

## Federal Acquisition Regulation

14.407-4

the evidence presented is clear and convincing.

(5) 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 agency 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. Attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(h) Each agency shall maintain records of all determinations made in accordance with this subsection 14.407-3, the facts involved, and the action taken in each case. Copies of all such determinations shall be included in the file.

(i) Nothing contained in this subsection 14.407-3 prevents an agency from submitting doubtful cases to the Comptroller General for advance decision.

[48 FR 42171, Sept. 19, 1983, as amended at 53 FR 17857, May 18, 1988; 54 FR 13023, Mar. 29, 1989. Redesignated and amended at 60 FR 34738, July 3, 1995]

### 14.407-4 Mistakes after award.

If a contractor's discovery and request for correction of a mistake in bid is not made until after the award, it shall be processed under the procedures of subpart 33.2 and the following:

(a) When a mistake in a contractor's bid is not discovered until after 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 specifications.

(b) In addition to the cases contemplated in paragraph (a) above or as otherwise authorized by law, agencies are 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 subparagraphs (1) or (2) above.

(c) Determinations under subparagraphs (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 coordinated with legal counsel in accordance with agency procedures.

(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 that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended.

(2) The case file concerning an alleged mistake shall 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

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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 manner by which the supplies or services will otherwise be acquired; and

(G) Disclosing the status of performance and payments under the contract, including contemplated performance and payments.

(iii) A signed copy of the bid involved.

(iv) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake.

(v) An abstract of written record of the bids received.

(vi) A written request by the contractor to reform or rescind the contract, and copies of all other relevant correspondence between the contracting officer and the contractor concerning the alleged mistake.

(vii) A copy of the contract and any related change orders or supplemental agreements.

(f) Each agency shall include in the contract file a record of (1) all determinations made in accordance with this 14.407-4, (2) the facts involved, and (3) the action taken in each case.

[48 FR 42171, Sept. 19, 1983, as amended at 50 FR 1738, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985. Redesignated and amended at 60 FR 34738, July 3, 1995; 63 FR 58602, Oct. 30, 1998]

### 14.408 Award.

#### 14.408-1 General.

(a) The contracting officer shall make a contract award (1) by written or electronic notice, (2) within the time for acceptance specified in the bid or an extension (see 14.404-1(d)), and (3) to that responsible bidder whose bid, conforming to the invitation, will be most

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advantageous to the Government, considering only price and the price-related factors (see 14.201-8) included in the invitation. Award shall not be made until all required approvals have been obtained and the award otherwise conforms with 14.103-2.

(b) If less than three bids have been received, the contracting officer shall examine the situation to ascertain the reasons for the small number of responses. Award shall be made notwithstanding the limited number of bids. However, the contracting officer shall initiate, if appropriate, corrective action to increase competition in future solicitations for the same or similar items, and include a notation of such action in the records of the invitation for bids (see 14.204).

(c)(1) Award shall be made by mailing or otherwise furnishing a properly executed award document to the successful bidder.

(2) When a notice of award is issued, it shall be followed as soon as possible by the formal award.

(3) When more than one award results from any single invitation for bids, separate award documents shall be suitably numbered and executed.

(4) When an award is made to a bidder for less than all of the items that may be awarded to that bidder and additional items are being withheld for subsequent award, the award shall state that the Government may make subsequent awards on those additional items within the bid acceptance period.

(5) All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document. The award is an acceptance of the bid, and the bid and the award constitute the contract.

(d)(1) Award is generally made by using the Award portion of Standard Form (SF) 33, Solicitation, Offer, and Award, or SF 1447, Solicitation/Contract (see 53.214). If an offer on an SF 33 leads to further changes, the resulting contract shall be prepared as a bilateral document on SF 26, Award/Contract.

(2) Use of the Award portion of SF 33, SF 26, or SF 1447, does not preclude the