

# Subpart 14.4 - Opening of Bids and Award of Contract

Parent topic: [Part 14 - Sealed Bidding](#)

## 14.400 Scope of subpart.

This subpart contains procedures for the receipt, handling, opening, and disposition of bids including mistakes in bids, and subsequent award of contracts.

## 14.401 Receipt and safeguarding of bids.

(a) All bids (including modifications) received before the time set for the opening of bids *shall* be kept secure. Except as provided in paragraph (b) of this section, the bids *shall* not be opened or viewed, and *shall* remain in a locked bid box, a safe, or in a secured, restricted-access electronic bid box. If an invitation for bids is cancelled, bids *shall* be returned to the bidders. Necessary precautions *shall* be taken to ensure the security of the bid box or safe. Before bid opening, information concerning the identity and number of bids received *shall* be made available only to Government employees. Such disclosure *shall* be only on a "need to know" basis. When bid samples are submitted, they *shall* be handled with sufficient care to prevent disclosure of characteristics before bid opening.

(b) Envelopes marked as bids but not identifying the bidder or the *solicitation* may be opened solely for the purpose of identification, and then only by an official designated for this purpose. If a sealed bid is opened by mistake (*e.g.*, because it is not marked as being a bid), the envelope *shall* be signed by the opener, whose position *shall* also be written thereon, and delivered to the designated official. This official *shall* immediately write on the envelope (1)an explanation of the opening, (2) the date and time opened, and (3) the invitation for bids number, and *shall* sign the envelope. The official *shall* then immediately reseal the envelope.

## 14.402 Opening of bids.

### 14.402-1 Unclassified bids.

(a) The bid opening officer *shall* decide when the time set for opening bids has arrived and *shall* inform those present of that decision. The officer *shall* then (1) personally and publicly open all bids received before that time, (2)if practical, read the bids aloud to the persons present, and (3) have the bids recorded. The original of each bid *shall* be carefully safeguarded, particularly until the abstract of bids required by [14.403](#) has been made and its accuracy verified.

(b) Performance of the procedure in paragraph (a) of this section *may* be delegated to an assistant, but the bid opening officer remains fully responsible for the actions of the assistant.

(c) Examination of bids by interested persons *shall* be permitted if it does not interfere unduly with

the conduct of Government business. Original bids *shall* not be allowed to pass out of the hands of a Government official unless a duplicate bid is not available for public *inspection*. The original bid *may* be examined by the public only under the immediate supervision of a Government official and under conditions that preclude possibility of a substitution, addition, deletion, or alteration in the bid.

### **14.402-2 Classified bids.**

The general public *may* not attend bid openings for *classified acquisitions*. A bidder or its representative *may* attend and record the results if the individual has the appropriate security clearance. The *contracting officer* also *may* make the bids available at a later time to properly cleared individuals who represent bidders. No public record *shall* be made of bids or bid prices received in response to classified invitations for bids.

### **14.402-3 Postponement of openings.**

(a) A bid opening *may* be postponed even after the time scheduled for bid opening (but otherwise in accordance with [14.208](#)) when-

(1) The *contracting officer* has reason to believe that the bids of an important *segment* of bidders have been delayed in the mails, or in the communications system specified for transmission of bids, for causes beyond their control and without their fault or negligence (*e.g.*, flood, fire, accident, weather conditions, strikes, or Government equipment blackout or malfunction when bids are due);  
or

(2) *Emergency* or unanticipated events interrupt normal governmental processes so that the conduct of bid opening as scheduled is impractical.

(b) At the time of a determination to postpone a bid opening under paragraph (a)(1) of this section, an announcement of the determination *shall* be publicly posted. If practical before issuance of a formal amendment of the invitation, the determination *shall* be otherwise communicated to prospective bidders who are likely to attend the scheduled bid opening.

(c) In the case of paragraph (a)(2) of this section, and when urgent Government requirements preclude amendment of the *solicitation* as prescribed in [14.208](#), the time specified for opening of bids will be deemed to be extended to the same time of *day* specified in the *solicitation* on the first work *day* on which normal Government processes resume. In such cases, the time of actual bid opening *shall* be deemed to be the time set for bid opening for the purpose of determining "late bids" under [14.304](#). A note *should* be made on the abstract of bids or otherwise added to the file explaining the circumstances of the postponement.

### **14.403 Recording of bids.**

(a) [Standard Form 1409](#), Abstract of *Offers*, or [Optional Form 1419](#), Abstract of *Offers-Construction* (or automated equivalent), *shall* be completed and certified as to its accuracy by the bid opening officer as soon after bid opening as practicable. Where bid items are too numerous to warrant complete recording of all bids, abstract entries for individual bids *may* be limited to item numbers and bid prices. In preparing these forms, the extra columns and [SF 1410](#), Abstract of *Offers-*

Continuation, and OF 1419A, Abstract of *Offer-Construction*, Continuation Sheet, *may* be used to label and record such information as the *contracting activity* deems necessary.

(b) Abstracts of *offers* for unclassified *acquisitions* *shall* be available for public *inspection*. Such abstracts *shall* not contain information regarding failure to meet minimum standards of responsibility, apparent collusion of bidders, or other notations properly exempt from disclosure to the public in accordance with agency regulations implementing subpart 24.2.

(c) The forms identified in paragraph (a) of this section need not be used by the Defense Energy Support Center for *acquisitions* of coal or petroleum *products* or by the Defense Supply Center Philadelphia for perishable subsistence items.

(d) If an invitation for bids is canceled before the time set for bid opening, this fact *shall* be recorded together with a statement of the number of bids invited and the number of bids received.

## **14.404 Rejection of bids.**

### **14.404-1 Cancellation of invitations after opening.**

(a)

(1) Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award *must* be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.

(2) Every effort *shall* be made to anticipate changes in a requirement before the date of opening and to notify all prospective bidders of any resulting modification or cancellation. This will permit bidders to change their bids and prevent unnecessary exposure of bid prices.

(3) As a general rule, after the opening of bids, an invitation *should* not be cancelled and resolicited due solely to increased requirements for the items being acquired. Award *should* be made on the initial invitation for bids and the additional quantity *should* be treated as a new *acquisition*.

(b) When it is determined before award but after opening that the requirements of 11.201 (relating to the availability and identification of specifications) have not been met, the invitation *shall* be cancelled.

(c) Invitations *may* be cancelled and all bids rejected before award but after opening when, consistent with subparagraph (a)(1) of this section, the *agency head* determines *in writing* that-

(1) Inadequate or ambiguous specifications were cited in the invitation;

(2) Specifications have been revised;

(3) The *supplies* or services being contracted for are no longer required;

(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 at unreasonable prices, or only one bid is 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 (see [subpart 3.3](#) for reports to be made to the Department of Justice);

(8) No responsive bid has been received from a responsible bidder;

(9) A cost comparison as prescribed in OMB Circular A-76 and [subpart 7.3](#) shows that performance by the Government is more economical; or

(10) For other reasons, cancellation is clearly in the public's interest.

(d) *Should* administrative difficulties be encountered after bid opening that *may* delay award beyond bidders' acceptance periods, the several lowest bidders whose bids have not expired (irrespective of the acceptance period specified in the bid) *should* be requested, before expiration of their bids, to extend *in writing* the bid acceptance period (with consent of *sureties*, if any) in order to avoid the need for resoliciting.

(e) Under some circumstances, completion of the *acquisition* after cancellation of the invitation for bids *may* be appropriate.

(1) If the invitation for bids has been cancelled for the reasons specified in subparagraphs(c)(6), (7), or (8) of this subsection, and the *agency head* has authorized, in the determination in paragraph (c) of this subsection, the completion of the *acquisition* through negotiation, the *contracting officer shall* proceed in accordance with paragraph (f) of this subsection.

(2) If the invitation for bids has been cancelled for the reasons specified in subparagraphs(c)(1), (2), (4), (5), or (10) of this subsection, or for the reasons in subparagraphs(c)(6), (7), or (8) of this subsection and completion through negotiation is not authorized under subparagraph (e)(1) of this subsection, the *contracting officer shall* proceed with a new *acquisition*.

(f) When the *agency head* has determined, in accordance with paragraph (e)(1) of this subsection, that an invitation for bids *should* be canceled and that use of negotiation is in the Government's interest, the *contracting officer may* negotiate (in accordance with [part 15](#), as appropriate) and make award without issuing a new *solicitation* provided-

(1) Each responsible bidder in the sealed bid *acquisition* has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations; and

(2) The award is made to the responsible bidder offering the lowest negotiated price.

#### **14.404-2 Rejection of individual bids.**

(a) Any bid that fails to conform to the essential requirements of the invitation for bids *shall* be rejected.

(b) Any bid that does not conform to the applicable specifications *shall* be rejected unless the invitation authorized the submission of *alternate* bids and the *supplies* offered as *alternates* meet the requirements specified in the invitation.

(c) Any bid that fails to conform to the delivery schedule or permissible *alternates* stated in the invitation *shall* be rejected.

(d) A bid *shall* be rejected when the bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the Government, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids *shall* be rejected in which the bidder-

(1) Protects against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined;

(2) Fails to state a price and indicates that price *shall* be "price in effect at time of delivery;"

(3) States a price but qualifies it as being subject to "price in effect at time of delivery;"

(4) When not authorized by the invitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) award under a separate *solicitation*;

(5) Requires that the Government is to determine that the bidder's product meets applicable Government specifications; or

(6) Limits rights of the Government under any *contract clause*.

(e) A low bidder *may* be requested to delete objectionable conditions from a bid provided the conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

(f) Any bid *may* be rejected if the *contracting officer* determines *in writing* that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual *line items* as well.

(g) Any bid *may* be rejected if the prices for any *line items* or *subline items* are materially unbalanced (see [15.404-1\(g\)](#)).

(h) Bids received from any person or concern that is suspended, debarred, proposed for *debarment* or declared *ineligible* as of the bid opening date *shall* be rejected unless a compelling reason determination is made (see [subpart 9.4](#)).

(i) Low bids received from concerns determined to be not responsible pursuant to [subpart 9.1](#) *shall* be rejected (but if a bidder is a small business concern, see 19.6 with respect to certificates of competency).

(j) When a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the invitation for bids, the bid *shall* be rejected, except as otherwise provided in [28.101-4](#).

(k) The originals of all rejected bids, and any written findings with respect to such rejections, *shall* be preserved with the papers relating to the *acquisition*.

(l) After submitting a bid, if all of a bidder's assets or that part related to the bid are transferred during the period between the bid opening and the award, the transferee *may* not be able to take

over the bid. Accordingly, the *contracting officer shall* reject the bid unless the transfer is effected by merger, operation of law, or other means not barred by [41 U.S.C.6305](#) or [31 U.S.C. 3727](#).

#### **14.404-3 Notice to bidders of rejection of all bids.**

When it is determined necessary to reject all bids, the *contracting officer shall* notify each bidder that all bids have been rejected and *shall* state the reason for such action.

#### **14.404-4 Restrictions on disclosure of descriptive literature.**

When a bid is accompanied by *descriptive literature* (as defined in [2.101](#)), and the bidder imposes a restriction that prevents the public disclosure of such literature, the restriction *may* render the bid nonresponsive. The restriction renders the bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the *products* offered or those elements of the bid that relate to quantity, price, and delivery terms. The provisions of this paragraph do not apply to unsolicited *descriptive literature* submitted by a bidder if such literature does not qualify the bid (see [14.202-5\(e\)](#)).

#### **14.404-5 All or none qualifications.**

Unless the *solicitation* provides otherwise, a bid *may* be responsive notwithstanding that the bidder specifies that award will be accepted only on all, or a specified group, of the items. Bidders *shall* not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

### **14.405 Minor informalities or irregularities in bids.**

A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the *supplies* or services being acquired. The *contracting officer* either *shall* give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the Government. Examples of minor informalities or irregularities include failure of a bidder to-

(a) Return the number of copies of signed bids required by the invitation;

(b) Furnish required information concerning the number of its employees;

(c) Sign its bid, but only if-

(1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or

(2) The firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped *signature* and submits evidence of such authorization and the bid carries such a *signature*;

(d) Acknowledge receipt of an amendment to an invitation for bids, but only if-

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation and the bidder submitted a bid on the item; or

(2) The amendment involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon; and

(e) 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.**

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.

(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.

(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 paragraph (g)(5) of this section). If the bidder alleges a mistake, the *contracting officer shall* advise the bidder to make a written request to withdraw or modify the bid. The request *must* be supported by statements (sworn statements, if possible) and *shall* include all pertinent evidence such as the bidder's file copy of the bid, the original worksheets and other data used in preparing the bid, subcontractors' quotations, if any, published price lists, and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

(3) When the bidder furnishes evidence supporting an alleged mistake, the *contracting officer shall* refer the case to the appropriate authority (see paragraph (e) of this section) together with the following data:

(i) A signed copy of the bid involved.

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

(iii) An abstract or record of the bids received.

(iv) The written request by the bidder to withdraw or modify the bid, together with the bidder's written statement and supporting evidence.

(v) A written statement by the *contracting officer* setting forth-

(A) A description of the *supplies* or services involved;

- (B) The expiration date of the bid in question and of the other bids submitted;
- (C) Specific information as to how and when the mistake was alleged;
- (D) A summary of the evidence submitted by the bidder;
- (E) In the event only one bid was received, a quotation of the most recent contract price for the *supplies* or services involved or, in the absence of a recent comparable contract, the *contracting officer's* estimate of a fair price for the *supplies* or services;
- (F) Any additional pertinent evidence; and
- (G) A recommendation that either the bid be considered for award in the form submitted, or the bidder be authorized to withdraw or modify the bid.

(4) 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.

#### **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) of this section 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 subparagraph (b)(1) or (2) of this section.

(c) Determinations under paragraph (b)(1) and (2) of this section *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 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.

## **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 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* from a 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 additional use of informal documents, including electronic transmissions, as notices of awards.

#### **14.408-2 Responsible bidder-reasonableness of price.**

(a) The *contracting officer shall* determine that a prospective contractor is responsible (see subpart 9.1) and that the prices offered are reasonable before awarding the contract. The price analysis techniques in 15.404-1(b) *may* be used as guidelines. In each case the determination *shall* be made in the light of all prevailing circumstances. Particular care *must* be taken in cases where only a single bid is received.

(b) The price analysis *shall* consider whether bids are materially unbalanced (see 15.404-1(g)).

#### **14.408-3 Prompt payment discounts.**

(a) Prompt payment discounts *shall* not be considered in the evaluation of bids. However, any discount offered will form a part of the award, and will be taken by the payment center if payment is made within the discount period specified by the bidder. As an alternative to indicating a discount in conjunction with the *offer*, bidders *may* prefer to *offer* discounts on individual *invoices*.

(b) See 32.111(b)(1), which prescribes the *contract clause* at 52.232-8, Discounts for Prompt Payment.

#### **14.408-4 Economic price adjustment.**

(a) Bidder proposes economic price adjustment.

(1) When a *solicitation* does not contain an economic price adjustment clause but a bidder proposes one with a ceiling that the price will not exceed, the bid *shall* be evaluated on the basis of the

maximum possible economic price adjustment of the quoted base price.

(2) If the bid is eligible for award, the *contracting officer shall* request the bidder to agree to the inclusion in the award of an approved economic price adjustment clause (see [16.203](#)) that is subject to the same ceiling. If the bidder will not agree to an approved clause, the award *may* be made on the basis of the bid as originally submitted.

(3) Bids that contain economic price adjustments with no ceiling *shall* be rejected unless a clear basis for evaluation exists.

(b) Government proposes economic price adjustment.

(1) When an invitation contains an economic price adjustment clause and no bidder takes exception to the provisions, bids *shall* be evaluated on the basis of the quoted prices without the allowable economic price adjustment being added.

(2) When a bidder increases the maximum percentage of economic price adjustment stipulated in the invitation or limits the downward economic price adjustment provisions of the invitation, the bid *shall* be rejected as nonresponsive.

(3) When a bid indicates deletion of the economic price adjustment clause, the bid *shall* be rejected as nonresponsive since the downward economic price adjustment provisions are thereby limited.

(4) When a bidder decreases the maximum percentage of economic price adjustment stipulated in the invitation, the bid *shall* be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, after evaluation, if the bidder offering the lower ceiling is in a position to receive the award, the award *shall* reflect the lower ceiling.

## **14.408-5 [Reserved]**

## **14.408-6 Equal low bids.**

(a) Contracts *shall* be awarded in the following order of priority when two or more low bids are equal in all respects:

(1) Small business concerns that are also *labor surplus area concerns*.

(2) Other small business concerns.

(3) Other business concerns.

(b) If two or more bidders still remain equally eligible after application of paragraph (a) of this section, award *shall* be made by a drawing by lot limited to those bidders. If time permits, the bidders involved *shall* be given an opportunity to attend the drawing. The drawing *shall* be witnessed by at least three persons, and the contract file *shall* contain the names and addresses of the witnesses and the person supervising the drawing.

(c) When an award is to be made by using the priorities under this [14.408-6](#), the *contracting officer shall* include a written agreement in the contract 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.

#### **14.408-7 Documentation of award.**

- (a) The *contracting officer shall* document compliance with 14.103-2 in the contract file.
- (b) The documentation *shall* either state 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.
- (c) When an award is made after receipt of equal low bids, the documentation *shall* describe how the tie was broken.

#### **14.408-8 Protests against award.**

(See subpart 33.1, Protests.)

### **14.409 Information to bidders.**

#### **14.409-1 Award of unclassified contracts.**

- (a)
  - (1) The *contracting officer shall* as a minimum (subject to any restrictions in subpart 9.4)-
    - (i) Notify each unsuccessful bidder *in writing* or electronically within threedays after contract award, that its bid was not accepted. "Day," for purposes of the notification process, means calendar *day*, except that the period will run until a *day* which is not a Saturday, Sunday, or legal holiday;
    - (ii) Extend appreciation for the interest the unsuccessful bidder has shown in submitting a bid; and
    - (iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.
  - (2) For *acquisitions* covered by the World Trade Organization Government *Procurement* Agreement or a Free Trade Agreement (see 25.408(a)(5)), agencies *must* include in notices given unsuccessful bidders from World Trade Organization Government *Procurement* Agreement or Free Trade Agreement countries-
    - (i) The dollar amount of the successful bid; and
    - (ii) The name and address of the successful bidder.
- (b) Information included in paragraph (a)(2) of this subsection *shall* be provided to any unsuccessful bidder upon request except when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the *contracting office*. In such circumstances, only information concerning location of the abstract of

*offers* need be given.

(c) When a request is received concerning an unclassified invitation from an inquirer who is neither a bidder nor a representative of a bidder, the *contracting officer should* make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the *contracting office*, the inquirer will be advised where a copy of the abstract of *offers may* be seen.

(d) Requests for records *shall* be governed by agency regulations implementing subpart 24.2.

#### **14.409-2 Award of classified contracts.**

In addition to 14.409-1, if *classified information* was furnished or created in connection with the *solicitation*, the *contracting officer shall* advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with agency procedures. The name of the successful bidder and the contract price will be furnished to unsuccessful bidders only upon request. Information regarding a classified award *shall* not be furnished by telephone.