

or withdrawal of a bid received by telephone from the receiving telegraph office not later than the time set for opening of bids shall be considered only if the message is confirmed by receipt of a copy of the written telegram or mailgram which formed the basis for the telephone call. Modifications received by telegram or mailgram (including a record of those telephoned by the telegraph company) shall be sealed in an envelope by a proper official who shall write thereon the date and time of receipt and by whom received, the invitation for bids, number, and his signature. No information contained therein shall be disclosed before the time set for bid opening or for the start of the sale. The term *telegraphic notice* includes modifications and withdrawals submitted by telegram or mailgram. The following statement should be included in all invitations for bids:

The terms *telegraphic bid* and *telegraphic notice* include bids and notices by telegram or by mailgram.

(b) A bid may be withdrawn in person by a bidder or his authorized representative, provided his identity is made known and he signs a receipt for the bid, but only if the withdrawal is prior to the exact time set for the opening of bids (in the instance of sealed bid sales) or the exact time set for the start of the sale (in the instance of spot bid and auction sales).

[37 FR 24666, Nov. 18, 1972, as amended at 43 FR 11821, Mar. 22, 1978]

**§ 101-45.705 Late modifications and withdrawals.**

(a) Modifications of bids and requests for withdrawal of bids which are received by the contracting officer after the exact time set for bid opening (in sealed bid sales) or after the exact time set for the receipt of bids (in spot bid or auction sales) are "late modifications" and "late withdrawals", respectively. A late modification or late withdrawal shall be subject to the provisions of § 101-45.703. However, a late modification of the otherwise successful bid shall be opened at any time it is received; and if in the judgment of the contracting officer it makes the terms

of the bid more favorable to the Government, it shall be considered.

(b) Mailed-in, telegraphic, and mailgram modifications or withdrawals which are received by the contracting officer after the time set for the start of a spot bid or auction sale shall not be considered, regardless of the cause of delay.

[37 FR 24666, Nov. 18, 1972, as amended at 43 FR 11821, Mar. 22, 1978]

**Subpart 101-45.8—Mistakes in Bids**

SOURCE: 32 FR 16270, Nov. 29, 1967, unless otherwise noted.

**§ 101-45.800 Scope of subpart.**

This subpart prescribes the policies and methods governing the treatment by executive agencies of mistakes in bids by bidders in sales of personal property. The authorities prescribed herein are not intended to nullify previous authorities granted by the Comptroller General.

**§ 101-45.801 General.**

After the opening of bids, sales contracting officers shall examine all bids for mistakes. Where the sales contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this subpart 101-45.8. Such actions shall be taken prior to award.

**§ 101-45.802 Apparent clerical mistakes.**

Any clerical mistake apparent on the face of a bid may be corrected by the sales contracting officer prior to award if the sales contracting officer has first obtained from the bidder verification of the bid actually intended. An example of such an apparent mistake is an error in placing the decimal point (e.g., a bidder bids \$10 each on 10 units, but shows an extended price of \$1,000 or a bidder bids \$0.50 per lb. for 1,000 lbs. but shows an extended price of \$50). Any correction made pursuant to this § 101-45.802 shall be reflected in the award

document, if an award is made on the corrected bid.

**§ 101-45.803 Other mistakes disclosed before award.**

(a) Heads of executive agencies are authorized (with power of redelegation as provided in §§ 101-45.803(b) and 101-45.804(d)), in order to minimize delay in contract awards, to make the administrative determinations described in this § 101-45.803 in connection with mistakes in bids alleged after opening of bids and before award. The authority contained herein to permit correction of bids is limited to bids which, as submitted, are responsive to the invitation for bids, and may not be used to permit correction of bids to make them responsive. This authority is in addition to that in § 101-45.802 or that which may be otherwise available.

(1) A determination may be made permitting the bidder to withdraw his bid where the bidder requests permission to do so and clear and convincing evidence establishes the existence of a mistake.

(2) However, if the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and if the bid as submitted and as corrected is the highest received, a determination may be made to correct the bid and not permit its withdrawal.

(3) A determination may be made permitting the bidder to correct his bid where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. However, if the correction would result in displacing one or more higher acceptable bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made.

(4) If the evidence does not warrant a determination under paragraph (a)(1), (2), or (3) of this section, a determination may be made that a bidder may neither withdraw nor correct his bid.

(b) Heads of executive agencies may delegate to one central authority in their agencies, without power of redelegation, authority to make the determinations under paragraphs (a) (2), (3), and (4) of this § 101-45.803. The authority to make determinations to permit withdrawal of bids as provided in paragraphs (a) (1) and (3) of this section may be delegated, without power of redelegation, to any sales activity having legal counsel available.

(c) Each proposed determination shall be approved by the agency's General Counsel, Deputy or Associate General Counsel, and Assistant General Counsel, or other comparable legal officer. However, authority to approve determinations to permit withdrawal of bids pursuant to paragraphs (a) (1) and (3) of this section may be delegated to the legal counsel of sales activities.

(d) Suspected or alleged mistakes shall be processed as follows:

(1) Whenever the sales contracting officer suspects that a mistake may have been made in a bid, he shall immediately request the bidder to verify the bid. Such request shall inform the bidder of the basis for suspecting a mistake and shall advise the bidder that if a mistake is alleged, to support his allegation by statements concerning the alleged mistake and by all pertinent evidence; such as the bidder's file copy of the bid, his original worksheets and other data used in preparing the bid, and any other evidence which conclusively establishes the existence of the error, the manner in which it occurred, and the bid actually intended. If the time for acceptance of bids is likely to expire before a decision can be made, the sales 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 grant such extension of time and a decision cannot be reached before expiration of the time for acceptance, even if handled by telegraph or telephone as provided in § 101-45.803(d)(4), the bid shall be considered as originally submitted.

(2) If the bidder verifies his bid, the sales contracting officer shall consider it as originally submitted.