Part 14 - Sealed Bidding

14.000 Scope of part.

This part prescribes (a) the basic requirements of contracting for supplies and services (including construction) by sealed bidding, (b) the information to be included in the invitation for bids (IFB), (c) procedures concerning the submission of bids, (d) requirements for opening, evaluating bids, awarding contracts, and (e) procedures for two-step sealed bidding.

Subpart 14.1 - General

(a) Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards.

(b) Use sealed bidding whenever the conditions in 6.101(b) are met.

(c) The contracting officer must use firm-fixed-price contracts when using sealed bidding or fixed-price contracts with economic price adjustment clauses when some flexibility is necessary and feasible.

Subpart 14.2 - Presolicitation

14.201 Preparation of invitations for bids.

14.201-1 Format.

(a) Contracting officers must prepare invitation for bids and contracts using parts I, II, III, and IV of the uniform contract format (see part 15) to the maximum practicable extent.

(b) The uniform contract format is not required when contracting for—

(1) Construction (see part 36);

(2) Shipbuilding (including design, construction, and conversion), ship overhaul, and ship repair;

(3) Subsistence items;

(4) Supplies or services requiring special contract forms prescribed elsewhere in this regulation that are inconsistent with the uniform contract format; or

(5) Firm-fixed-price or fixed-price with economic price adjustment acquisitions that use the simplified contract format.

(c) (1) The contracting officer may use the simplified contract format in lieu of the uniform contract format.

(2) The contracting officer has flexibility in preparation and organization of the simplified contract format. The following format should be used to the maximum extent practical:

(i) Use Standard Form (SF) 1447, Solicitation/Contract, as the first page of the IFB.

(ii) Include the following for each line item:

(A) Line item number.

(B) Description of supplies or services, or data sufficient to identify the requirement.

(C) Quantity and unit of issue.

(D) Unit price and amount.

(E) Packaging and marking requirements.

(F) Inspection and acceptance, quality assurance, and reliability requirements.

(G) Place of delivery, performance and delivery dates, period of performance, and f.o.b. point.

(H) Other item-peculiar information as necessary (e.g., individual fund citations).

(iii) Include the clauses required by this regulation. Additional clauses must be incorporated only when necessary to the particular acquisition.

(iv) List of documents and attachments (include if necessary).

(v) Representations and instructions:

(A) Insert the IFB provisions that require representations, certifications, or the submission of other information by offerors.

(B) Insert the IFB provisions required by 14.207. Include any other information/instructions necessary to guide offerors.

(C) Insert all price related evaluation factors and any significant price related subfactors for award.

(D) Upon award, the contracting officer must retain the representations and instructions in the contract file.

14.202 Uniform contract format.

14.202-1 Part I Schedule.

The contracting officer shall prepare the Schedule as follows:

(a) *Section A, Solicitation/contract form*.

(1) For sealed bidding the SF 33 or the SF 1447 may be used. When the SF 1447 is used as the IFB document, insert the information in subdivisions (a)(2)(i) and (a)(2)(iv) of this section in block 9 of the SF 1447.

(2) If the SF 33 or the SF 1447 are not used, include the following on the first page of the invitation for bids:

(i) Name, address, and location of issuing activity, including room and building where bids must be submitted.

(ii) Invitation for bids number.

(iii) Date of issuance.

(iv) Time specified for receipt of bids.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Requirement for a bidder to provide its name and complete address, including street, city, county, State, and ZIP code.

(viii) A statement that bidders should include in the bid the address to which payment should be mailed, if that address is different from that of the bidder.

(b) *Section B, Supplies or services and prices*.

(1) See 15.108-1(b)

(2) Optional Form 336 (OF 336), Continuation Sheet, may be used.

(c) Section C, Description/specifications. (see 15.108-1(c)).

(d) Section D, Packaging and marking (see 15.108-1(d)).

(e) Section E, Inspection and acceptance (see 15.108-1(e)).

(f) Section F, Deliveries or performance (see 15.108-1(f)).

(g) Section G, Contract administration data (see 15.108-1(g)).

(h) Section H, Special contract requirements (see 15.108-1(h)).

14.202-2 Part II Contract clauses.

Section I, Contract clauses (see 15.108-2).

14.202-3 Part III Documents, exhibits, and other attachments.

Section J, List of documents, exhibits, and other attachments (see 15.108-3).

14.202-4 Part IV Representations and instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) Section K, Representations, certifications, and other statements of bidders (see 15.108-4(a)).

(b) Section L, Instructions, conditions, and notices to bidders (see 15.108-4(b)). The contracting officer must include the time and place for bid openings.

(c) Section M, Evaluation factors for award (see 15.108-4(c)).

14.203 Requirements.

(a) An IFB must clearly, accurately, and completely describe the Government requirements.

(b) Restrictive specifications or requirements that might unduly limit the number of bidders are prohibited.

(c) Include all documents and information (whether attached or incorporated by reference) prospective bidders will need for the purpose of bidding.

(d) The contracting officer must state in the invitation for bids that bids will be evaluated without discussions (see 52.214-10 and, for construction contracts, 52.214-19).

(e) When considering establishing qualification requirements, see and follow subpart 9.2.

14.204 Economic purchase quantities (supplies).

Contracting officers must comply with the economic purchase quantity planning requirements for supplies in part 7. See part 7 for instructions regarding use of the provision at 52.207-4, Economic Purchase Quantity—Supplies, and for guidance on handling responses to that provision.

14.205 Bid samples.

(a) The contracting officer must not require bidders to furnish bid samples unless—

(1) Characteristics of the product cannot be described adequately in the specification or purchase description;

(2) Necessary to determine the responsiveness of the bid. Do not use samples to determine a bidder's ability to produce the required items; and

(3) Products must be suitable from the standpoint of balance, facility of use, general “feel”, color, pattern, or other characteristics that cannot be described adequately in the specification.

(b) If the contracting officer requires bid samples, the IFB must state—

(1) The number and, if appropriate, size, and description of the bid samples required; and

(2) List all the characteristics for which the bid samples will be examined.

(c) (1) Contracting officers may waive bid sample requirements when a bidder offers a product previously or currently contracted for or tested by the Government and found to comply with specification requirements conforming in every material respect with those in the current invitation for bids. (See 14.207(j)(2)).

(2) Where samples required by a Federal, Military, or other formal specification are not considered necessary and a waiver of the sample requirements of the specification is, include a statement in the invitation that notwithstanding the requirements of the specification, samples are not required.

(d) Bid samples furnished with a bid that are not required by the invitation generally will not be considered as qualifying the bid and will be disregarded. However, the bid sample will not be disregarded if it is clear from the bid or accompanying papers that the bidder's intention was to qualify the bid. If the qualification does not conform to the IFB, see 14.306-3(d).

(e) (1) Return samples that are not destroyed in testing to bidders at their request and expense, unless otherwise specified in the invitation.

(2) Request disposition instructions from bidders.

(3) Samples are ordinarily returned collect to the address from which received if disposition instructions are not received within 30 days. Small items may be returned by mail, postage prepaid.

(4) Transmit samples that are intended for inspection purposes in connection with deliveries to the inspecting activity concerned, with instructions to retain the sample until completion of the contract or until disposition instructions are furnished.

(5) Where samples are consumed or their usefulness is impaired by tests, dispose as scrap unless the bidder requests their return.

14.206 Descriptive literature.

(a) Contracting officers must not require bidders to furnish descriptive literature unless it is needed before award to determine whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

(b) The contracting officer must document in the contract file the justification why product acceptability cannot be determined without the submission of descriptive literature, except when the contract specifications require submission.

(c) (1) If the invitation will require descriptive literature, the IFB must clearly state—

(i) What descriptive literature the bidders must furnish;

(ii) The purpose for requiring the literature;

(iii) The extent of its consideration in the evaluation of bids; and

(iv) The rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature provided does not comply with the requirements of the invitation.

(2) If bidders must furnish descriptive literature, see 14.207(k).

(d) (1) The contracting officer may waive the requirement for descriptive literature if—

(i) The bidder states in the bid that the product being offered is the same as a product previously or currently being furnished to the contracting activity; and

(ii) The contracting officer determines that the product offered complies with the specification requirements of the current invitation for bids. When the contracting officer waives the requirement, see 14.207(k)(2).

(2) When descriptive literature is not necessary and a waiver of literature requirements of a specification has been authorized, the contracting officer must include a statement in the invitation that, despite the requirements of the specifications, descriptive literature is not required.

(3) If the IFB provides for a waiver, a bidder may submit a bid on the basis of either the descriptive literature furnished with the bid or a previously furnished product. If the bid is submitted on one basis, the bidder may not have it considered on the other basis after bids are opened.

(e) If descriptive literature is furnished when it is not required by the invitation for bids, follow the procedures at 14.205(d).

14.207 Solicitation Provisions.

(a) The provisions prescribed in this section apply to preparation and submission of bids in general. See other FAR parts for provisions and clauses related to specific acquisition requirements.

(b) Insert in all invitations for bids the provisions at—

(1) 52.214-3, Amendments to Invitations for Bids; and

(2) 52.214-4, False Statements in Bids.

(3) 52.214-5, Submission of Bids.

(4) 52.214-6, Explanation to Prospective Bidders.

(5) 52.214-7, Late Submissions, Modifications, and Withdrawals of Bids.

(c) Insert in all invitations for bids, except those for construction, the provision at 52.214-10, Contract Award-Sealed Bidding.

(d) Insert in invitations for bids to which the uniform contract format applies, the provision at 52.214-12, Preparation of Bids.

(e) Insert the provision at 52.214-14, Place of Performance—Sealed Bidding, in invitations for bids except those in which the place of performance is specified by the Government.

(f) Insert the provision at 52.214-15, Period for Acceptance of Bids, in invitations for bids (IFB's) that are not issued on SF 33 or SF 1447 except IFB's—

(1) For construction work or

(2) In which the Government specifies a minimum acceptance period.

(g) Insert the provision at 52.214-16, Minimum Bid Acceptance Period, in invitations for bids, except for construction, if the contracting officer determines that a minimum acceptance period must be specified.

(h) Insert the provision at 52.214-18, Preparation of Bids—Construction, in invitations for bids for construction work.

(i) Insert the provision at 52.214-19, Contract Award—Sealed Bidding—Construction, in all invitations for bids for construction work.

(j) (1) Insert the provision at 52.214-20, Bid Samples, in invitations for bids if bid samples are required.

(2) If it appears that the conditions in 14.205(c)(1) will apply and the contracting officer anticipates granting waivers and—

(i) If the nature of the required product does not necessitate limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, use the provision with its Alternate I; or

(ii) If the nature of the required product necessitates limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, use the provision with its Alternate II.

(3) See 14.205(c)(2) regarding waiving the requirement for all bidders.

(k) (1) Insert the provision at 52.214-21, Descriptive Literature, in invitations for bids if—

(i) Descriptive literature is required to evaluate the technical acceptability of an offered product and

(ii) The required information will not be readily available unless it is submitted by bidders.

(2) Use the basic clause with its Alternate I if the possibility exists that the contracting officer may waive the requirement for furnishing descriptive literature for a bidder offering a previously supplied product that meets specification requirements of the current IFB.

(3) See 14.206(d)(2) regarding waiving the requirement for all bidders.

(l) Insert the provision at 52.214-22, Evaluation of Bids for Multiple Awards, in invitations for bids if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the Government.

(m) Insert the provision at 52.214-23, Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding, in solicitations for technical proposals in step one of two-step sealed bidding.

(n) Insert the provision at 52.214-24, Multiple Technical Proposals, in solicitations for technical proposals in step one of two-step sealed bidding if the contracting officer permits the submission of multiple technical proposals.

(o) Insert the provision at 52.214-25, Step Two of Two-Step Sealed Bidding, in invitations for bids issued under step two of two-step sealed bidding.

(p) Insert the provision at 52.214-34, Submission of Offers in the English Language, in solicitations that include any of the clauses prescribed in part 25. It may be included in other solicitations when the contracting officer decides that it is necessary.

(q) Insert the provision at 52.214-35, Submission of Offers in U.S. Currency, in solicitations that include any of the clauses prescribed in part 25, unless the contracting officer includes the clause at 52.225-17, Evaluation of Foreign Currency Offers, as prescribed in part 25. It may be included in other solicitations when the contracting officer decides that it is necessary.

14.208 Contract clauses.

(a) Insert the clause at 52.214-26, Audit and Records-Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold at part 15 for submission of certified cost or pricing data.

(b) (1) Insert the clause at 52.214-27, Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of certified cost or pricing data at part 15.

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it must be in writing.

(c) Insert the clause at 52.214-28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of certified cost or pricing data at part 15; or

(1) Upon request of a contractor in connection with a prime contract entered into before July 1, 2018, the contracting officer must modify the contract without requiring consideration to replace clause 52.214-28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, with its Alternate I.

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it must be in writing.

(d) Insert the clause at 52.214-29, Order of Precedence—Sealed Bidding, in solicitations and contracts to which the uniform contract format applies.

14.209 Soliciting bids.

(a) See subpart 5.1 for presolicitation notices.

(b) See subpart 5.2 for publicizing the IFB.

(c) The contracting officer must specify in the IFB whether bids will be accepted by paper submission, or electronic transmission method, or both.

(d) If the IFB has been issued and it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to make a correction, such changes must be accomplished by amendment of the IFB using Standard Form 30, Amendment of Solicitation/ Modification of Contract. Amendments must—

(1) Be issued before the time set for bid opening;

(2) If determined necessary by the contracting officer, consider the amount of time remaining until bid opening and the need for an extension to the bid opening date;

(3) Be published in the GPE, if the IFB was published in the GPE, as a solicitation amendment;

(4) If applicable, be displayed in the bid room;

(5) Provide all prospective bidders equal access to the amendment providing the information necessary to submit bids; and

(6) Require acknowledgment of each amendment within each bidder's bid.

(e) When electronic bids are specified, the contracting officer must include in the IFB the acceptable methods and the necessary information that allows bidders to submit bids that are compatible with Government systems.

(f) When a contracting office is located in the United States, any IFB sent to a prospective bidder located outside the United States must be sent by electronic data interchange or air mail if security classification permits.

(g) (1) The master IFB is provided to potential sources who are requested to retain it for continued and repetitive use.

(2) Subsequent individual IFB must reference the date of the current master IFB and identify any changes.

(3) When using a master IFB the contracting officer must—

(i) Make available copies of the master IFB on request; and

(ii) Provide the cognizant contract administration activity a current copy of the master IFB.

(h) Retain records of invitations for bids and records of bids as a record of each invitation a contracting office issues and each abstract or record of bids. The file for each invitation must show the—

(1) Distribution that was made;

(2) Date the invitation was issued; and

(3) Names and addresses of prospective bidders who requested the invitation and were not included on the original IFB list must be added to the list and made a part of the record.

(i) See 15.101 and 15.201 for policy on the release of acquisition information before and after the issuance of the IFB.

(j) An IFB may be cancelled by the contracting officer when clearly in the public interest; e.g.,

(1) Where there is no longer a requirement for the supplies or services; or

(2) Where amendments to the IFB would be of such magnitude that a new IFB is desirable.

(k) If an IFB is cancelled prior to the date and time specified in 14.301, the contracting officer must—

(1) Identify the IFB number and short title or subject matter;

(2) Briefly explain the reason for the cancellation; and

(3) Where appropriate, assure prospective bidders that they will be given an opportunity to bid on any resolicitation of bids or any future requirements for the type of supplies or services involved. Cancellations must be recorded in accordance with 14.303(g).

14.210 Submission of Bids.

(a) Allow prospective bidders a reasonable time to prepare and submit bids in response to all invitations, consistent with the needs of the Government.

(b) Provide at least 30 calendar days when a synopsis is required (see subpart 5.1).

(c) Require bidders to submit sealed bids to be opened publicly at the time and place stated in the IFB.

14.211 Two-step sealed bidding.

14.211-1 General.

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may use conventional sealed bidding methods. This two-step method is especially useful in acquisitions requiring technical proposals, particularly those for complex items.

(a) Step one consists of the request for submission of technical proposals, evaluation, and (if necessary) discussion of a technical proposal. No pricing is submitted with step one. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word technical has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility as defined in 9.

(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with subpart 14.3.

14.211-2 Conditions for use.

(a) Unless other factors require the use of sealed bidding, the contracting officer may use two-step sealed bidding rather than negotiation when all of the following conditions are present:

(1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Government.

(2) Definite criteria exist for evaluating technical proposals.

(3) More than one technically qualified source is expected to be available.

(4) There is sufficient time to use the two-step method.

(5) The contracting officer intends to award a firm-fixed-price contract or a fixed-price contract with economic price adjustment.

(b) None of the following precludes the use of two-step sealed bidding:

(1) Multi-year contracting.

(2) Government property to be made available to the successful bidder.

(3) A total small business set-aside (see part 19).

(4) The use of a set-aside or price evaluation preference for HUBZone small business concerns (see part 19).

(5) The use of a set-aside for service-disabled veteran-owned small business concerns (see part 19).

(6) The use of a set-aside for economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program (see part 19).

14.211-3 Procedures.

(a) *Step one*.

(1) Synopsize requests for technical proposals in accordance with Part 5. The request must include, as a minimum, the following:

(i) A description of the supplies or services required.

(ii) A statement of intent to use the two-step method.

(iii) The requirements of the technical proposal.

(iv) The evaluation criteria, to include all factors and any significant subfactors.

(v) A statement that the technical proposals must not include prices or pricing information.

(vi) The date, or date and hour, by which the technical proposal must be received (see 14.210).

(vii) A statement that, in the second step—

(A) The contracting officer will consider awards based upon bids that have acceptable technical proposals, either initially or as a result of discussions; and

(B) Each technical proposal must be based on the bidder's own technical proposals.

(viii) A statement that—

(A) Bidders should submit technical proposals that are acceptable without additional explanation or information;

(B) The Government may make a final determination regarding a technical proposal's acceptability solely on the basis as submitted; and

(C) The Government may proceed with the second step without requesting further information from any bidder; however, the Government may request additional information from bidders of bids that it considers reasonably susceptible of being made acceptable and may discuss bids with their bidders.

(ix) A statement that a notice of unacceptability will be forwarded to the bidder upon completion of the technical proposal evaluation and final determination of unacceptability.

(x) A statement either that each bidder may only submit one technical proposal or, if authorized, multiple technical proposals. When specifications permit different technical approaches, it is generally in the Government's interest to authorize multiple technical proposals. If multiple technical proposals are authorized, see 14.207(n).

(2) Include information on delivery or performance requirements that may assist bidders in determining whether or not to submit a technical proposal. Indicate that the information is not binding on the Government and that the invitation issued under step two will include actual delivery or performance requirements.

(3) Upon receipt, the contracting officer must—

(i) Safeguard technical proposals against disclosure to unauthorized persons;

(ii) Accept and handle data marked in accordance with part 15 and 27; and

(iii) Remove any reference to price or cost.

(4) The contracting officer must establish a time period for evaluating technical proposals. The period may vary with the complexity and number of technical proposals involved. However, the evaluation should be completed quickly.

(5) (i) Base evaluations on the criteria in the request for proposals but not consideration of responsibility as defined in part 9. Categorize technical proposals as—

(A) Acceptable;

(B) Reasonably susceptible of being made acceptable; or

(C) Unacceptable.

(ii) Categorize any proposal that modifies, or fails to conform to the essential requirements or specifications of, the request for technical proposals as unacceptable.

(6) (i) The contracting officer may proceed directly with step two if there are sufficient acceptable proposals to ensure adequate price competition under step two, and if further time, effort and delay to make additional technical proposals acceptable and thereby increase competition would not be in Government's interest. If this is not the case, the contracting officer must request bidders whose technical proposals may be made acceptable to submit additional clarifying or supplementing information. The contracting officer must identify the nature of the deficiencies in the technical proposal or the nature of the additional information required. The contracting officer may also arrange discussions for this purpose. Do not discuss a technical proposal with any bidder other than the submitter.

(ii) When requesting additional information, the contracting officer must establish an appropriate time for bidders to conclude discussions, if any, submit all additional information, and incorporate such additional information as part of their technical proposals. The contracting officer may extend the due date for such submissions at their discretion. If the additional information is incorporated into a technical proposal within the established time, and the contracting officer determines that the technical proposal is acceptable, the contracting officer will update its category to acceptable.

(7) When a technical proposal is found unacceptable (either initially or after clarification), the contracting officer must promptly notify the bidder of the basis of the determination and that a revision of the technical proposal will not be considered. Upon written request, the contracting officer must debrief unsuccessful bidders (see part 15).

(8) Late technical proposals are governed by part 15.

(9) If it is necessary to discontinue two-step sealed bidding, the contracting officer must include a statement of the facts and circumstances in the contract file. The contracting officer must notify each bidder in writing. When step one results in no

acceptable technical proposals or only one acceptable technical proposal, the acquisition may be continued by negotiation.

(b) *Step two*.

(1) Follow sealed bidding procedures except that invitations for bids in step two must—

(i) Be issued only to those bidders that submitted acceptable technical proposals in step one;

(ii) Include the provision prescribed in 14.207(o);

(iii) Clearly state that the bidder must comply with the specifications and the bidder's technical proposal; and

(iv) Not be synopsized through the Governmentwide point of entry (GPE) as an acquisition opportunity nor publicly posted.

(2) List the names of firms that submitted acceptable proposals in step one through the GPE for the benefit of prospective subcontractors (see 5.201).

Subpart 14.3 - Evaluation and award

14.301 Submission, modification, or withdrawal of bids.

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals not later than the exact time set for opening of bids. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b) Bids may be modified or withdrawn by any method authorized by the IFB.

(c) The receiving official receiving a paper bid submission, modification or withdrawal must—

(1) Write on the envelope—

(i) The date and time of receipt and by whom; and

(ii) The invitation for bid number; and

(2) Sign the envelope.

(3) Not disclose bid information before the time set for bid opening. See part 3 for requirements for protecting information including access to and disclosure thereof.

(d) A bidder or its authorized representative may withdraw a paper bid submission in person if, before the exact time set for opening of bids, the identity of the persons requesting withdrawal is established and that person signs a receipt for the bid.

(e) A bidder may withdraw an electronically submitted bid if notice is received in the office designated in the IFB not later than the exact time set for opening of bids. Upon withdrawal of an electronically transmitted bid, the data received must not be viewed and, to the maximum extent practical, must be purged from primary and backup data storage systems.

(f) (1) Any bid, modification, or withdrawal of a bid received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless—

(i) It is received before award is made; and

(ii) The contracting officer determines that accepting the late bid would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) The contracting officer will consider and may accept, a late modification of an otherwise successful bid, that makes its terms more favorable to the Government, at any time it is received.

(g) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(h) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB, and urgent Government requirements preclude amendment of the bid opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the IFB on the first work day on which normal Government processes resume.

(i) The contracting officer must promptly notify any bidder if its bid, modification, or withdrawal was received late, and must inform the bidder whether its bid will be considered, unless contract award is imminent, and the notices prescribed in 14.309 would suffice.

(j) Late bids and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids. However, any bid bond or guarantee must be returned.

(k) If available, the following must be included in the contract files for each late bid, modification, or withdrawal:

(1) The date and hour of receipt.

(2) A statement, with supporting rationale, regarding whether the bid was considered for award.

(3) The envelope, wrapper, or other evidence of the date of receipt.

14.302 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 must immediately 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.

14.303 Bid opening.

(a) All bids (including modifications) received before the time set for the opening of bids must be secured in a locked bid box, a safe, or in a secure restricted-access electronic bid box (i.e., secure password protected file folder on a controlled access Government computer network).

(b) The bid opening officer must inform those present at the public bid opening that the time set for the opening of bids has arrived.

(c) (1) The bid opening officer must personally and publicly open all bids received before the exact time set for opening of bids and if practical, read the bids aloud to all present.

(2) The public may not attend bid openings for classified acquisitions. No public record must be made of bids or bid prices received in response to classified invitations for bids.

(d) The contracting officer may postpone the public bid opening if the contracting officer determines in writing there is reason to believe—

(1) An important segment of bidders has been delayed in the mail;

(2) That there are delays in the communications system specified for transmission of bids;

(3) That circumstances beyond the control of the bidders have delayed their timely submission, (e.g., flood, fire, accident, weather, strikes, or Government equipment blackout or malfunction); or

(4) That emergency or unanticipated events has interrupted normal Governmental processes so that the scheduled opening of bids is impractical.

(e) Publicly post a determination to postpone a bid opening under paragraph (d) of this section. If practical before issuance of a formal amendment of the invitation, communicate the determination to the prospective bidders likely to attend the scheduled bid opening.

(f) In the case of paragraph (d)(4) of this section, and when urgent Government requirements preclude amendment of the IFB, the time specified for opening of bids will be deemed to be extended to the same time of day specified in the IFB on the first workday on which normal Government processes resume. In such cases, the time of actual bid opening must be deemed to be the time set for bid opening for the purpose of determining "late bids" under section 14.301. A note should be made on the abstract of bids or otherwise added to the file explaining the circumstances of the postponement.

(g) The bid opening officer must complete and certify the accuracy of the Standard Form 1409, Abstract of Offers, or Optional Form 1419, Abstract of Offers—Construction (or automated equivalent) 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. The contracting activity may use the extra columns and SF 1410, Abstract of Offers—Continuation, and OF 1419A, Abstract of Offers—Construction, Continuation Sheet, to label and record such information as necessary.

(h) Abstracts of offers for unclassified acquisitions must be available for public inspection

14.304 Mistakes in bids.

14.304-1 General.

(a) After the opening of bids, contracting officers must examine all bids for mistakes.

(b) The authority to permit correction of bids is limited to bids that, as submitted, are responsive to the invitation. The authority does not permit correction of bids to make them responsive.

(c) If the contracting officer identifies an apparent mistake or has reason to believe that a mistake exists the contracting officer must request the bidder verify its bid, calling attention to the suspected mistake.

(d) If the bidder asserts a mistake in its bid, the matter must be processed in accordance with section 14.304. Such actions must be taken before award.

14.304-2 Apparent clerical mistakes.

The contracting officer may correct any clerical mistake, apparent on its face in the bid, before award. The contracting officer first must obtain from the bidder a verification of the bid intended. Examples of apparent mistakes are obvious—

(a) Misplacement of a decimal point;

(b) Incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);

(c) Reversal of the price f.o.b. destination and price f.o.b. origin; and

(d) Mistake in designation of unit.

14.304-3 Other mistakes disclosed before award.

(a) A bidder may request in writing permission from the contracting officer to correct a mistake after providing clear and convincing evidence that establishes both the existence of the mistake, and the bid actually intended.

(1) If the contracting officer accepts the clear and convincing evidence and the correction does not cause the bidder to outbid other lower bids, the contracting officer may allow the correction.

(2) If the correction causes the bidder to outbid one or more otherwise lower bids, the head of the agency may make a determination to permit the correction only if the mistake and intended bid are obvious from the final bid documents.

(b) If a bidder requests permission to withdraw a bid rather than correct it, the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and the bid, both as uncorrected and as corrected, is the lowest received, the head of the agency may make a determination to correct the bid and not permit its withdrawal.

(c) If, under paragraph (a) or (b) of this section—

(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) above, the head of the agency 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 section to a central authority, or a limited number of authorities as necessary, in their agencies, without power of redelegation.

(f) Before issuance of the determinations in this section, legal counsel within the respective agency must provide concurrence.

(g) Process Government suspected or alleged mistakes in bids as follows:

(1) A mere statement by the administrative officials that they are satisfied that an error was made is insufficient.

(2) The contracting officer must immediately request that the bidder verify its bid.

(i) Actions 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.

(ii) To assure that the bidder will be put on notice of a suspected mistake by the contracting officer, the bidder should be advised as appropriate—

(A) That its bid is so much lower than the other bids or the Government's estimate as to indicate a possibility of error;

(B) Of important or unusual characteristics of the specifications;

(C) Of changes in requirements from previous purchases of a similar item; or

(D) Of any other information, proper for disclosure, that leads the contracting officer to believe that there is a mistake in bid.

(3) If the bid is verified, the contracting officer must consider the bid as originally submitted.

(4) If the time for acceptance of bids is likely to expire before a decision can be made, the contracting officer must request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids.

(5) If the bidder whose bid is believed erroneous does not (or cannot) grant an extension of time, the bid must be considered as originally submitted (but see paragraph (8) below).

(6) If the bidder alleges a mistake, the contracting officer must 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 must 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.

(7) When the bidder furnishes evidence supporting an alleged mistake, the contracting officer must refer the case to the appropriate authority 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 bidder’s written request to withdraw or modify the bid, together with the bidder's written statement and supporting evidence.

(v) A written statement by the contracting officer providing—

(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 to consider the bid as submitted or to authorize the bidder to withdraw or modify its bid.

(8) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer must 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 which are 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. The contracting officer must document all attempts made to obtain the information required and the action taken with respect to the correct the bid.

(h) Each agency must maintain records of all determinations made in accordance with this section, the facts involved, and the action taken in each case. Include copies of all such determinations in the file.

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

14.305 Cancellation of invitations after opening.

(a) Unless there is a compelling reason to reject all bids and cancel the invitation after the opening, the contracting officer must award to the responsible bidder who submitted the lowest responsive bid.

(b) Invitations may be cancelled after opening when, consistent with paragraph (a) above and, 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 part 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 shows that performance by the Government is more economical; or

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

(c) If award is delayed beyond the bidders' acceptance periods, the contracting officer should request bidders extend in writing the bid acceptance period (with consent of sureties, if any) in order to avoid the need for resoliciting.

(d) 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 paragraphs (b)(6) through (8) of this section, and the agency head has authorized, in the determination in paragraph (b) of this section, the completion of the acquisition through negotiation, the contracting officer must proceed in accordance with paragraph (e) of this section.

(2) If the invitation for bids has been cancelled for the reasons specified in paragraphs (b) (1), (2), (4), (5), or (10) of this section, or for the reasons in paragraphs (b) (6), (7), or (8) of this section and completion through negotiation is not authorized under paragraph (d)(1) of this section, the contracting officer must proceed with a new acquisition.

(e) When the agency head has determined, in accordance with paragraph (d)(1) of this section, 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 IFB 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.

14.306 Evaluation.

14.306-1 Responsiveness of bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids.

(b) Bids must be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if—

(1) The bidder accepts all the terms and conditions of the invitation; and

(2) Award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation.

(c) Bids submitted by electronic commerce may be considered only if the electronic commerce method was specifically stipulated or permitted by the IFB.

(d) If any sample fails to conform to the characteristics listed in the invitation, the respective bid will be rejected as nonresponsive.

14.306-2 Responsible bidder—reasonableness of price.

(a) Prior to award, the contracting officer must determine that—

(1) The apparent awardee(s) is responsible (see subpart 9.1); and

(2) The prices offered are reasonable and not materially unbalanced.

(b) The price analysis techniques in part 15 should be used as guidelines for determining reasonableness and if prices offered are materially unbalanced.

(c) In each case the determination must be made in the light of all prevailing circumstances. Particular care must be taken in cases where only a single bid is received.

14.306-3 Rejection of individual bids.

(a) Bids that fail to conform to the basic requirements of the invitation for bids must be rejected.

(b) Bids that do not conform to the requirements must 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) Bids that fail to conform to the delivery schedule or permissible alternates stated in the invitation must be rejected.

(d) Bids must be rejected if the bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the Government. For example, bids must 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 will be the price in effect at time of delivery;

(3) States a price but qualifies it as being subject to the 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 IFB;

(5) Requires the Government 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) The contracting officer may reject any bid if they determine in writing that it is unreasonable as to the total price of the bid or the prices for individual line items as well.

(g) The contracting officer may reject any bid if the prices for any line items or subline items are materially unbalanced (see part 15).

(h) The contracting officer must reject any bid received from a person or concern that is suspended, debarred, proposed for debarment, or declared ineligible as of the bid opening date unless determined in writing that there is a compelling reason for such action (see subpart 9.4).

(i) Reject low bids received from concerns determined to be not responsible pursuant to part 9, unless received from a small business concern (see part 19 with respect to certificates of competency).

(j) Reject a bid when a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the invitation for bids, except as otherwise provided in part 28.

(k) Preserve the originals of all rejected bids, and any written findings with respect to such rejections with the contract file.

(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 must 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.

14.306-4 Rejection of all bids.

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

14.306-5 Restrictions on disclosure of descriptive literature.

When a bid is accompanied by descriptive literature, 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.

14.306-6 All or none qualifications.

Unless the IFB 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. Contracting officers must not permit bidders to withdraw or modify all or none qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

14.306-7 Minor informalities or irregularities in bids.

A minor informality or irregularity is merely a matter of form and not of substance or 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 must 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 written, 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.

14.306-8 Prompt payment discounts.

Prompt payment discounts must not be considered in the evaluation of bids.

14.306-9 Economic price adjustment.

(a) Bidder proposed economic price adjustment.

(1) When an IFB does not contain an economic price adjustment clause but a bidder proposes one with a ceiling that the price will not exceed, the contracting officer must evaluate the bid 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 must request the bidder to agree to the inclusion in the award of an approved economic price adjustment clause (see part 16) that is subject to the same ceiling. If the bidder will not agree to an approved clause, the contracting officer may award based on the bid as originally submitted.

(3) Reject bids that contain economic price adjustments with no ceiling unless a clear basis for evaluation exists.

(b) (1) When an invitation contains a Government proposed economic price adjustment clause and no bidder takes exception to the provisions, the contracting officer must evaluate bids on the basis of the quoted prices without the allowable economic price adjustment being added.

(2) Reject a bid as nonresponsive if 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.

(3) Reject a bid as nonresponsive if a bid indicates deletion of the economic price adjustment clause because 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 contracting officer must evaluate the bid 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 must reflect the lower ceiling.

14.307 Award.

(a) The contracting officer must make a contract award—

(1) By written or electronic notice,

(2) Within the time for acceptance specified in the bid or an extension, 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 included in the invitation.

(b) When more than one award results from any single invitation for bids, separate award documents must be executed.

(c) 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 invitation to bid and award document must state that the Government may make subsequent awards for those additional items within the bid acceptance period.

(d) All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, must be clearly and accurately set forth (either expressly or by reference) in the award document.

(e) (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 must 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 communications, as notices of awards.

(3) Do not physically include Part IV in the contract. Award by acceptance of a bid on the award portion of Standard Form 33, Solicitation Offer and Award (SF 33), Standard Form 26, Award/Contract (SF 26), or Standard Form 1447, Solicitation/Contract (SF 1447), incorporates Section K, Representations, certifications, and other statements of bidders, in the resultant contract even though not physically attached.

(f) 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.

(1) As an alternative to indicating a discount in conjunction with the offer, bidders may prefer to offer discounts on individual invoices.

(2) See part 32, which prescribes the contract clause at 52.232-8, Discounts for Prompt Payment.

14.308 Award of equal low bids.

(a) Award contracts 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 remain equally eligible after application of paragraph (a) above, the contracting officer must conduct a drawing, limited to those bidders. If time permits, give the bidders involved an opportunity to attend the drawing. The drawing must be witnessed by at least three persons, and the contract file must 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 section, the contracting officer must 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.

14.309 Information to bidders.

14.309-1 Award of unclassified contracts.

(a) The contracting officer must as a minimum (subject to any restrictions in part 9)—

(1) Notify each unsuccessful bidder in writing or electronically within three days 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; and

(2) 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.

(b) For acquisitions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see part 25), agencies must include in notices given unsuccessful bidders from World Trade Organization Government Procurement Agreement or Free Trade Agreement countries—

(1) The dollar amount of the successful bid; and

(2) The name and address of the successful bidder.

14.309-2 Award of classified contracts.

In addition to 14.309-1, if classified information was furnished or created in connection with the IFB, the contracting officer must advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with agency procedures. The contracting officer may provide the name of the successful bidder and the contract price to unsuccessful bidders upon request. Information regarding a classified award must not be provided by telephone.

Subpart 14.4 - Postaward.

14.401 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 must be processed under the procedures of part 33 and the following:

(a) When a mistake in a contractor's bid is not discovered until after award, correct the mistake by contract modification if it 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 to—

(i) Delete the items involved in the mistake; or

(ii) 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 will be made in the contract as awarded, if the evidence does not warrant a determination under paragraphs (1) or (2).

(c) Make determinations under paragraphs (b)(1) and (2) 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 must be coordinated with legal counsel in accordance with agency procedures.

(e) Process mistakes alleged or disclosed after award as follows:

(1) The contracting officer must 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 must 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 must include in the contract file a record of—

(1) All determinations made in accordance with this 14.401;

(2) the facts involved, and

(3) the action taken in each case.

14.402 Pricing modifications.

See part 15 for cost and price negotiation policies and procedures.

Part 52 - Solicitation Provisions and Contract Clauses

52.214 [Reserved]

52.214-1 [Reserved]

52.214-2 [Reserved]

52.214-3 Amendments to Invitations for Bids.

As prescribed in 14.207(b)(1), insert the following provision:

AMENDMENTS TO INVITATIONS FOR BIDS (DEVIATION DEC 2025)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) (1) Bidders shall acknowledge receipt of any amendment to this solicitation-

(i) By signing and returning the amendment;

(ii) By identifying the amendment number and date in space provided for this purpose on the form for submitting a bid;

(iii) By letter; or

(iv) By email, if email bids are authorized in the solicitation.

(2) The Government shall receive the acknowledgement by the time and at the place specified for receipt of bids.

(End of provision)

52.214-4 False Statements in Bids.

As prescribed in 14.207(b)(2), insert the following provision in all invitations for bids:

FALSE STATEMENTS IN BIDS (APR 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

52.214-5 Submission of Bids.

As prescribed in 14.207(b)(3), insert the following provision:

SUBMISSION OF BIDS (DEVIATION DEC 2025)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation, and (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a) (1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

(End of provision)

52.214-6 Explanation to Prospective Bidders.

As prescribed in 14.207(b)(4), insert the following provision:

EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.

As prescribed in 14.207(b)(5), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (DEVIATION DEC 2025)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b) (1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt 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.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

52.214-8 [Reserved]

52.214-9 [Reserved]

52.214-10 Contract Award-Sealed Bidding.

As prescribed in 14.207(c), insert the following provision:

CONTRACT AWARD-SEALED BIDDING (JULY 1990)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may-

(1) Reject any or all bids;

(2) Accept other than the lowest bid; and

(3) Waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

52.214-11 [Reserved]

52.214-12 Preparation of Bids.

As prescribed in 14.207(d), insert the following provision:

PREPARATION OF BIDS (APR 1984)

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, bidders shall (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price for the quantity of each item offered in the "Amount" column of the Schedule. In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(End of provision)

52.214-13 [Reserved]

52.214-14 Place of Performance-Sealed Bidding.

As prescribed in 14.207(e), insert the following provision:

PLACE OF PERFORMANCE-SEALED BIDDING (APR 1985)

(a) The bidder, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable box*] to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.

(b) If the bidder checks "intends" in paragraph (a) of this provision, it shall insert in the spaces provided below the required information:

Place of Performance (Street Address, City, State, County, ZIP Code)	Name and Address of Owner and Operator of the Plant or Facility if Other than Bidder
____________________	____________________
____________________	____________________

(End of provision)

52.214-15 Period for Acceptance of Bids.

As prescribed in 14.207(f), insert the following provision:

PERIOD FOR ACCEPTANCE OF BIDS (APR 1984)

In compliance with the solicitation, the bidder agrees, if this bid is accepted within ______ calendar days (60 calendar days unless a different period is inserted by the bidder) from the date specified in the solicitation for receipt of bids, to furnish any or all items upon which prices are bid at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

(End of provision)

52.214-16 Minimum Bid Acceptance Period.

As prescribed in 14.207(g), insert the following provision in invitations for bids, except for construction, if the contracting officer determines that a minimum acceptance period must be specified:

MINIMUM BID ACCEPTANCE PERIOD (APR 1984)

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of __________ calendar days [*the Contracting Officer shall insert the number of days*].

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement.

The bidder allows the following acceptance period: __________ calendar days.

(e) A bid allowing less than the Government's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within-

(1) The acceptance period stated in paragraph (c) of this clause; or

(2) Any longer acceptance period stated in paragraph (d) of this clause.

(End of provision)

52.214-17 [Reserved]

52.214-18 Preparation of Bids-Construction.

As prescribed in 14.207(h), insert the following provision:

PREPARATION OF BIDS-CONSTRUCTION (APR 1984)

(a) Bids must be-

(1) Submitted on the forms furnished by the Government or on copies of those forms, and

(2) *Manually signed*. The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including-

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

(End of provision)

52.214-19 Contract Award-Sealed Bidding-Construction.

As prescribed in 14.207(i), insert the following provision:

CONTRACT AWARD-SEALED BIDDING-CONSTRUCTION (AUG 1996)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

52.214-20 Bid Samples.

As prescribed in 14.207(j)(1), insert the following provision:

BID SAMPLES (APR 2002)

(a) "Bid sample" means a product sample required to be submitted by a bidder to show those characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the invitation for bid (*e.g.,* balance, facility of use, or pattern).

(b) Bidders must furnish bid samples as part of the bid. The Government must receive the bid samples by the time specified in the invitation for bids. If the bidder fails to submit samples on time, the Government will reject the bid, except that the Contracting Officer will consider a late sample sent by mail under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) The Government will test or evaluate bid samples to determine compliance with all the characteristics listed for examination in this solicitation. The Government will reject the bid when the sample fails to conform to the required characteristics. Products delivered under any resulting contract must conform to-

(1) The approved sample for the characteristics listed for test or evaluation; and

(2) The specifications for all other characteristics.

(d) Unless otherwise specified in the solicitation, bid samples shall be-

(1) Submitted at no expense to the Government; and

(2) Returned at the bidder’s request and expense, unless they are destroyed during preaward testing.

(End of provision)

Alternate I (May 2002). As prescribed in 14.201-6 (o)(2)(i), insert the following Alternate I:

(e) At the discretion of the Contracting Officer, the requirement for furnishing bid samples may be waived for a bidder if-

(1) The bid states that the offered product is the same as a product offered by the bidder to the _______________ *[as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office]*; and

(2) The Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those in this solicitation.

Alternate II (May 2002). As prescribed in 14.201-6 (o)(2)(ii), insert the following Alternate II:

(e) At the discretion of the Contracting Officer, the requirements for furnishing bid samples may be waived for a bidder if-

(1) The bid states that the offered product is the same as a product offered by the bidder to the ________ *[as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office]* on a previous acquisition;

(2) The Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those of this solicitation; and

(3) The product offered under this solicitation will be produced under a resulting contract at the same plant in which the previously acquired or tested product was produced.

52.214-21 Descriptive Literature.

As prescribed in 14.207(k)(1), insert the following provision:

DESCRIPTIVE LITERATURE (APR 2002)

(a) "Descriptive literature," as used in this provision, means information furnished by a bidder, such as cuts, illustrations, drawings, and brochures, that shows a product's characteristics or construction or explains its operation. The term includes only that information required to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

(b) Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as-

(1) Design;

(2) Materials;

(3) Components;

(4) Performance characteristics; and

(5) Methods of manufacture, assembly, construction, or operation.

(c) Descriptive literature, required elsewhere in this solicitation, shall be-

(1) Identified to show the item(s) of the offer to which it applies; and

(2) Received by the time specified in this solicitation.

(d) If the bidder fails to submit descriptive literature on time, the Government will reject the bid, except that late descriptive literature sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(e) If the descriptive literature fails to show that the product offered conforms to the requirements of the solicitation, the Government will reject the bid.

(End of provision)

Alternate I (Jan 2017). As prescribed in 14.201-6 (p)(2), add the following paragraphs (f) and (g) to the basic provision:

(f) The Contracting Officer may waive the requirement for furnishing descriptive literature if the offeror has supplied a product that is the same as that required by this solicitation under a prior contract. A bidder that requests a waiver of this requirement shall provide the following information:

Prior contract number ____________

Date of prior contract ____________

Line item number of product supplied ______

Name and address of Government activity to which delivery was made ___________________________

Date of final delivery of product supplied ____________

(g) Bidders shall submit bids on the basis of required descriptive literature or on the basis of a previously supplied product under paragraph (f) of this provision. A bidder submitting a bid on one of these two bases may not elect to have its bid considered on the alternative basis after the time specified for receipt of bids. The Government will disregard a bidder's request for a waiver under paragraph (f) if that bidder has submitted the descriptive literature requested under this solicitation.

52.214-22 Evaluation of Bids for Multiple Awards.

As prescribed in 14.207(l), insert the following provision:

EVALUATION OF BIDS FOR MULTIPLE AWARDS (MAR 1990)

In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating bids, that $500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)

52.214-23 Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.

As prescribed in 14.207(m), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, REVISIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (DEVIATION DEC 2025)

(a) Bidders are responsible for submitting technical proposals, and any modifications or revisions, so as to reach the Government office designated in the request for technical proposals by the time specified in the invitation for bids (IFB). If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids or revisions are due.

(b) (1) Any technical proposal under step one of two-step sealed bidding or modification, revision, or withdrawal of such proposal received at the Government office designated in the request for technical proposals after the exact time specified for receipt will not be considered unless the Contracting Officer determines that accepting the late technical proposal would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the request for technical proposals, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt; or

(iii) It is the only proposal received and it is negotiated under part 15 of the Federal Acquisition Regulation.

(2) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the technical proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that technical proposals cannot be received at the Government office designated for receipt of technical proposals by the exact time specified in the request for technical proposals, and urgent Government requirements preclude amendment of the request for technical proposals, the time specified for receipt of technical proposals will be deemed to be extended to the same time of day specified in the request for technical proposals on the first work day on which normal Government processes resume.

(e) Technical proposals may be withdrawn by written notice received at any time before the exact time set for receipt of technical proposals. A technical proposal may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of technical proposals, the identity of the person requesting withdrawal is established and the person signs a receipt for the technical proposal.

(End of provision)

52.214-24 Multiple Technical Proposals.

As prescribed in 14.207(o), insert the following provision:

MULTIPLE TECHNICAL PROPOSALS (APR 1984)

In the first step of this two-step acquisition, solicited sources are encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the submitter will be notified as to its acceptability.

(End of provision)

52.214-25 Step Two of Two-Step Sealed Bidding.

As prescribed in 14.201-6(t), insert the following provision:

STEP TWO OF TWO-STEP SEALED BIDDING (APR 1985)

(a) This invitation for bids is issued to initiate step two of two-step sealed bidding under subpart 14.5 of the Federal Acquisition Regulation.

(b) The only bids that the Contracting Officer may consider for award of a contract are those received from bidders that have submitted acceptable technical proposals in step one of this acquisition under ________________*[the Contracting Officer shall insert the identification of the step-one request for technical proposals]*.

(c) Any bidder that has submitted multiple technical proposals in step one of this acquisition may submit a separate bid on each technical proposal that was determined to be acceptable to the Government.

(End of provision)

52.214-26 Audit and Records-Sealed Bidding.

As prescribed in 14.208(a), insert the following clause:

AUDIT AND RECORDS-SEALED BIDDING (DEVIATION DEC 2025)

(a) As used in this clause, records includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Certified cost or pricing data*. If the Contractor has been required to submit certified cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the modification; or

(4) Performance of the modification.

(c) *Comptroller General*. In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause and also the right to interview any current employee regarding such transactions.

(d) *Availability*. The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the data of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) *Subcontracts*. The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1) on the date of subcontract award.

(End of clause)

52.214-27 Price Reduction for Defective Certified Cost or Pricing Data-Modifications-Sealed Bidding.

As prescribed in 14.208(b)(1), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA-MODIFICATIONS-SEALED BIDDING (JUN 2020)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403-4(a)(1) on the date of execution of the modification, except that this clause does not apply to a modification if an exception under FAR 15.403-1(b) applies.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2)a subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(d) (1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if-

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if-

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid-

(1) Interest compounded daily, as required by 26U.S.C.6622, the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

52.214-28 Subcontractor Certified Cost or Pricing Data-Modifications-Sealed Bidding.

As prescribed in 14.208(c), insert the following clause in solicitations and contracts:

SUBCONTRACTOR CERTIFIED COST OR PRICING DATA-MODIFICATIONS-SEALED BIDDING (DEVIATION DEC 2025)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403-4(a)(1) on the date of execution of the modification, and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1), on the date of agreement on price or the date of award, whichever is later, or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), as part of the subcontractor's proposal in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1(b) applies. If the threshold for submission of certified cost or pricing data specified in FAR 15.403-4(a)(1) is adjusted for inflation as set forth in FAR 1.108, then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in section 15.406-2 of the Federal Acquisition Regulation that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1).

(End of clause)

Alternate I (Aug 2020). As prescribed in 14.208(c)(1), substitute the following paragraph (b) in place of paragraph (b) of the basic clause:

(b) Unless an exception under FAR 15.403-1(b) applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), as part of the subcontractor's proposal in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—

(1) Before modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed $950,000; or

(2) Before awarding any subcontract expected to exceed $2.5 million on or after July 1, 2018, or modifying any subcontract that was awarded on or after July 1, 2018, involving a pricing adjustment expected to exceed $2.5 million.

52.214-29 Order of Precedence-Sealed Bidding.

As prescribed in 14.208(d), insert the following clause:

ORDER OF PRECEDENCE-SEALED BIDDING (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications);

(b) Representations and other instructions;

(c) Contract clauses;

(d) Other documents, exhibits, and attachments; and

(e) The specifications.

(End of clause)

52.214-30 [Reserved]

52.214-31 [Reserved]

52.214-32 [Reserved]

52.214-33 [Reserved]

52.214-34 Submission of Offers in the English Language.

As prescribed in 14.207(p), insert the following provision:

SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

52.214-35 Submission of Offers in U.S. Currency.

As prescribed in 14.207(q), insert the following provision:

SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)