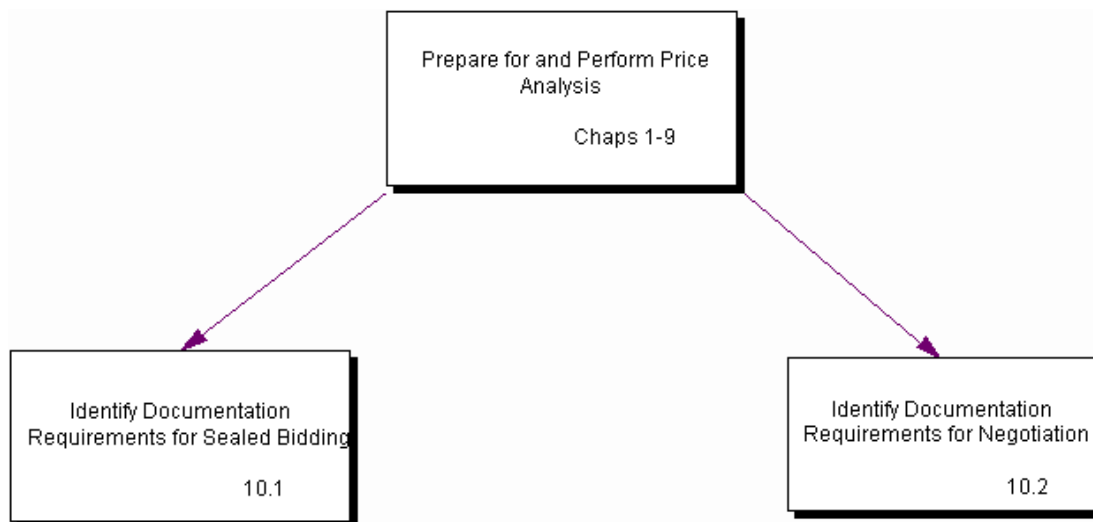


## Ch 10 -Documenting Pricing Actions

- 10.0 - [Introduction](#)
  - 10.1 - [Documenting Actions In Sealed Bidding](#)
    - 10.1.1 - [Record All Bids](#)
    - 10.1.2 - [Record The Reason For Rejection Of Bids](#)
    - 10.1.3 - [Record How Any Ties Were Broken](#)
    - 10.1.4 - [Identify The Basis For Considering The Award Price Reasonable](#)
  - 10.2 - [Documenting Actions In Negotiations](#)
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### 10.0 Introduction

*Documentation in the Pricing Process.* Documentation is the final activity in contract pricing process. The figure below demonstrates that you must identify the appropriate documentation for the method of contracting that you are using.



*Need for Good Documentation.* Good documentation is essential to good contracting. As time goes on, you forget times, dates, persons involved, and other elements that are important in all aspects of contracting and pricing in particular.

While fresh in your mind, you should document:

- Events;
- Actions; and
- Decisions.

*Problems from Poor Documentation.* Lack of good documentation can create serious problems. Since you will not always be available to explain what you did, or why, other contracting personnel will not know what happened, or about any special circumstances that may have affected your decisions. If your files lack proper documentation:

- Other contracting personnel may take the time to accomplish an action or make a decision that you have already completed. These actions or decisions may conflict with yours.
- Legal advisors and management review teams may question your action or lack of action because they do not have all of the relevant information.
- You will find that the lack of documentation is generally treated as a lack of action. If it is not documented, it never happened.

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## **10.1 Documenting Actions In Sealed Bidding**

- 10.1.1 [Record All Bids](#)
- 10.1.2 [Record The Reason For Rejection Of Bids](#)
- 10.1.3 [Record How Any Ties Were Broken](#)
- 10.1.4 [Identify The Basis For Considering The Award Price Reasonable](#)

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### **10.1.1 Record All Bids**

*Introduction* ([FAR 14.403\(a\)](#)). As soon as practicable after opening, the bid opening officer must assure that all bids are accurately recorded and certified.

*Forms to Be Completed* ([FAR 14.403\(a\)](#) and [14.403\(c\)](#)). Except for the Defense Center, in the acquisition of natural gas, petroleum or coal, and the Defense , in the acquisition of perishable subsistence items, bids must be recorded on one of the following forms:

- Standard Form (SF) 1409, [Abstract of Offers](#) (Note--PDF format).
- Optional Form (OF) 1419, [Abstract of Offers](#) -- Construction (Note--PDF Format).
- An automated equivalent to one of the above forms.

Agencies and contracting offices may establish additional documentation requirements.

*Acquisitions with Numerous Bid Items* ([FAR 14.403\(a\)](#)). In situations where bid items are too numerous to warrant complete recording of all bids, you may limit abstract entries for individual bids to the item numbers and bid prices. In preparing these forms, use the extra columns of the SF 1409 or OP 1419 to record the information that the contracting office deems necessary. If needed, the following forms can be used:

- SF 1410, [Abstract of Offers](#) (Note--PDF Format) -- Continuation, with the SF 1409.
- OF 1419A, [Abstract of Offers](#) -- Construction, Continuation Sheet, with the OF 1419.

*Make Abstracts Available for Public Inspection* ([FAR 14.403\(b\)](#) and [24.2](#)). You must make abstracts of offers for unclassified acquisitions available for public inspection. However, publicly displayed abstracts must not contain:

- Information on any failure to meet minimum standards or responsibility.
- Information on apparent collusion of bidders.
- Other notations properly exempt from disclosure to the public in accordance with agency regulations implementing FAR 24.2, Freedom of Information Act.

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### **10.1.2 Record The Reason For Rejection Of Bids**

*Introduction.* An individual bid may be rejected or an entire solicitation canceled for pricing related reasons. Whenever such action is taken, you must clearly document the facts leading to the decision, as well as the decision itself.

*Documenting a Suspected Mistake in Bid* ([FAR 14.404-2\(f\)](#) and [14.407-1](#)). Any bid may be rejected if the contracting

officer determines in writing that the price is unreasonable. Unreasonableness of price includes the total price of the bid, as well as the prices of individual items.

Typically, the rejection of an individual bid because of unreasonable pricing begins with an alleged or suspected mistake in bid. Whenever you suspect a mistake in bid, you must call the bidders attention to the suspected mistake and request the bidder to verify the bid in writing.

Documentation of the verification process SHOULD include:

- A record of the request for verification. If the request is made orally, the key points of the conversation must be documented in the contract file. If the request is made in writing, retain a copy in the contract file.
- Also retain a copy of the offeror's written response in the contract file.

*Documenting Rejection of an Unfair Bid* (FAR [14.407-3\(g\)\(5\)](#))(Pamfilis Painting, Inc., CGEN B-237968, April 3, 1990).

. If the bidder fails or refuses to furnish evidence to support the mistake in bid, consider the bid as submitted, unless the contracting officer determines that one of the following situations exists:

- The amount of the bid is so far out of line with the amounts of other bids received, the agency estimate, or the amount determined reasonable by the contracting officer, as to reasonably justify the conclusion that accepting the bid would be unfair to the bidder or to other bona fide bidders.
- There are 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.

Documentation concerning rejection of an unfair bid MUST include a record of all attempts made to obtain the information required and the action taken with respect to the bid.

Documentation SHOULD also include:

- Evidence supporting the determination that the bid is "far out of line" with other bids or the agency estimate or other indications that the bid is unfair to the bidder or other bona fide bidders.
- A clear determination that one or both of the FAR [14.407-3\(g\)\(5\)](#) situations exist.
- A copy of the bidder notification of bid rejection.

The following quote, concerning a protest by Pamfilis Painting, Inc., demonstrates the importance of clear "unfair bid" documentation.

A contracting officer's decision to reject an apparently mistaken bid under the authority of the Federal Acquisition Regulation 14.407-3(g)(5) **is subject to question only where it is shown to be unreasonable....** Moreover, an obviously erroneous bid may not be accepted even if it is verified by the bidder. The contracting officer's decision to reject Pamfilis's bid was reasonable. **The record demonstrates that there is a significant disparity in Pamfilis's bid and the government estimate for many elements of work which creates reasonable doubt that the protester understood the scope of work required by the IFB. ... the record indicates that the Navy questioned whether Pamfilis's bid included the costs associated with (1) the specialty painting required in the solicitation, i.e., railing and trim painting, metal and fence painting; (2) demolition, (3) quality assurance, and (4) utilities, water, scaffolding and tools. While Pamfilis denies any mistake in its bid and continues to maintain that its total bid price is reasonable and includes all costs reasonably associated with all items of work to be performed, the protester has not furnished any probative evidence to support its bid calculations. As noted above, Pamfilis was repeatedly asked to furnish its original work papers which Pamfilis has failed to provide.** In view thereof, and in view of the disparities between Pamfilis's bid and the government estimate, the contracting officer reasonably rejected Pamfilis's bid as mistaken." (emphasis added)

*Documenting Rejection of an Unbalanced Bid* ([FAR 14.404-2\(g\)](#) and [15.404-1\(g\)](#)). Any bid may be rejected if the prices

for line items or subline items are unbalanced and there is a high probability that award to that bidder will:

- Increase contract performance risk; or
- Result in payment of unreasonably high prices.

Documentation SHOULD include:

- The price analysis used to identify the unbalanced bid.
- A clear determination that the unbalanced pricing will:
  - Increase contract performance risk; or
  - Result in payment of unreasonably high prices.
- A copy of the bidder notification of bid rejection.

*Documenting Invitation Cancellation for Pricing Related Reasons ([FAR 14.404-1\(c\)](#))*. As you learned earlier in the text, five of eleven reasons for canceling an IFB after bid opening are directly related to pricing decisions. The relevant subparagraphs of FAR 14.404-1(c) are:

(4) The invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants.

(5) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that for which the bids were invited.

(6) All otherwise acceptable bids received are unreasonable prices, or only one bid received and the contracting officer cannot determine the reasonableness of the bid price.

(7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(9) A cost comparison as prescribed in OMB Circular A-76 and Subpart 7.3 shows that performance by the Government is more economical.

Documentation MUST include a written determination by the agency head, or designee, that one of the situations identified above exists and presents a compelling reason for canceling the .

Documentation SHOULD also include:

- All the findings that led to the decision - including, in the case of unreasonable prices - data supporting the contracting officer's conclusion that all bids received are unreasonable (e.g., in comparison to commercial prices, historical prices, the Independent Government Estimate, et. al.).
- The specific reason for the cancellation, including the authorizing FAR reference.
- A copy of the notification of bid rejection and invitation cancellation.

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### **10.1.3 Record How Any Ties Were Broken**

*Introduction* ([FAR 14.408-6\(a\)](#) and [14.408-6\(b\)](#)). When two or more bids are equal in ALL respects, contract must be awarded in the following order of priority:

1. Small business concerns that are also labor surplus area concerns.
1. Other small business concerns.
2. Other business concerns.
3. If two or more bidders remain tied, the tie must be broken by a drawing by lot limited to the tied bidders. If time permits, the bidders involved must be given the opportunity to attend the drawing. The drawing must be witnessed by at least three persons.

*Tie Breaking Documentation* ([FAR 14.408-6\(](#) and [14.408-](#)). You MUST include in the documentation:

- A written agreement that the contractor will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.
- A record of how the tie was broken. The record should consider the order of priority of tie breaking

criteria and the offerors eliminated by each criterion.

- If applicable, the names and addresses of at least three individuals who witnessed the drawing by lot and the person who supervised the drawing.

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#### **10.1.4 Identify The Basis For Considering The Award Price Reasonable**

*Introduction* ([FAR 14.408-2](#)). You must determine that the prices offered are reasonable before making a contract award. In each case, the determination must consider all relevant circumstances. Take particular care in cases where only a single bid is received.

*Document in the Contract File* ([FAR 14.103-2](#), [14.408-2\(a\)](#), [14.408-7\(a\)](#), and [FAR 14.408-7\(b\)](#)).

Whenever you award a contract, you MUST document the following in the contract file:

- Compliance with FAR 14.103-2, including FAR 14.103-2(d), which requires that award be made to the responsible bidder whose bid is responsive to the terms of the IFB and is most advantageous to the Government, considering only price and price-related factors included in the IFB.
- That the accepted bid was the lowest bid received, or list all lower bids with reasons for their rejection in sufficient detail to justify the award. If bids are rejected for price-related reasons, include details, or reference to details, of the price analysis supporting the rejection decision.

By awarding the contract, you, as the contracting officer, demonstrate an affirmative decision that the price is reasonable.

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#### **10.2 Documenting Actions In Negotiations**

*Introduction.* Requirements for documentation of negotiations vary with the dollars involved. In this



section you will learn about documentation of both simplified acquisitions and other contracts.

*Micro-Purchase Documentation* ([FAR 13.202](#)). The administrative cost of verifying the reasonableness of the price of purchases at or below the micro-purchase threshold may more than offset potential savings from detecting overpricing. Action to verify price is only required when you:

- Suspect or have information to indicate that the price may not be reasonable (e.g., comparison with previous prices or personal knowledge).
- Purchase an item for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as or similar to other supplies or services that you have recently purchased on a competitive basis).

Since there is no requirement for price analysis, no pricing documentation is required unless you must take action to verify price reasonableness. Award demonstrates an affirmative decision that the price is reasonable. When you must take action to verify price reasonableness, documentation should be sufficient to establish price reasonableness. If you award to other than the low quoter, you must explain your award decision.

*Other Simplified Acquisition Documentation* ([FAR 13.106-3](#)). Other simplified acquisitions require a determination that the price is reasonable:

- Whenever possible, base your determination on comparisons with competitive quotations or offers.
- If you only receive one quote, include a statement of price reasonableness in the contract file. The statement may be based on:
  - Market research;
  - Comparison of the proposed price with prices found reasonable on previous purchases;
  - Current price lists, catalogs, or advertisements;
  - A comparison with similar items in a related industry
  - Value analysis;
  - Personal knowledge of the item being purchased;
  - Comparison to an Independent Government Estimate;or

- o Any other reasonable basis.

Your documentation must also include:

- All quotes
  - o If an oral solicitation is used, include an informal record of the suppliers contacted, oral price quotations, and other terms and conditions.
  - o If a written solicitation is used, include an abstract or notes to show prices, delivery, references to printed price lists used, the vendor or vendors contacted, and other pertinent data.
- If you do not have adequate price competition, describe the analysis used to determine price reasonableness.
- If you only solicit one source, explain the absence of competition, unless the contract is for utility services available from only one source.
- When you consider criteria other than price-related factors in selecting the supplier, document the rationale used in making your final award decision. Be sure to explain the role that price analysis played in your decision.

*Pre negotiation Documentation for Other Than Simplified Acquisitions ([FAR 15.406-1\(b\)](#) and [15.406-3\(a\)](#)).*

Contracting officers must establish pre negotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action.

In many contracting activities, contracting officers prepare written **pre negotiation memoranda** to document these pre negotiation objectives. Whether you work for such an activity or not, you should draft the following elements of the Price Negotiation Memorandum (PNM) **before** negotiations:  
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- Purpose of the negotiation (new contract, final pricing, etc.)
- Description of the acquisition, including appropriate identifying numbers (e.g., RFP number).
- If the offeror was not required to submit cost or pricing data to support a price negotiation over the

cost or pricing data threshold, the exception used and the basis for using it.

- A summary of the contractor's proposal, field pricing and internal analyses, and the Government prenegotiation objective. Carefully summarize the reasons for any pertinent variances.
- Summarize of the most significant facts or considerations controlling the establishment of the prenegotiation price objective.
- Summarize and quantify any significant effect that direction from Congress, other agencies, or higher-level officials (i.e., officials who would not normally exercise authority during the contract award and review process) has had on the contract action.

<sup>1</sup> Note: Additional information is required if you used cost analysis in preparing your negotiation objectives.

*Additional Documentation for Other Than Simplified Acquisitions.* In preparing your prenegotiation documentation, you should also document any important aspects of the acquisition situation that could reasonably affect your pricing decision:

- Describe the items or services being purchased.
- Indicate the quantities being purchased.
- Identify the unit prices proposed and negotiated.
- Identify the place of contract performance.
- Describe the delivery schedule or period of performance.
- State whether there is a difference between the proposed delivery schedule and the objective schedule.
- State whether there have been any previous buys of similar products; if so, identify:
  - When.
  - How many were acquired.
  - Schedule/production rate.
  - Contract type.
  - Unit prices or total prices, including both target and final prices, if applicable.
- Identify whether Government-furnished material will be provided as a result of the contract, and if so, its estimated dollar value.
- Describe any unique aspects of the contract action.
- Describe any outside influences or time pressures associated with the procurement, for example, procurement priority and funding limitations, etc.

*Documentation of Actions Taken To Address Unreasonable Prices.* Describe all actions taken if a contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable (see FAR 15.405(d)). The documentation should describe:

- efforts to identify, or to determine the feasibility of developing, an alternative source;
- actions taken at a level above the contracting officer to address a contractor's refusal to agree to a reasonable price;
- circumstances that compel the government to agree to a price, or a profit or fee, that the contracting officer considers unreasonable, as well as actions taken to prevent a recurrence of those circumstances; and,

actions taken to ensure that unreasonable prices are not used in making future price comparisons, or as the basis for determining any other prices to be fair and reasonable.