTRACTOR'S LIC. #	M1043	M1806; G11873	M2072	M108812
BID BOND	✓	✓	✓	✓
ADDENDUM #1	✓	✓	✓	✓
BASE BID #1	\$224,750	\$249,899	\$221,700	\$238,125
BASE BID #2	\$236,800	\$249,899	\$233,000	\$256,125
MECHANICAL SUBCONTRACTOR	W. B. Thomasson	W.O. Blackstone	Waldrop, Inc.	H. R. Allen
CONTROLS SUBCONTRACTOR	Johnson Controls	Johnson Controls	Johnson Controls	Johnson Controls
ELECTRICAL SUBCONTRACTOR	Energy Pro	Shealey & Sons	B&L Electric	H. R. Allen, Inc.
MECHANICAL SUBCONTRACTOR (Base Bid # 2)	W. B. Thomasson	W.O. Blackstone	Waldrop, Inc.	H. R. Allen
CONTROLS SUBCONTRACTOR (Base Bid # 2)	Johnson Controls	Johnson Controls	Johnson Controls	Johnson Controls
ELECTRICAL SUBCONTRACTOR (Base Bid # 2)	Energy Pro	Shealey & Sons	B&L Electric	H. R. Allen, Inc
BID SIGNED	✓	✓	✓	✓

Certified to be a true and correct tabulation of bids taken on this contract

Buford Goff & Associates, Inc.
 1331 Elmwood Avenue
 Columbia, South Carolina 29201

BID TABULATION

PROJECT: SC Department of Mental Health, Crafts Farrow Building #16, Chiller Replacement
 STATE PROJECT NUMBER: J12-9714-DC
 BUFORD GOFF & ASSOCIATES PROJECT NUMBER: 08027-0-31
 DATE: February 18, 2010 at 2:00 PM

BIDDER'S NAME	Triad Mechanical	Superior Maintenance & Piping	Cullum Constructors	Steele's Htg. & AC
CONTRACTOR'S LIC. #	M2377	M104469	M101999	M109363
BID BOND	✓	✓	✓	✓
ADDENDUM #1	✓	✓	✓	✓
BASE BID #1	\$217,748	\$154,790	\$271,800	\$225,770
BASE BID #2	\$232,874	\$16,738	\$292,600	\$247,868
MECHANICAL SUBCONTRACTOR	Triad Mechanical	Superior Maintenance & Piping	Cullum Constructors	Steeles Htg. & AC
CONTROLS SUBCONTRACTOR	Johnson Controls	Johnson Controls	Johnson Controls	Johnson Controls
ELECTRICAL SUBCONTRACTOR	B&L Electric	B&L Electric	Shealey & Sons	Rivers Plumbing & Electric
MECHANICAL SUBCONTRACTOR (Base Bid # 2)	Triad Mechanical	Superior Maintenance & Piping	Cullum Constructors	Steeles Htg. & AC
CONTROLS SUBCONTRACTOR (Base Bid # 2)	Johnson Controls	Johnson Controls	Johnson Controls	Johnson Controls
ELECTRICAL SUBCONTRACTOR (Base Bid # 2)	B&L Electric	B&L Electric	Shealey & Sons	Rivers Plumbing & Electric
BID SIGNED	✓	✓		✓

Certified to be a true and correct tabulation of bids taken on this contract

Buford Goff & Associates, Inc.
 1331 Elmwood Avenue
 Columbia, South Carolina 29201

BID TABULATION

PROJECT: SC Department of Mental Health, Crafts Farrow Building #16, Chiller Replacement
 STATE PROJECT NUMBER: J12-9714-DC
 BUFORD GOFF & ASSOCIATES PROJECT NUMBER: 08027-0-31
 DATE: February 18, 2010 at 2:00 PM

BIDDER'S NAME	Walker White, Inc.	McCarter Mechanical	O.L. Holley & Sons	
CONTRACTOR'S LIC. #	M2724	106171	M1508	
BID BOND	✓	✓	✓	
ADDENDUM #1	✓	✓	✓	
BASE BID #1	\$210,985	\$197,128	\$220,111	
BASE BID #2	\$221,011	\$211,863	\$237,326	
MECHANICAL SUBCONTRACTOR	Walker White, Inc.	McCarter Mechanical	O. L. Holley & Sons	
CONTROLS SUBCONTRACTOR	Johnson Controls	Johnson Controls	Johnson Controls	
ELECTRICAL SUBCONTRACTOR	Shealey Electric	Shealey & Sons	Shealey & Sons	
MECHANICAL SUBCONTRACTOR (Base Bid # 2)	Walker White, Inc.	McCarter Mechanical	O. L. Holley & Sons	
CONTROLS SUBCONTRACTOR (Base Bid # 2)	Johnson Controls	Johnson Controls	Johnson Controls	
ELECTRICAL SUBCONTRACTOR (Base Bid # 2)	Shealey Electric	Shealey & Sons	Shealey & Sons	
BID SIGNED	✓	✓		

Certified to be a true and correct tabulation of bids taken on this contract



Buford Goff & Associates, Inc.
 1331 Elmwood Avenue
 Columbia, South Carolina 29201