28.101-4 Noncompliance with bid guarantee requirements.

(a) In sealed bidding, noncompliance with a *solicitation* requirement for a *bid guarantee* requires rejection of the *bid*, except in the situations described in paragraph (c) of this subsection when the noncompliance *shall* be waived.

(b) In negotiation, noncompliance with a *solicitation* requirement for a *bid guarantee* requires rejection of an initial proposal as unacceptable, if a determination is made to award the contract based on initial proposals without discussion, except in the situations described in paragraph (c) of this subsection when noncompliance *shall* be waived. (See 15.306(a)(2) for conditions regarding making awards based on initial proposals.) If the conditions for awarding based on initial proposals are not met, deficiencies in *bid guarantees* submitted by *offerors* determined to be in the competitive range *shall* be addressed during discussions and the *offeror shall* be given an opportunity to correct the deficiency.

(c) Noncompliance with a *solicitation* requirement for a *bid guarantee shall* be waived in the following circumstances unless the *contracting officer* determines *in writing* that acceptance of the *bid* would be detrimental to the Government's interest when-

(1) Only one *offer* is received. In this case, the *contracting officer may* require the furnishing of the *bid guarantee* before award;

(2) The amount of the *bid guarantee* submitted is less than required, but is equal to or greater than the difference between the *offer* price and the next higher acceptable *offer*;

(3) The amount of the *bid guarantee* submitted, although less than that required by the *solicitation* for the maximum quantity offered, is sufficient for a quantity for which the *offeror* is otherwise eligible for award. Any award to the *offeror shall* not exceed the quantity covered by the *bid guarantee*;

(4) The *bid guarantee* is received late, and late receipt is waived under 14.304;

(5) A *bid guarantee* becomes inadequate as a result of the correction of a mistake under 14.407 (but only if the *bidder* will increase the *bid guarantee* to the level required for the corrected *bid*);

(6) An otherwise acceptable *bid bond* was submitted with a signed *offer*, but the *bid bond* was not signed by the *offeror*;

(7) An otherwise acceptable *bid bond* is erroneously dated or bears no date at all; or

(8) A *bid bond* does not list the *United States* as obligee, but correctly identifies the *offeror*, the *solicitation* number, and the name and location of the project involved, so long as it is acceptable in all other respects.

Parent topic: 28.101 Bid guarantees.