

14.407-4 Mistakes after award.

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

(a) When a mistake in a contractor's bid is not discovered until after award, the mistake *may* be corrected by *contract modification* if correcting the mistake would be favorable to the Government without changing the essential requirements of the specifications.

(b) In addition to the cases contemplated in paragraph (a) of this section or as otherwise authorized by law, agencies are authorized to make a determination-

(1) To rescind a contract;

(2) To reform a contract-

(i) To delete the items involved in the mistake; or

(ii) To increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original invitation for bids; or

(3) That no change *shall* be made in the contract as awarded, if the evidence does not warrant a determination under subparagraph (b)(1) or (2) of this section.

(c) Determinations under paragraph (b)(1) and (2) of this section *may* be made only on the basis of clear and convincing evidence that a mistake in bid was made. In addition, it *must* be clear that the mistake was-

(1) Mutual; or

(2) If unilaterally made by the contractor, so apparent as to have charged the *contracting officer* with notice of the probability of the mistake.

(d) Each proposed determination *shall* be coordinated with legal counsel in accordance with agency procedures.

(e) Mistakes alleged or disclosed after award *shall* be processed as follows:

(1) The *contracting officer shall* request the contractor to support the alleged mistake by submission of written statements and pertinent evidence, such as-

(i) The contractor's file copy of the bid,

(ii) The contractor's original worksheets and other data used in preparing the bid,

(iii) Subcontractors' and suppliers' quotations, if any,

(iv) Published price lists, and

(v) Any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended.

- (2) The case file concerning an alleged mistake *shall* contain the following:
- (i) All evidence furnished by the contractor in support of the alleged mistake.
 - (ii) A signed statement by the *contracting officer*-
 - (A) Describing the *supplies* or services involved;
 - (B) Specifying how and when the mistake was alleged or disclosed;
 - (C) Summarizing the evidence submitted by the contractor and any additional evidence considered pertinent;
 - (D) Quoting, in cases where only one bid was received, the most recent contract price for the *supplies* or services involved, or in the absence of a recent comparable contract, the *contracting officer's* estimate of a fair price for the *supplies* or services and the basis for the estimate;
 - (E) Setting forth the *contracting officer's* opinion whether a bona fide mistake was made and whether the *contracting officer* was, or *should* have been, on constructive notice of the mistake before the award, together with the reasons for, or data in support of, such opinion;
 - (F) Setting forth the course of action with respect to the alleged mistake that the *contracting officer* considers proper on the basis of the evidence, and if other than a change in contract price is recommended, the manner by which the *supplies* or services will otherwise be acquired; and
 - (G) Disclosing the status of performance and payments under the contract, including contemplated performance and payments.
 - (iii) A signed copy of the bid involved.
 - (iv) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake.
 - (v) An abstract of written record of the bids received.
 - (vi) A written request by the contractor to reform or rescind the contract, and copies of all other relevant correspondence between the *contracting officer* and the contractor concerning the alleged mistake.
 - (vii) A copy of the contract and any related *change orders* or *supplemental agreements*.
- (f) Each agency *shall* include in the contract file a record of-
- (1) All determinations made in accordance with this 14.407-4;
 - (2) The facts involved; and
 - (3) The action taken in each case.

Parent topic: 14.407 Mistakes in bids.