

RESOLUTION NO. 97-167

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY AUTHORIZING THE COUNTY ADMINISTRATOR, OR HIS DESIGNEE, TO (1) ALLOW ALTERATION OF A PARTICULAR BID, AS ALLOWED BY THE COUNTY ADMINISTRATIVE CODE, UPON A SHOWING OF A COMPUTER SOFTWARE RELATED COMPUTATIONAL ERROR; AND (2) TO ENTER INTO A CONTRACT WITH JACKSONVILLE EIGHTEEN CONSTRUCTION, INC. BASED UPON AN ADJUSTED COMPUTATION AND RELATED NEGOTIATIONS.

WHEREAS, the Florida Department of Transportation has contracted for the widening of State Road 207 from I-95 to State Road 312; and

WHEREAS, St. Johns County is responsible for the project of relocating Utilities (the "Project") along the affected roadway; and

WHEREAS, St. Johns County has proposed for and received bids for the Project; and

WHEREAS, Jacksonville Eighteen Construction, Inc. submitted the lowest Project bid, at \$566,159.20, but determined upon comparing its bid to other bids (after opening) that a computational error had occurred, making its bid \$141,682.68 lower than intended; and

WHEREAS, Jacksonville Eighteen Construction, Inc. immediately notified St. Johns County of the problem, and demonstrated to the St. Johns County Purchasing Department where the computer software related computational error occurred (see Exhibit 3); and

WHEREAS, the St. Johns County Purchasing Department investigated Jacksonville Eighteen Construction, Inc.'s industry reputation and found no history of improper bid manipulation; and

WHEREAS, even after allowing for a bid adjustment, Jacksonville Eighteen Construction, Inc. maintains the lowest bid for the Project; and

WHEREAS, Section 304.6.5 of the St. Johns County Administrative Code provides:

"After a bid has been opened, a bidder will not be permitted to withdraw or alter their bid, or any bid deposit which may have been requested with their bid. If, however, circumstances warrant the apparent lowest and best bidder may notify the Purchasing Director that an error has been made in their bid, the Purchasing Director will present the matter, with recommendations, to the County Administrator, the matter may be presented to the Board of County Commissioners for final approval. If withdrawal is approved, the next lowest and best bid may be accepted."; and

WHEREAS, the Board of County Commissioners interprets the above underlined phrase to mean that in the case of a bid error, a possible recommendation is to allow withdrawal or alteration of the bid; and

WHEREAS, the Purchasing Director and the County Administrator have recommended to the Board of County Commissioner that Jacksonville Eighteen Construction, Inc.'s proposal of \$706,522.83 (which is \$66,570.17 below the next bidder) be accepted; and

WHEREAS, the Board of County Commissioners is satisfied that the Purchasing Department's investigation into this case did not indicate bid manipulation, and therefore bid adjustment due to bona fide error does not harm the County's bid program; and

WHEREAS, Jacksonville Eighteen Construction, Inc. (1) acted in good faith in submitting the bid; (2) the error is of such magnitude that enforcement of the bid (unaltered) would work severe hardship upon the bidder; (3) the error was not the result of gross negligence or willful inattention; and (4) the error was discovered and communicated to the County, along with a request to alter the bid, before bid acceptance; and

WHEREAS, the American Bar Association (the "ABA") , in its Model Procurement Code for State and Local Governments, provides for a procedure to correct bid mistakes in certain instances, including clearly evident computational errors (see Exhibit 1); and

WHEREAS, the Federal Acquisition Regulations (the "FAR") provides for a procedure to correct bid mistakes in certain instances, including instances similar to the Project bid situation (see Exhibit 2); and

WHEREAS, such procedures provided by the ABA and FAR demonstrate that low bid alterations based on bonafide mistakes are an acceptable acquisition practice; and

WHEREAS, the Board of County Commissioners wishes to expend only the minimum of public monies needed to properly perform the Project.

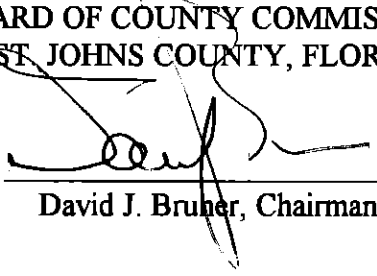
NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County that:

1. All the Whereas clauses above are duly made findings of this Board.
2. The County Administrator, or his designee, is authorized to accept a properly altered bid in the amount of \$706,522.83 by Jacksonville Eighteen Construction, Inc., based on the circumstances of this case.
3. The County Administrator, or his designee, is authorized to execute a contract, based on the properly altered bid by Jacksonville Eighteen Construction, Inc., upon condition that the


contract include a provision that Jacksonville Eighteen Construction, Inc. agrees to indemnify the County an amount up to, but not exceeding, one half (1/2) of the bid amount (5% of the final bid figure) for any legal fees and costs incurred by the County as a result of any litigation caused by, or related to, the award of the Project contract to Jacksonville Eighteen Construction, Inc.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 14 day of October, 1997.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: 
David J. Bruher, Chairman

ATTEST: CHERYL STRICKLAND, CLERK

By: 
Deputy Clerk

The Model Procurement Code for State and Local Governments

FEBRUARY 1979

The suggested statutory provisions and Code Commentary contained in this draft were approved by the American Bar Association on February 13, 1979. This material should not be considered as legislative history of any statute or regulation which may become law in any jurisdiction.

FEBRUARY 1993

Fifth Printing

Exhibit (1)

Bids. This procedure also does not permit discussions or negotiations with bidders after receipt and opening of bids.

(6) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in accordance with regulations promulgated by the Policy Office. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the [State] or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Procurement Officer or head of a Purchasing Agency.

COMMENTARY:

(1) Correction or withdrawal of bids before or after contract award requires careful consideration to maintain the integrity of the competitive bidding system, to assure fairness, and to avoid delays or poor contract performance. While bidders should be expected to be bound by their bids, circumstances frequently arise where correction or withdrawal of bids is proper and should be permitted.

(2) To maintain the integrity of the competitive sealed bidding system, a bidder should not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

X (3) An otherwise low bidder should be permitted to correct a material mistake of fact in its bid, including price, when the intended bid is obvious from the bid document or is otherwise supported by proof that has evidentiary value. A low bidder should not be permitted to correct a bid for mistakes or errors in judgment.

our situation

(4) In lieu of bid correction, the [State] should permit a low bidder alleging a material mistake of fact to withdraw its bid when there is reasonable proof that a mistake was made and the intended bid cannot be ascertained with reasonable certainty.

(5) After bid opening an otherwise low bidder should not be permitted to delete exceptions to the bid conditions or specifications which affect price or substantive obligations; however, such bidder should be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.

(6) A suspected bid mistake can give rise to a duty on the part of the [State] to request confirmation of a bid, and failure to do so can result in a nonbinding award. Where there is an appearance of mistake, therefore, the bidder should be asked to reconfirm the bid before award. In such instance, a bidder should be permitted to correct the bid or to withdraw it when the bidder acknowledges that a mistake was made.

(7) Correction of bid mistakes after award should be subject to the same proof as corrections before award with a further requirement that no correction be permitted that would cause the contract price to exceed the next low bid.

(8) Nothing in this Section is intended to prohibit the [State] from accepting a voluntary reduction in price from a low bidder after bid opening; provided that such reduction is not conditioned on, or results in, the modification or deletion of any conditions contained in the Invitation for Bids.

(7) *Award.* The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such funds by more than [five] percent, the Chief

Exhibit (1)



Federal Acquisition Regulation (FAR)

GENERAL STRUCTURE

Through FAC 90-46

Additional Procurement Regulation Information -- FACs and FAR Supplements



Search the body of the current Federal Acquisition Regulation (FAR)

Subchapter a - General

Part 1 - Federal Acquisition Regulations System

Part 2 - Definitions of Words and Terms

Part 3 - Improper Business Practices and Personal Conflicts of Interest

Part 4 - Administrative Matters

Subchapter b - Competition and Acquisition Planning

Part 5 - Publicizing Contract Actions

Part 6 - Competition Requirements

Part 7 - Acquisition Planning

Part 8 - Required Sources of Supplies and Services

Part 9 - Contractor Qualifications

Part 10 - Market Research

Part 11 - Describing Agency Needs

Part 12 - Acquisition of Commercial Items

Subchapter c - Contracting Methods and Contract Types

Part 13 - Simplified Acquisition Procedures

Part 14 - Sealed Bidding

Part 15 - Contracting by Negotiation

Part 16 - Types of Contracts

Part 17 - Special Contracting Methods

Part 18 - [Reserved]

Subchapter d - Socioeconomic Programs

Part 19 - Small Business and Small Disadvantaged Business Concerns

Part 20 - [Reserved]

Part 21 - [Reserved]

Part 22 - Application of Labor Laws to Government Acquisitions

Part 23 - Environment, Conservation, Occupational Safety, and Drug-Free Workplace

Part 24 - Protection of Privacy and Freedom of Information

Part 25 - Foreign Acquisition

Part 26 - Other Socioeconomic Programs

Subchapter e - General Contracting Requirements

Part 27 - Patents, Data, and Copyrights

Part 28 - Bonds and Insurance

Part 29 - Taxes

Part 30 - Cost Accounting Standards Administration

Part 31 - Contract Cost Principles and Procedures

Part 32 - Contract Financing

Part 33 - Protests, Disputes, and Appeals

Subchapter f - Special Categories of Contracting

Part 34 - Major System Acquisition

Part 35 - Research and Development Contracting

Part 36 - Construction and Architect-Engineer Contracts

Part 37 - Service Contracting

Part 38 - Federal Supply Schedule Contracting

Part 39 - Acquisition of Information Resources

Part 40 - [Reserved]

Part 41 - Acquisition of Utility Services

Subchapter g - Contract Management

Part 42 - Contract Administration

Part 43 - Contract Modifications

Part 44 - Subcontracting Policies and Procedures

Part 45 - Government Property

Part 46 - Quality Assurance

Part 47 - Transportation

Part 48 - Value Engineering

Part 49 - Termination of Contracts

Part 50 - Extraordinary Contractual Actions

Part 51 - Use of Government Sources by Contractors

Subchapter h - Clauses and Forms

Part 52 - Solicitation Provisions and Contract Clauses

Part 53 - Forms

Appendices to the FAR

Appendix A - Acquisition of Federal Information Processing (FIP) Resources by Contracting

Appendix B - Cost Accounting Preambles and Regulations

Cost Accounting Standards and Cost Accounting Standards Board Rules and Regulations

Recodified by the Cost Accounting Standards Board at 48 CFR Chapter 99
Preambles

Part I-Preambles to the Cost Accounting Standards Published by the Cost Accounting Standards Board

Part II-Preambles to the Related Rules and Regulations Published by the Cost Accounting Standards Board

Part III-Preambles Published under the FAR System Cost Accounting Standards Board Rules and Procedures

Historical Changes to the FAR

- Federal Acquisition Circulars (FACs)

Other procurement regulations can be found at the following sites:

- DFARS Initial Public Prototype
- NASA FAR Supplement
- Air Force FARSite
- Department of Energy Acquisition Regulations

quantity, quality, or delivery of the item bid upon.

— FAR —

(e) Furnish affidavits concerning parent company and affiliates, if required pursuant to the clause at 52.214-8, Parent Company and Identifying Data, and 52.214-17, Affiliated Bidders; and

(f) Execute the representations with respect to Equal Opportunity and Affirmative Action Programs, as set forth in the clauses at 52.222-22, Previous Contracts and Compliance Reports, and 52.222-25, Affirmative Action Compliance.

14.406 Receipt of an unreadable electronic bid.

If a bid received at the Government facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the invitation for bids cannot be ascertained, the contracting officer immediately shall notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence--

(a) Of the content of the bid as originally submitted; and

(b) That the unreadable condition of the bid was caused by Government software or hardware error, malfunction, or other Government mishandling.

14.407 Mistakes in bids.

14.407-1 General.

After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer 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 section 14.407. Such actions shall be taken before award.

14.407-2 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 first shall 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

(c) Correction of bids submitted by electronic data interchange shall be effected by including in the electronic solicitation file the original bid, the verification request, and the bid verification.

14.407-3 Other mistakes disclosed before award.

Exhibit (2)



In order to minimize delays in contract awards, administrative determinations may be made as described in this 14.407-3 in connection with mistakes in bids alleged after opening of bids and before award. The authority to permit correction of bids is limited to bids that, as submitted, are responsive to the invitation and may not be used to permit correction of bids to make them responsive. This authority is in addition to that in 14.407-2 or that may be otherwise available.

this applies to us
(a) If a bidder requests permission to correct a mistake and clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the agency head may make a determination permitting the bidder to correct the mistake; *provided*, that if this 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. *this does not*

(b) If (1) a bidder requests permission to withdraw a bid 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 agency head may make a determination to correct the bid and not permit its withdrawal.

(c) If, under paragraph (a) or (b) 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, an official above the contracting officer, unless otherwise provided by agency procedures, may make a determination permitting the bidder to withdraw the bid.

(d) If the evidence does not warrant a determination under paragraph (a), (b), or (c) of this section, the agency head may make a determination that the bid be neither withdrawn nor corrected.

(e) Heads of agencies may delegate their authority to make the determinations under paragraphs (a), (b), (c), and (d) of this 14.407-3 to a central authority, or a limited number of authorities as necessary, in their agencies, without power of redelegation.

(f) Each proposed determination shall have the concurrence of legal counsel within the agency concerned before issuance.

(g) Suspected or alleged mistakes in bids shall be processed as follows. A mere statement by the administrative officials 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 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, 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 in accordance with 14.404-1(d). If the bidder whose bid is believed erroneous does not (or cannot) grant an extension of time, the bid shall be considered as originally submitted (but see subparagraph (g)(5) of this section). If the bidder alleges a

Exhibit (2)

BID DATA

①

Exhibit (3)

FORMULA
WIRING UNIT
did not include

Should have been

3/26/15.15

	QUANTITY	UNIT MEASURE	LABOR & EQPT.	MATERIAL	UNIT PRICE
47	1	LS	520.00	200.00	720.00
48	40	UF	145.00	201.05	346.05
49	560	UF	17,324.65	1,765.52	19,090.17
50	7460	UF	45,597.03	38,889.28	84,486.31
51	00	UF	482.56	960.00	1,442.56
53	18	EA	1,939.14	3,030.66	4,969.80
53	26	EA	2,223.78	6,316.44	8,540.22
89	26	EA	2,223.78	7,800.00	10,023.78
57	1	EA	107.73	242.95	358.97
58	21	EA	1,796.13	6,088.11	7,884.24
59	4	EA	874.32	3,031.32	3,905.64
	20	EA	7,427.20	22,566.80	29,994.00
	2	EA	124.80	250.00	374.80
	1	EA	62.40	150.00	212.40
	1	EA	62.40	190.00	252.40
	1	EA	62.40	180.00	242.40
	1	EA	94.26	341.26	435.52
	1	EA	81.96	355.95	437.91
	1	EA	81.96	407.93	489.89
	1	EA	62.40	100.00	162.40
	21	EA	2,570.40	2,667.00	5,237.40
	3	EA	249.60	2,453.70	2,703.30
	20	EA	3,039.20	14,734.40	17,773.60
	10	EA	951.10	2,252.80	3,206.90
	8	EA	3,019.44	10,188.16	13,207.60
	4	EA	753.56	3,198.00	3,951.56
	5	EA	753.60	2,694.55	3,448.15
	1	EA	162.53	3,489.45	3,650.98
	1	EA	101.40	1,670.34	1,771.74
	2	EA	202.92	1,364.76	1,567.68
	1	LS	396.50	3,903.25	4,299.75
	1	LS	1,716.00	0.00	1,716.00
			95,213.15	141,602.68	95,213.15
	64	EA	10,279.68	21,320.32	31,600.00
	280	EA	37,330.56	37,120.32	74,450.88
	92	EA	9,278.20	6,700.36	15,978.56
	90	EA	9,475.20	4,105.80	13,581.00
	22	EA	200.20	707.52	907.72
			66,563.84	69,954.32	136,518.16

16" RESTRAINTS
10" RESTRAINTS
8" RESTRAINTS
6" RESTRAINTS
4" RESTRAINTS

BID DATA

Exhibit (3)

511,636.37
791,682.68

280,046.31

due
- work for material
- to
ERATOR

641,038.41
61,025.91

702,064.32

CLEAN & GRUB						
REGULAR EXCAVATION						
IMPORTED A-3 SAND						
#57 STONE IN PLACE						
SHEETING AND BRACING						
DEWATERING						
2" PVC PIPE DR-25	20	LF	254.40	8.00	262.40	
6" PVC DR-25 FM	2540	LF	12,268.20	5,003.80	17,272.00	
8" PVC DR-25 FM	160	LF	1,360.00	550.40	1,910.40	
10" PVC DR-25 FM	3040	LF	25,262.40	15,260.00	40,522.40	
16" PVC DR-25 FM	2260	LF	17,989.60	27,120.00	45,109.60	
10" DI FLANGED FM						
12" HDPE DR-11						
6" 45 DI EPOXY LINED	8	EA	1,683.60	1,290.64	2,974.24	
8" 45 DI EPOXY LINED	4	EA	663.16	649.60	1,312.76	
10" 45 DI EPOXY LINED	10	EA	4,784.22	4,095.64	9,879.86	
18" 45 DI EPOXY LINED	6	EA	1,007.00	1,735.50	2,822.58	
16" 45 DI EPOXY LINED	16	EA	4,502.00	11,143.04	15,645.92	
6" 90 DI EPOXY LINED	2	EA	206.00	223.50	429.50	
8" 90 DI EPOXY LINED	1	EA	120.70	149.40	385.44	
10" 90 DI EPOXY LINED	0	EA	965.60	1,941.44	2,907.04	
16" 90 DI MJ	6	EA	988.14	3,533.64	4,521.78	
6" TAPPING SLEEVE & VALVE BOX COVER	3	EA	1,540.98	1,335.54	2,876.52	
8" TAPPING SLEEVE & VALVE BOX COVER	2	EA	1,027.32	1,130.88	2,158.20	
10" TAPPING SLEEVE & VALVE BOX COVER	16	EA	10,420.00	9,965.60	20,385.60	
4" VALVE PLUG W/BOX COVER	6	EA	3,307.50	3,326.22	6,633.72	
16" VALVE PLUG W/BOX & COVER	4	EA	1,501.60	1,036.96	2,538.56	
16" X 6" TEE DI EPOXY	1	EA	541.06	1,560.00	2,101.06	
10" X 6" REDUCER DI	1	EA	117.40	946.77	1,622.31	
6" VALVE AIR RELEASE			463.74	2,695.50	3,159.24	
8" VALVE AIR RELEASE			463.74	1,752.07	2,215.81	
10" VALVE AIR RELEASE			463.74	2,695.50	3,159.24	
16" VALVE AIR RELEASE			463.74	2,695.50	3,159.24	
16" X 6" TAPPING SLEEVE	1	EA	463.74	2,695.50	3,159.24	
16" X 8" TAPPING SLEEVE	1	EA	463.74	2,695.50	3,159.24	
16" X 10" TAPPING SLEEVE	6	EA	3,099.96	18,941.88	22,041.84	
16" MJ TAPPING VALVE	28	EA	5,819.52	7,465.64	13,285.16	
MISC. FITTINGS			7,235.00		7,235.00	
LAYOUT			20,483.17		20,483.17	
FLUSH & CLEAN PIPE			130,483.67	137,140.76	267,624.43	

499,355.74 ✓
12,280.63

511,636.37

2.5

499,355.74
191,682.68

691,038.42

BOND