

Chapter 8. Competitive Sealed Bidding: Addenda, Modifications, and Withdrawals

Summary

This chapter addresses situations in which the invitation for bids is revised by an addendum or the bid submitted by a vendor is either modified or withdrawn. The modification and withdrawal of bids both before and after the bid opening are covered in this chapter.

Essential Information in this Chapter

- The purchasing agent may modify an invitation for bids by issuing a written addendum no later than five calendar days prior to the date bids must be received; if the addendum modifies the date bids must be received, it may be issued at any time prior to that date.
- A bid may be modified or withdrawn by the vendor any time prior to the time and date bids must be received.
- After bid opening, the purchasing agent may allow a vendor to withdraw its bid without prejudice if clear and convincing evidence supports the existence of an error.
- After bid opening, the purchasing agent may allow mistakes other than clerical errors to be corrected only if the evidence of the mistake and of the bid actually intended is clear and convincing.

Key References to the Code of Virginia Applicable to this Chapter

Section 2.2-4301: Definitions of competitive sealed bidding and other key terms
Section 2.2-4303(A): When competitive sealed bidding required, generally
Section 2.2-4330: Withdrawal of bid due to error

8-1 General

Once the invitation for bids is issued, the course of the procurement process is still subject to change. It may become apparent to the purchasing agent or the using department that the invitation contains an omission or an ambiguity that must be corrected or clarified prior to the date that bids must be received. A vendor may realize after its bid has been submitted that it contains errors or omissions that must be corrected or that compel the vendor to desire to withdraw its bid altogether.

8-2 Amending an Invitation for Bids by Addendum

If, after the invitation for bids is issued but prior to the receipt of bids, the invitation must be amended or clarified, the purchasing agent may issue addenda that modify the invitation. The following procedures shall apply:

- Authority to issue an addendum: The purchasing agent shall have the sole authority to issue an addendum.
- Initiation of an addendum: An addendum may be initiated by the purchasing agent in his discretion, upon his own determination of the need, upon the request of the using department, or upon the request of a prospective bidder who requests clarification of a provision of the invitation for bids.
- Addendum must be in writing: All addenda shall be in writing. No oral modification of any provision of an invitation for bids shall be permitted.
- Timing of issuance of addendum: If the purchasing agent determines that an addendum is necessary, it shall be issued no later than five calendar days prior to the date bids must be received. An addendum extending the date for the receipt of bids or withdrawing the invitation for bids may be issued any time prior to the date bids must be received.
- Notifying prospective bidders about addendum: An addendum shall be provided to all potential bidders who were provided an invitation for bids. Acceptable means of providing addenda to potential bidders are hand delivery, first class mail, fax with telephone confirmation of receipt, or other means designed to ensure receipt of the addenda as soon as possible.
- Changing the date bids must be received: When issuing an addendum, the purchasing agent should consider the effect on the time for prospective bidders to prepare their bids. If additional preparation time is likely to be required by the potential bidders, the addendum should also extend the date bids must be received by a reasonable period of time.

8-3 Modifying or Withdrawing a Bid Prior to Bid Receipt Date and Time

A bid may be modified or withdrawn by the vendor, subject to the following requirements:

- Notification: The vendor shall notify the purchasing agent in writing of its intentions to modify or withdraw its bid.
- Time to modify: If the vendor modifies its bid, it must submit and the purchasing office must receive the corrected sealed bid before the deadline for receipt of bids.
- Time to withdraw: If the vendor withdraws its bid, it must submit and the purchasing office must receive a written notice of withdrawal before the deadline for receipt of bids.

- Amount of bid may not be revealed: A vendor who withdraws or modifies a bid shall not reveal the amount of the bid. If the amount of the bid is revealed by the vendor, the bid shall be invalid. An attempt to modify a bid by writing on the exterior of the bid envelope shall render the bid invalid.
- Resubmittal of withdrawn bid: Withdrawn bids may be resubmitted to the purchasing agent up to the time and date bids must be received.

A bid may not be withdrawn after the time and date bids must be received and for sixty days thereafter; except that a bid may be withdrawn as otherwise provided in Section 8-4.

8-4 Withdrawing a Bid After Bid Opening

When a mistake in a bid is discovered by the vendor or by the purchasing agent or using department after the bid opening, and it is an obvious mistake, then the purchasing agent shall notify the vendor of the mistake and request that the bid be verified. If the vendor acknowledges the mistake and requests relief, the purchasing agent shall proceed in the following manner:

The purchasing agent may allow a vendor to withdraw its bid without prejudice if clear and convincing evidence supports the existence of an error. If there is significant and obvious disparity between the prices of the lowest bidder and of the others, the lowest bidder may be permitted to withdraw without prejudice, upon submission of evidence that a non-intentional error occurred.

8-4.1 Withdrawal Due to Error, Other than Construction Bids

For all bids other than construction bids, the following procedure shall apply when a vendor seeks to withdraw its bid after bid opening:

- Notice of claim to withdraw: The vendor shall give written notice of its claim to withdraw its bid to the purchasing agent within two business days after the conclusion of the bid opening procedure and shall submit original work papers with the notice. The mistake shall be proven only from the original work papers, documents and materials delivered to the purchasing agent with the vendor's written request to withdraw its bid.
- Verification of error: The purchasing agent shall inspect the written evidence submitted by the vendor with the request, verify that an error occurred, and determine the nature of the error.
- Withdrawal if bid price substantially lower: The purchasing agent may allow a vendor to withdraw its bid from consideration if the price bid was substantially lower than the next low responsive bid due solely to a mistake therein, provided the bid was submitted in good faith and the mistake was a clerical mistake as opposed to a

judgmental mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work or material made directly in the compilation of the bid. The unintentional arithmetic error or unintentional omission must be clearly shown by objective evidence drawn from an inspection of the original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. Examples of these mistakes include errors in price extension, placement of decimal points, reversal of prices, F.O.B. destination, and F.O.B. point of origin.

- Identification of interests: Before the purchasing agent allows a vendor to withdraw, the vendor shall identify in writing all other corporations, partnerships, sole proprietorships or other like businesses in which it has an interest.
- If withdrawal allowed, award to next lowest bidder: If the purchasing agent allows a bid to be withdrawn, he shall award the contract to the next lowest responsive and responsible bidder, or may reject all bids.
- No withdrawal when second low bidder is the same bidder: No bid shall be withdrawn when the result would be to award the contract to the same vendor, who submitted another bid.
- Participation in procurement by withdrawn bidder prohibited: A vendor who is permitted to withdraw its bid may not, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the vendor to whom the contract is awarded or otherwise benefit directly or indirectly from the performance of the project.
- Notification to vendor if withdrawal denied: If the purchasing agent denies the withdrawal of a bid under this section, he shall notify the vendor in writing within five business days, stating the reasons for the denial and award the contract to that vendor at the bid price, provided that the vendor is a responsible and responsive bidder. At the same time as the notification, the purchasing agent shall return all work papers and copies thereof that have been submitted by the vendor.

8-4.2 Withdrawal Due to Error, Construction Bids

The following procedure shall apply when a vendor seeks to withdraw its bid for construction after bid opening.

- Claim of error: A vendor shall give written notice to the purchasing

agent of its claim of right to withdraw its bid within two business days after the conclusion of the bid opening procedure.

- Submittal of papers, documents and materials: The vendor shall submit to the purchasing agent with its claim of error its original work papers, documents and materials used in the preparation of the bid. The responsibility for proving the originality and authentication of the papers submitted is the vendor's. Electronic records must have a means of determining date and time stamping. If the authentication cannot be made with the materials submitted, the purchasing agent may reject the claim of right to withdraw.
- Verification of error: The purchasing agent shall inspect the written evidence submitted by the vendor with the request, verify that an error occurred, and determine the nature of the error.
- Withdrawal if bid price substantially lower: A vendor for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw its bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgmental mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid.

The unintentional arithmetic error or unintentional omission must be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. A mistake shall be proved only from the original work papers, documents, and materials delivered to the purchasing office as required herein.

If a bid contains both clerical and judgment mistakes, a vendor may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid.

- Identification of interests: Before the purchasing agent allows a vendor to withdraw, the vendor shall identify in writing all other corporations, partnerships, sole proprietorships or other like businesses in which it has an interest.

- If withdrawal allowed, award to next lowest vendor: If the purchasing agent allows a bid to be withdrawn, he shall award the contract to the next lowest remaining bid.
- No withdrawal when second low vendor is the same vendor: No bid shall be withdrawn when the result would be to award the contract to the same bidder or of another vendor in which the ownership of the withdrawing bidder is more than five percent.
- Participation in procurement by withdrawn vendor prohibited: A vendor who is permitted to withdraw its bid may not, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the vendor to whom the contract is awarded or otherwise benefit directly or indirectly from the performance of the project.
- Notification to vendor if withdrawal denied: If the purchasing agent denies the withdrawal of a bid under the provisions of this section, he shall notify the vendor in writing within five business days stating the reasons for its decision and award the contract to the vendor at the bid price, provided the vendor is a responsible and responsive bidder. At the same time as the notification, the purchasing agent shall return all work papers and copies thereof that have been submitted by the vendor.

8-5 Modifying a Bid After Bid Opening

The correction of mistakes other than clerical errors after a bid opening is not permitted except where evidence of the mistake and of the bid actually intended is clear and convincing on the face of the bid, and the bid as received and as actually intended and corrected is the lowest bid received. Where clear and convincing evidence of a mistake is not present, the vendor shall not be permitted to correct its error.

If the vendor fails to enter into a contract with the County, its bid bond or bid deposit should be forfeited.