**Section 2000.2038 Mistakes**

a) General

Corrections to bids, proposals or other procurement processes are allowed, but only to the extent not contrary to the best interest of the State or the fair treatment of other bidders.

b) Mistakes Discovered Before Opening

A vendor may correct mistakes discovered before the time and date set for opening by withdrawing or correcting as provided in this Section.

c) Confirmation of Mistake

When the Procurement Officer knows or has reason to conclude that a mistake has been made, such officer shall request the vendor to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted. If the vendor alleges a mistake, the bid or proposal may be corrected or withdrawn if the conditions set forth in this Section, as applicable, are met.

d) Mistakes in Bids Discovered After Opening but Before Award

This subsection (d) sets forth procedures to be applied in situations in which mistakes in bids are discovered after the time and date set for bid opening but before award.

1) Minor informalities. A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the Invitation for Bids, the correction or waiver of which would not be prejudicial to the State (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The Procurement Officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the State. Examples of minor informalities as to form include the failure of a bidder to:

A) return the number of signed bids required by the Invitation for Bids;

B) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound, including but not limited to signature on an auxiliary form, submission of a bid guarantee or submission of a signed transmittal letter; or

C) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

i) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

ii) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

2) Mistakes Where Intended Correct Bid Is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

3) Mistakes Where Intended Correct Bid Is Not Evident. A bidder may be permitted to withdraw a low bid if:

A) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

B) the bidder submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

e) Mistakes in Proposals Discovered After Receipt, but Before Award

This subsection (e) sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.

1) During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake prior to the date set for conclusion of discussions or for receipt of best and final offers.

2) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this Section, shall be treated as they are under subsection (d).

3) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:

A) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or

B) the mistake is not clearly evident on the face of the proposal, but the offeror submits adequate proof that clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

4) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:

A) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;

B) the offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or

C) the offeror submits adequate proof that clearly and convincingly demonstrates the intended correct offer, but to allow corrections would be contrary to the fair and equal treatment of other offerors.

f) Mistakes Discovered After Award

Mistakes shall not be corrected after award of the contract except where the Procurement Officer finds it would be unconscionable (e.g., if the mistake resulted in a windfall to the State) not to allow the mistake to be corrected.

g) Determinations Required

When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared showing that relief was granted or denied in accordance with this Part. The Procurement Officer shall prepare the determination.