

(c) Failure of bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document, such as the submission of a bid guarantee, or a letter signed by the bidder with the bid referring to and clearly identifying the bid itself.

(d) Failure of a bidder to acknowledge receipt of an amendment to an IFB but only if:

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the IFB and the bidder submitted a bid thereon; or

(2) The amendment involves only a matter of form or is one which has either no effect or merely a trivial or negligible effect on price, quantity, quality or delivery of the item bid upon.

## SECTION 5. EQUAL LOW BIDS

**1. General.** When two or more low bids are received which are equal in all respects, taking into consideration costs of transportation, payment discounts, and any factors properly to be considered for bid evaluation purposes, award is to be made to the equal low bidder as determined by the following sequence:

(a) Small business concerns which are also labor surplus area concerns.

(b) Other small business concerns.

(c) Other business concerns which are also labor surplus area concerns.

(d) Other business concerns.

(e) If two or more bidders still remain equally eligible for award, award shall be made by drawing of lots. A written statement shall be included in the contract file as to how lots were drawn, by whom, and who witnessed the drawing.

## SECTION 6. MISTAKES IN BID

**1. General.** After the opening of bids, the Contracting Officer shall examine all bids for mistakes. In cases of apparent mistake and in cases where the Contracting Officer has reason to believe that a mistake may have been made, the bidder shall be advised of the suspected mistake and requested to verify the bid. If the bidder alleges a mistake, the matter shall be processed in accordance with this section. Such actions shall be taken prior to award.

### 2. Apparent Clerical Mistakes.

(a) Any clerical mistake, apparent on its face in the bid, may be corrected by the Contracting Officer before award. The Contracting Officer shall first obtain from the bidder a verification of the bid intended. Examples of apparent mistakes are—

(1) Obvious misplacement of a decimal point;

(2) Obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);

(3) Obvious reversal of the price f.o.b. destination and price f.o.b. origin; and

(4) Obvious mistake in designation of unit.

(b) Correction of the bid shall be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.

### 3. Other Mistakes Disclosed Before Award.

(a) The Chairperson, CRB is authorized to make the administrative determinations described in this subsection in connection with mistakes in bids alleged after opening of bids but before award. The authority to permit correction of bids is limited to bids which, as submitted, are responsive to the IFB, and may not be used to permit correction of bids to make them responsive.

(b) If a bidder requests permission to correct a mistake (see exhibit XII-1) and clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the CRB Chairperson may make a determination permitting the bidder to correct the mistake; *provided*, that if correction would result in displacing one or more lower bids, such a determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself.

(c) If (1) a bidder requests permission to withdraw a bid (see exhibit XII-2) rather than correct it, (2) the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and (3) the bid, both as uncorrected and as corrected, is the lowest received, the Chairperson, CRB may make a determination to correct the bid and not permit its withdrawal.

(d) If, under paragraphs (b) or (c) of this subsection, (1) the evidence of a mistake is clear and convincing only as to the mistake but not as to the intended bid, or (2) the evidence reasonably supports the existence of a mistake but is not clear and convincing, the CRB Chairperson may make a determination permitting the bidder to withdraw the bid.

(e) If the evidence does not warrant a determination under paragraphs (b), (c), or (d) of this subsection, the CRB Chairperson may make a determination that the bid be neither withdrawn nor corrected.

(f) Suspected or alleged mistakes in bids shall be processed as follows. A mere statement by contracting officers that they are satisfied that an error was made is insufficient.

(1) The Contracting Officer shall immediately request the bidder to verify the bid. 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. To assure that the bidder will be put on notice of a mistake suspected by the Contracting Officer, the bidder should be advised as appropriate—

(i) That its bid is so much lower than the other bids or the Government's estimate as to indicate a possibility of error;

(ii) Of important or unusual characteristics of the solicitation specifications;

(iii) Of changes in requirements from previous purchases of a similar item; or

(iv) Of any other information, proper for disclosure, that leads the Contracting Officer to believe that there is a mistake in bid.

(2) If the bid is verified as correct, the Contracting Officer shall consider the bid as originally submitted. If the time for acceptance of bids is likely to expire before a decision can be made, the Contracting Officer shall request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids. If the bidder whose bid is believed erroneous does not (or cannot) grant an extension of time, the bid shall be considered as origi-

nally submitted (but see subparagraph (4) below). If the bidder alleges a mistake, the Contracting Officer shall advise the bidder to make a written request to withdraw or modify the bid. The request must be supported by statements (sworn statements, if possible) and shall include all pertinent evidence such as the bidder's file copy of the bid, the original worksheets and other data used in preparing the bid, subcontractors' quotations, if any, published price lists, and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

(3) When the bidder furnishes evidence supporting an alleged mistake, the Contracting Officer shall refer the case, by memorandum, to the CRB Chairperson, together with the following data:

- (i) A signed copy of the bid involved.
- (ii) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake.
- (iii) An abstract or record of the bids received.
- (iv) The bidder's written request to withdraw or modify the bid, together with the bidder's written statement and supporting evidence.
- (v) A written statement by the Contracting Officer setting forth—
  - (A) A description of the supplies or services involved;
  - (B) The expiration date of the bid in question and of the other bids submitted;
  - (C) Specific information as to how and when the mistake was alleged;
  - (D) A summary of the evidence submitted by the bidder;
  - (E) In the event only one bid was received, a quotation of the most recent contract price for the same or similar supplies or services involved or, in the absence of a recent comparable contract, the Contracting Officer's estimate of a fair price for the supplies or services;
  - (F) Any additional pertinent evidence; and
  - (G) A recommendation that either the bid be considered for award in the form submitted, or the bidder be authorized to withdraw or correct the bid.
- (vi) A D&F for the CRB Chairperson to sign, conforming to the recommendation of the Contracting Officer.

(4) 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 Contracting Officer 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. If the circumstances in (i) and (ii) of this paragraph prevail, the Contracting Officer shall recommend the bid be rejected. Attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(g) Each contract file folder shall contain copies of all determinations made in accordance with this subsection, the facts involved, and the action taken in each case.

#### 4. Disclosure of Mistakes After Award.

(a) When a mistake in a contractor's bid is not discovered until after the award, the mistake may be corrected by contract modification if correcting the mistake would be favorable to the Government without changing the essential requirements of the contract.

(b) In addition to the case contemplated in paragraph (a), the CRB Chairperson is authorized to make a determination—

- (1) To rescind a contract;
- (2) To reform a contract (i) to delete the items involved in the mistake; or (ii) to increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original invitation for bids; or
- (3) That no change shall be made in the contract as awarded, if the evidence does not warrant a determination under paragraphs (b)(1) or (2) of this subsection.

(c) Determinations under paragraphs (b)(1) and (2) above may be made only on the basis of clear and convincing evidence that a mistake in bid was made. In addition, it must be clear that the mistake was (1) mutual, or (2) if unilaterally made by the contractor, so apparent as to have charged the Contracting Officer with notice of the probability of the mistake.

(d) Each proposed determination shall be sent to the Office of General Counsel, for concurrence.

(e) Mistakes alleged or disclosed after award shall be processed as follows:

(1) The Contracting Officer shall request the contractor to support the alleged mistake by submission of written statements and pertinent evidence, such as (i) the contractor's file copy of the bid, (ii) the contractor's original worksheets and other data used in preparing the bid, (iii) subcontractors' and suppliers' quotations, if any, (iv) published price lists, and (v) any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended.

(2) The case file concerning the alleged mistake shall be referred to the CRB Chairperson and contain the following:

- (i) All evidence furnished by the contractor in support of the alleged mistake.
- (ii) A signed statement by the Contracting Officer—
  - (A) Describing the supplies or services involved;
  - (B) Specifying how and when the mistake was alleged or disclosed;
  - (C) Summarizing the evidence submitted by the contractor and any additional evidence considered pertinent;
  - (D) Quoting, in cases where only one bid was received, the most recent contract price for the supplies or services involved or, in the absence of a recent comparable contract, the Contracting Officer's estimate of a fair price for the supplies or services and the basis for the estimate;
  - (E) Setting forth the Contracting officer's opinion whether a bona fide mistake was made and whether the Contracting Officer was, or should have been, on constructive notice of the mistake before the award, together with the reasons for, or data in support of, such opinion;
  - (F) Setting forth the course of action with respect to the alleged mistake that the Contracting Officer considers proper on the basis of the evidence, and if other than a change in contract price is recommended, the