14.407-3 Other mistakes disclosed before award.

In order to minimize delays in contract awards, administrative determinations *may* be made as described in this 14.407-3 in connection with mistakes in bids alleged after opening of bids and before award. The authority to permit correction of bids is limited to bids that, as submitted, are responsive to the invitation and *may* not be used to permit correction of bids to make them responsive. This authority is in addition to that in 14.407-2 or that *may* be otherwise available.

(a) If a bidder requests permission to correct a mistake and clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the *agency head may* make a determination permitting the bidder to correct the mistake; provided, that if this correction would result in displacing one or more lower bids, such a determination *shall* not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself.

(b) If-

(1) A bidder requests permission to withdraw a bid rather than correct it;

(2) The evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended; and

(3) The bid, both as uncorrected and as corrected, is the lowest received, the *agency head may* make a determination to correct the bid and not permit its withdrawal.

(c) If, under paragraph (a) or (b) of this subsection, (1) the evidence of a mistake is clear and convincing only as to the mistake but not as to the intended bid, or (2) the evidence reasonably supports the existence of a mistake but is not clear and convincing, an official above the *contracting officer*, unless otherwise provided by agency procedures, *may* make a determination permitting the bidder to withdraw the bid.

(d) If the evidence does not warrant a determination under paragraph (a), (b), or (c) of this section, the *agency head may* make a determination that the bid be neither withdrawn nor corrected.

(e) Heads of agencies *may* delegate their authority to make the determinations under paragraphs (a), (b), (c), and (d) of this 14.407-3 to a central authority, or a limited number of authorities as necessary, in their agencies, without power of redelegation.

(f) Each proposed determination *shall* have the concurrence of legal counsel within the agency concerned before issuance.

(g) Suspected or alleged mistakes in bids *shall* be processed as follows. A mere statement by the administrative officials that they are satisfied that an error was made is insufficient.

(1) The *contracting officer shall* immediately request the bidder to verify the bid. Action taken to verify bids *must* be sufficient to reasonably assure the *contracting officer* that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder. To assure that the bidder will be put on notice of a mistake suspected by the *contracting officer*, the bidder *should* be advised as appropriate-

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

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

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

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

(2) If the bid is verified, the *contracting officer shall* consider the bid as originally submitted. If the time for acceptance of bids is likely to expire before a decision can be made, the *contracting officer shall* request all bidders whose bids *may* become eligible for award to extend the time for acceptance of their bids in accordance with 14.404-1(d). If the bidder whose bid is believed erroneous does not (or cannot) grant an extension of time, the bid *shall* be considered as originally submitted (but see paragraph (g)(5) of this section). If the bidder alleges a mistake, the *contracting officer shall* advise the bidder to make a written request to withdraw or modify the bid. The request *must* be supported by statements (sworn statements, if possible) and *shall* include all pertinent evidence such as the bidder's file copy of the bid, the original worksheets and other data used in preparing the bid, subcontractors' quotations, if any, published price lists, and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

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

(i) A signed copy of the bid involved.

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

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

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

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

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

(B) The expiration date of the bid in question and of the other bids submitted;

(C) Specific information as to how and when the mistake was alleged;

(D) A summary of the evidence submitted by the bidder;

(E) In the event only one bid was received, a quotation of the most recent contract price for the *supplies* or services involved or, in the absence of a recent comparable contract, the *contracting officer*'s estimate of a fair price for the *supplies* or services;

(F) Any additional pertinent evidence; and

(G) A recommendation that either the bid be considered for award in the form submitted, or the

bidder be authorized to withdraw or modify the bid.

(4) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the *contracting officer shall* consider the bid as submitted unless (i) the amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency or determined by the *contracting officer* to be reasonable, or (ii) there are other indications of error so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. Attempts made to obtain the information required and the action taken with respect to the bid *shall* be fully documented.

(h) Each agency *shall* maintain records of all determinations made in accordance with this subsection 14.407-3, the facts involved, and the action taken in each case. Copies of all such determinations *shall* be included in the file.

(i) Nothing contained in this subsection 14.407-3 prevents an agency from submitting doubtful cases to the Comptroller General for advance decision.

Parent topic: 14.407 Mistakes in bids.