



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Murray Service Company t/a EMD Mechanical Specialists

File: B-274866

Date: December 9, 1996

Andrew N. Cook, Esq., Bell, Boyd & Lloyd, for the protester.
Marian E. Sullivan, Esq., Paul Warring, Esq., Frank Miller, Esq., and John Lariccia, Esq., Department of the Air Force, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency may accept a bid that, while containing discrepancies between line item prices and total prices, is low under all reasonable interpretations and where the bidder has presented clear and convincing evidence of the intended bid price.

DECISION

Murray Service Company t/a EMD Mechanical Specialists protests the award of a contract to Superior Management Services (SMS) under invitation for bids (IFB) No. F49642-96-B-0060, issued by the Department of the Air Force for alteration and repair of a chilled water system at Bolling Air Force Base. The protester argues that SMS's bid should not have been accepted since its price is ambiguous.¹

We deny the protest.

BACKGROUND

Twelve bids were received by the September 26, 1996 bid opening date. SMS was the apparent low bidder with a total price of \$2,477,000; Edward Kocharian, Inc. (whose bid was subsequently determined nonresponsive) was second low with a price of \$2,489,000; and Murray was third low with a total bid of \$2,687,000.

¹The protester also argued in its initial submission that SMS's bid was unbalanced. The agency responded in its report that SMS's bid was neither mathematically nor materially unbalanced. The protester, in commenting on the agency report, does not attempt to rebut the agency position; we therefore consider it to have abandoned this argument. Arjay Elecs. Corp., B-243080, July 1, 1991, 91-2 CPD ¶ 3.

In reviewing SMS's bid, the contracting officer noted a discrepancy in the amounts entered on its bid schedule. SMS's bid schedule appeared as follows:

<u>Item No.</u>	<u>Bid Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
0001	Alter	1	JB	LS	\$ 277,000
0002	Repair	1	JB	LS	\$2,200,000
SUBTOTAL (0001-0002)					\$2,180,000
0003	Total Bond Cost	1	JB	LS	\$ 20,000
<u>TOTAL</u> (0001-0003)					\$2,477,000

The contracting officer noted that the sum of CLINs 0001, 0002, and 0003 did not equal the total bid entered by SMS on the bid schedule. In addition, the sum of CLINs 0001 and 0002 did not equal the subtotal entered and the sum of the subtotal and CLIN 0003 did not equal the total entered.

The contracting officer contacted SMS immediately and requested that it either verify its bid price of \$2,477,000 or submit a notice of mistake in bid. SMS responded by verifying its total price of \$2,477,000. In a second letter transmitted the same afternoon, SMS explained that it had transposed some of the entries on its bid schedule. It stated that the correct entries should have been as follows:

Item No. 0001	\$ 277,000
Item No. 0002	\$2,180,000
Subtotal	\$2,457,000
Item No. 0003	\$ 20,000
Total	\$2,477,000

With the letter, SMS enclosed a copy of its bid estimate worksheet, which supported its claim that it had intended to bid the above amounts.

SMS submitted a third letter the following day, in which it explained how the transposition error had occurred. An SMS employee had been dispatched to the bid opening location prior to the time set for opening. Upon his arrival there, he had contacted SMS's president via mobile phone to receive final instructions on SMS's intended pricing. SMS's president first instructed the employee to enter a total bid price of \$2,477,000 on the schedule. Next, the president instructed the employee to enter the sum \$277,000 for item No. 0001. The phone then disconnected. A second call was placed, and the president instructed the employee to enter \$20,000 for the bid bond item. The president then instructed the employee to enter \$2,180,000 for

"the next bid item," to calculate the subtotal, and to get the bid in on time. The employee, in his haste to comply, entered \$2,180,000 in the subtotal blank, rather than in the blank for CLIN 0002; he then added \$2,180,000 to the \$20,000 that he had entered for CLIN 0003 and entered the sum (i.e., \$2,200,000) in the remaining blank, opposite CLIN 0002.

After reviewing the information submitted by SMS, including its bid estimate worksheet and its explanation of how the error had occurred, the contracting officer concluded that there was clear and convincing evidence of both mistake and the bid intended. The contracting officer also noted that SMS was the low bidder, whether considering its total bid as entered on the bid schedule (i.e., \$2,477,000); the sum of CLINs 0001, 0002, and 0003 (i.e., \$2,497,000), or the sum of the subtotal entry and CLIN 0003 (i.e., \$2,200,000). The contracting officer therefore allowed SMS to correct its bid. On September 30, the agency awarded a contract to SMS.

DISCUSSION

The protester argues first that the agency should have rejected SMS's bid as nonresponsive because it is ambiguous as to price.

Although a bid must be rejected as nonresponsive if it is ambiguous regarding the actual price the government would be obligated to pay upon acceptance of the bid, BFI Medical Waste Servs., B-266354, Jan. 29, 1996, 96-1 CPD ¶ 28; Municipal Leasing Sys., Inc., B-242648.2, May 21, 1991, 91-1 CPD ¶ 495, we apply this rule only in situations in which the bid price is ambiguous in the sense that it is unclear from the bid how it should be calculated--for example, where the bidder bids on the basis of units other than those identified in the bid schedule under an indefinite quantity solicitation. E.g., BFI Medical Waste Servs., supra. We apply a different rule in situations, such as the one here, in which, due to a mistake in one or more of the entries on the bid form, there are two (or a finite number more) reasonable interpretations of the intended price. In such cases, a bid which is ambiguous as to price need not be rejected if it is low under all reasonable interpretations. NJS Dev. Corp., 67 Comp. Gen. 529 (1988), 88-2 CPD ¶ 62.

Moreover, if the bid discrepancy can properly be eliminated through the mistake in bid rules of Federal Acquisition Regulation § 14.407-3, award may be made at the intended price. Here, the contracting agency found, by clear and convincing evidence, consisting of SMS's bid estimate worksheet and its plausible explanation of how the error had occurred, that it was the entries for CLIN 0002 and the subtotal for CLINs 0001 and 0002 that were in error and that the "total amount was the intended bid." Since nothing on this record establishes that the contracting

officer's finding of clear and convincing evidence was unreasonable, we conclude that award to SMS at that total price was proper.²

The protest is denied.

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²Although the protester asserts that in accord with our decision in Polycast Technology Corp., B-203871, Nov. 2, 1981, 81-2 CPD ¶ 373, in which we held that an ambiguous low bid could be accepted where the bid was low under either interpretation of the ambiguity and the bidder agreed to accept the interpretation that was most favorable to the government, award can be made to SMS only at the lowest of the three interpretations of its bid price, here, as a result of the evidence presented, there is no ambiguous bid.