



PIMA COUNTY PROCUREMENT DEPARTMENT
130 W. CONGRESS ST., 3RD FLOOR, TUCSON, AZ 85701-1207
PHONE: (520) 724-8161 FAX: (520) 222-1484

Mary Jo Furphy
Procurement Director

Via Email: mlund@romanoskiglass.com

April 12, 2017

Mr. James Romanoski
Blue Moon Glass Services LLC,
DBA Romanoski Glass and Mirror
PO Box 27006
Tucson, AZ 85726

RE: Protest of Award
Solicitation No. 241493 As Needed & Emergency Glass Repair

Dear Mr. Romanoski,

On April 10, 2017, the Procurement Department received your letter filing a pre-bid protest of Solicitation No. 241493, As Needed & Emergency Glass Repair.

You have requested that Pima County reject Vista Glass's bid and for the award to be made to Blue Moon Glass Services LLC. You assert two bases for your protest. First is that Sierra Vista Glass dba Vista Glass, Arizona Registrar of Contractors License Number 169930 was under suspension at the time of bid submission. Second, you state that Vista Glass "did not have line item errors but actually quoted two different rates with the intention of amending their quote".

In reference to the first ground for protest, the solicitation required the bidder's Arizona Registrar of Contractors license to be currently active. The Arizona Registrar of Contractors' website clearly shows that License Number 169930 was suspended from March 17, 2017 through April 3, 2017. The bid was signed on March 23, 2017. The bid was received by Pima County Procurement Department on March 27, 2017. The bids were opened on March 29, 2017. All of these events occurred while License Number 169930 was not active, and therefore the Vista Glass bid did not meet the Minimum Qualifications. There is a valid basis for this ground of your protest.

With regard to your second stated ground for protest, Vista Glass did not, and was not given the opportunity to, correct their bid. Pima County is not subject to the federal rules attached to the protest letter. Pima County Procurement Code 11.12.010 G states "The procurement director is authorized to approve the correction or withdrawal of inadvertently erroneous bids before or after bid opening . . . only as follows: . . . After bid opening, and before bid award, the bid may not be withdrawn and shall be corrected to the intended bid if a bid mistake is evident on the face of the bid and the intended bid is obvious." In Pima County, a respondent is not allowed to correct their bid. Pima County used the unit prices as submitted and performed extension calculations on all lines items as we standardly perform on all bid responses, including your bid. There is no valid basis to invalidate the Vista Glass bid for this reason.

Mr. James Romanoski
Blue Moon Glass Services LLC,
DBA Romanoski Glass and Mirror
April 12, 2017
Page Two

Pursuant to Pima County Procurement Code 11.20.010.E (1), I have determined that the first stated ground for your protest does state a valid basis for invalidation of the Vista Glass bid. Therefore, your protest is sustained in part and Pima County Procurement Department will post a revised Notice of Recommendation for Award.

You may appeal this decision to the Board of Supervisors by filing an appeal with the Clerk of the Board within five business days of the date of this written decision pursuant to Pima County Procurement Code Section 11.20.010.H. If you file an appeal with the Board of Supervisors, the Board will consider the protest at a regularly scheduled meeting within 30 days of this decision. The Board may, with or without a hearing, either accept the decision or determine another appropriate remedy.

Sincerely,



Mary Jo Murphy
Procurement Director

Attachment: Blue Moon Glass Services LLC protest letter dated April 10, 2017 (18 pages)

c: A. Wilber, Materials & Services Division Manager
M. Lynch, Commodity Contracts Officer
L. Josker, Facilities Management Director
T. Rosen, Deputy County Attorney
Interested Parties

Blue Moon Glass Services LLC, DBA

Romanoski Glass and Mirror

ROC: 291766 Class K-65 Glazing ROC: 291765 Class K-60 Carpentry
Tel: (520) 748-0500 Fax: (520) 748-9450

April 10, 2017

Pima County Procurement
130 West Congress, 3rd Floor
Tucson, Az. 85701

RE: Solicitation # 241493

Dear Mary Jo,

Please consider this to be a formal protest of Solicitation #241493 for reasons stated below.

Blue Moon Glass Services and Vista Glass were present at the pre-bid meeting on March 15th. A complete review of all bid documents were given including unit pricing, extended pricing as well as licensing requirements.

Formal submission and open bid process for this solicitation was March 29, 2017. Bid totals at this opening were made public; Blue Moon \$63,947.00 and Vista Glass \$29,720.00.

On April 6 Notice of Recommended For Award Notice were given out and it was discovered that Vista Glass's number had changed and increased by almost \$30,000.00 due to a "line extension error".

Upon our request we were sent all factual documents by Pima County Public Records, for review of Vista Glass's line error extension. We received said documents the same day April 6.

In reviewing the Vista Glass submission, we have discovered that Sierra Vista Glass dba Vista Glass, License number 169930 was under suspension at the time this bid was submitted March 29, 2017. Please see attached copy from the Arizona Registrars page showing Vista Glass license was suspended from March 17, 2017 through April 3, 2017. According to the Registrar 32-1154 #17- A contractor may not offer or submit a bid while the license is under suspension. Blue Moon Glass will be filing a complaint with the Arizona Registrar of Contractors regarding Vista Glass's submission of bid while their license was suspended.

In addition Vista Glass did not have line item errors but actually quoted two different rates with the intention of amending their quote after our number was made public. According to Acquisitions.gov, page 6-7 (please see attached) 14.407-2 Mistakes in Bids - the line item error noted allowing Vista Glass to change their bid, does not meet the parameters to qualify as a line item error.

It is for these reasons that we believe that quotes from Vista Glass be thrown out and the award for Solicitation Number 241493, As Needed Emergency Glass Repair is awarded to Blue Moon Glass Services LLC.

Please call if you have any questions. Thank you.

Sincerely,


James A. Romanoski

cc: Rick Erickson Snell and Wilmer LLP



NOTICE OF RECOMMENDATION FOR AWARD

Date of Issue: April 6, 2017

The Pima County Procurement Department hereby issues formal notice to respondents to Solicitation No. 241493 for As Needed & Emergency Glass Repair that the following listed respondent will be recommended for award as indicated below. The award action is scheduled to be performed by the Procurement Director on or after April 14, 2017.

Award is recommended to the Respondent submitting the Low Bid.

<u>AWARDEE NAME</u>	<u>BID AMOUNT</u>	<u>AWARD AMOUNT</u>
Sierra Vista Glass, Inc., dba Vista Glass	\$58,930.00*	\$65,000.00

*Line item extension errors. Submitted bid amount \$29,720.00. Corrected as shown.

<u>OTHER RESPONDENT NAMES</u>	<u>BID AMOUNT</u>
Blue Moon Glass Services, LLC	\$63,947.00

Issued by: Meagan Lynch, Contracts & Commodity Officer

Telephone Number: 520-724-9071

This notice is in compliance with Pima County Procurement Code §11.20.010(C).

Copy to: Pima County SBE via e-mail at SBE@pima.gov [or via fax at 520-724-4434].



DISCLAIMER

The data supplied below is based on your specific request(s) and is correct to the best of our knowledge as of the date and time it was extracted from our data files. The information is provided without personal research or analysis. The data is subject to change on a daily basis. You may obtain additional public records related to any licensee including dismissed complaints and nondisciplinary actions and orders, by contacting the ROC directly. If this information is required for legal purposes, you may request an affidavit or certified copies for a fee as specified in A.R.S. 32-1104A3. Please read our Standard Disclaimer at www.azroc.gov/Legal/Disclaimer.html

Please note: The company or individuals listed on this license may hold other Arizona contracting licenses. To view information, status and complaint history for the past two years on other licenses held, go to the License Inquiry page and do a "Company Name and Personnel" search by entering the name of the company or individuals listed on the license.

Details for License Number 169930 (Monday, April 10, 2017 9:57:23 AM)

Contractor		License	
Name/ Address/ Phone	Status/ Action	Class Type Entity	Issued/Renewal
Sierra Vista Glass Inc 3827 S Highway 92 Sierra Vista, AZ 85650-5775 Phone:	CURRENT	CR65 DUAL CORPORATION	First issued: 02/14/2002 Renewed Thru: 02/28/2018

License Class & Description **CR65 GLAZING**

Comments

●[SUSPENDED LACK OF BOND 03/17/2017 - 04/03/2017]●[SUSPENDED NON-RENEWAL 03/01/2016 - 03/08/2016]●[SUSPENDED NON-RENEWAL 03/01/2012 - 03/16/2012]●[SUSPENDED LACK OF BOND 03/08/2011 - 04/14/2011]●[SUSP 3/1/06 - 5/5/06 RENEWAL]

Qualifying Party and Personnel

The Qualifying Party listed below is associated with this license. All other persons named, if any, are associated with the company. They are not all necessarily associated with this license.

Name Richard Main	Position QP/OFFICER	Qual. Date 02/14/2002	Name Maria Claudia Main	Position OFFICER
-------------------	---------------------	-----------------------	-------------------------	------------------

Complaint Information

Complaints against this contractor are listed below. Complaints that were cancelled, resolved or settled without a corrective work order or dismissed are not included. Contact the Registrar of Contractors at 602-542-1525 or toll-free statewide at 1-877-MY AZROC (1-877-692-9762) to identify the ROC office location you need to visit to view complete complaint documentation.

Open: 0	This is the number of complaints against this contractor that are currently open except those in which an agency inspection has not occurred or a violation was not found. Upon adjudication some complaints are found to be without merit and are dismissed.						
Closed Cases							
Disciplined: 0	This is the number of complaints that resulted in discipline against this contractor.						
Resolved/Settled/Withdrawn: 1	This is the number of complaints closed against this contractor that were resolved or settled by the contractor or withdrawn by the complainant after issuance of a corrective work order or formal citation.						
Denied Access: 0	This is the number of complaints against this contractor that were closed without corrective work being performed because the contractor was denied access by the complainant.						
Bankruptcy: 0	This is the number of complaints against this contractor that were closed because the contractor is in bankruptcy.						
Bond [1] Information							
Number	Effective	Amount	Paid	Available	Company	Notes	
RSB134383	04/14/2011	\$6,750.00	\$0.00	\$6,750.00	R L I INSURANCE COMPANY		
Bond [2] Information							
Number	Effective	Cancelled	Amount	Paid	Available	Company	Notes
AH1938	02/14/2002	01/07/2008	\$3,500.00	\$0.00	\$3,500.00	CONTRACTORS BONDING & INS CO	

§32-1152.01. Alternatives to cash deposit

- A. As an alternative to the cash deposit provided for in section 32-1152, subsection B, a contractor may substitute any of the following:
1. Certificates of deposit assigned to the registrar, issued by banks doing business in this state and insured by the federal deposit insurance corporation.
 2. Investment certificates or share accounts assigned to the registrar and issued by a savings and loan association doing business in this state and insured by the federal deposit insurance corporation.
- B. The terms and conditions surrounding each of such types of security shall be prescribed by the registrar.

§32-1153. Proof of license as prerequisite to civil action

No contractor as defined in section 32-1101 shall act as agent or commence or maintain any action in any court of the state for collection of compensation for the performance of any act for which a license is required by this chapter without alleging and proving that the contracting party whose contract gives rise to the claim was a duly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose.

§32-1154. Grounds for suspension or revocation of license; continuing jurisdiction; civil penalty; recovery fund award

- A. The holder of a license or any person listed on a license pursuant to this chapter shall not commit any of the following acts or omissions:
1. Abandonment of a contract or refusal to perform after submitting a bid on work without legal excuse for the abandonment or refusal.
 2. Departure from or disregard of plans or specifications or any building codes of the state or any political subdivision of the state in any material respect that is prejudicial to another without consent of the owner or the owner's duly authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications and code.
 3. Violation of any rule adopted by the registrar.
 4. Failure to comply with the statutes or rules governing social security, workers' compensation or unemployment insurance.
 5. Misrepresentation of a material fact by the applicant in obtaining a license.
 6. The doing of a fraudulent act by the licensee as a contractor resulting in another person being substantially injured.
 7. Conviction of a felony.
 8. Failure in a material respect by the licensee to complete a construction project or operation for the price stated in the contract, or in any modification of the contract.
 9. Aiding or abetting a licensed or unlicensed person to evade this chapter, knowingly or recklessly combining or conspiring with a licensed or unlicensed person, allowing one's license to be used by a licensed or unlicensed person or acting as agent, partner, associate or otherwise of a licensed or unlicensed person with intent to evade this chapter.

10. Failure by a licensee or agent or official of a licensee to pay monies in excess of seven hundred fifty dollars when due for materials or services rendered in connection with the licensee's operations as a contractor when the licensee has the capacity to pay or, if the licensee lacks the capacity to pay, when the licensee has received sufficient monies as payment for the particular construction work project or operation for which the services or materials were rendered or purchased.
11. Failure of a contractor to comply with any safety or labor laws or codes of the federal government, state or political subdivisions of the state.
12. Failure in any material respect to comply with this chapter.
13. Knowingly entering into a contract with a contractor for work to be performed for which a license is required with a person not duly licensed in the required classification.
14. Acting in the capacity of a contractor under any license issued under this chapter in a name other than as set forth on the license.
15. False, misleading or deceptive advertising whereby any member of the public may be misled and injured.
16. Knowingly contracting beyond the scope of the license or licenses of the licensee.
17. Contracting or offering to contract or submitting a bid while the license is under suspension or while the license is on inactive status.
18. Failure to notify the registrar in writing within a period of fifteen days of any disassociation of the person who qualified for the license. Such licensee shall have sixty days from the date of such disassociation to qualify through another person.
19. Subsequent discovery of facts that if known at the time of issuance of a license or the renewal of a license would have been grounds to deny the issuance or renewal of a license.
20. Having a person named on the license who is or was named on any other license in this state or in another state that is under suspension or revocation for any act or omission that occurs while the person is or was named on the license unless the prior revocation was based solely on a violation of this paragraph.
21. Continuing a new single family residential construction project with actual knowledge that a pretreatment wood-destroying pests or organisms application was either:
 - (a) Not performed at the required location.
 - (b) Performed in a manner inconsistent with label requirements, state law or rules.
22. Failure to take appropriate corrective action to comply with this chapter or with rules adopted pursuant to this chapter without valid justification within a reasonable period of time after receiving a written directive from the registrar. The written directive shall set forth the time within which the contractor is to complete the remedial action. The time permitted for compliance shall not be less than fifteen days from the date of issuance of the directive. A license shall not be revoked or suspended nor shall any other penalty be imposed for a violation of this paragraph until after a hearing has been held.

- B. If any amount is paid from the fund in settlement of a claim arising from the act, representation, transaction or conduct of a residential contractor, the license of the contractor shall be automatically suspended by operation of law until the amount paid from the fund is repaid in full, plus interest at the rate of ten per cent a year. Any person who is or was, at the time of the act or omission, named on a license that has been suspended because of a payment from the recovery fund is not eligible to receive a new license or retain another existing license that also shall be suspended by operation of law, nor shall any suspended license be reactivated, until the amount paid from the fund is repaid as provided in this subsection.
- C. After receiving an award from the fund pursuant to this article a person is deemed to have assigned to the registrar the person's rights for recovery against the responsible residential contractor licensed pursuant to this chapter to the extent of the person's award from the fund.

§32-1140. Disciplinary action against contractor

This article does not limit the authority of the registrar to take disciplinary action against any licensed contractor for a violation of this chapter, or of the rules and regulations of the registrar, nor does the repayment in full of all obligations to the fund by any contractor nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter or the rules and regulations.

ARTICLE 3. REGULATION

§32-1151. Engaging in contracting without license prohibited

It is unlawful for any person, firm, partnership, corporation, association or other organization, or a combination of any of them, to engage in the business of, submit a bid or respond to a request for qualification or a request for proposals for construction services as, act or offer to act in the capacity of or purport to have the capacity of a contractor without having a contractor's license in good standing in the name of the person, firm, partnership, corporation, association or other organization as provided in this chapter, unless the person, firm, partnership, corporation, association or other organization is exempt as provided in this chapter. Evidence of securing a permit from a governmental agency or the employment of a person on a construction project shall be accepted in any court as prima facie evidence of existence of a contract.

§32-1151.01. Change in ownership; notice to registrar

A corporation, association or other organization which is a licensed contractor shall immediately notify the registrar of any transfer of ownership of fifty per cent or more of the stock or beneficial interest in the company.

§32-1151.02. List of unlicensed contractors; web site publication

- A. The registrar shall maintain a list of persons who have been convicted of contracting without a license in violation of section 32-1151 or administratively adjudicated to have been contracting without a license after having been issued a civil citation pursuant to section 32-1166. The list shall be published on the registrar's web site.
- B. The registrar shall remove a person from the list within ten business days when the person becomes licensed pursuant to this chapter and submits a written request to the registrar requesting the person's name to be removed from the list.

Subpart 14.4—Opening of Bids and Award of Contract

14.400 Scope of subpart.

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

14.401 Receipt and safeguarding of bids.

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

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

14.402 Opening of bids.

14.402-1 Unclassified bids.

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

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

(c) Examination of bids by interested persons shall be permitted if it does not interfere unduly with the conduct of Government business. Original bids shall not be allowed to pass out of the hands of a Government official unless a duplicate bid is not available for public inspection. The original bid may be examined by the public only under the immediate supervision of a Government official and under conditions that preclude possibility of a substitution, addition, deletion, or alteration in the bid.

14.402-2 Classified bids.

The general public may not attend bid openings for classified acquisitions. A bidder or its representative may attend and record the results if the individual has the appropriate security clearance. The contracting officer also may make the bids available at a later time to properly cleared

individuals who represent bidders. No public record shall be made of bids or bid prices received in response to classified invitations for bids.

14.402-3 Postponement of openings.

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

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

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

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

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

14.403 Recording of bids.

(a) [Standard Form 1409](#), Abstract of Offers, or [Optional Form 1419](#), Abstract of Offers—Construction (or automated equivalent), shall be completed and certified as to its accuracy by the bid opening officer as soon after bid opening as practicable. Where bid items are too numerous to warrant complete recording of all bids, abstract entries for individual bids may be limited to item numbers and bid prices. In preparing these forms, the extra columns and [SF 1410](#), Abstract of Offers—Continuation, and [OF 1419A](#), Abstract of Offer—Construction, Continuation Sheet, may be used to label and record such information as the contracting activity deems necessary.

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

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

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

14.404 Rejection of bids.

14.404-1 Cancellation of invitations after opening.

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

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

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

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

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

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

(2) Specifications have been revised;

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

(4) The invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants;

(5) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that for which the bids were invited;

(6) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price;

(7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see [Subpart 3.3](#) for reports to be made to the Department of Justice);

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

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

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

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

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

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

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

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

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

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

14.404-2 Rejection of individual bids.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) After submitting a bid, if all of a bidder's assets or that part related to the bid are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Accordingly, the contracting officer shall reject the bid unless the transfer is effected by merger, operation of law, or other means not barred by [41 U.S.C. 6305](#) or [31 U.S.C. 3727](#).

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

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

14.404-4 Restrictions on disclosure of descriptive literature.

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

14.404-5 All or none qualifications.

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

14.405 Minor informalities or irregularities in bids.

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

- (a) Return the number of copies of signed bids required by the invitation;
- (b) Furnish required information concerning the number of its employees;
- (c) Sign its bid, but only if—

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

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

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

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

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

- (e) Execute the representations with respect to Equal Opportunity and Affirmative Action Programs, as set forth in the clauses at [52.222-22](#), Previous Contracts and Compliance Reports, and [52.222-25](#), Affirmative Action Compliance.

14.406 Receipt of an unreadable electronic bid.

If a bid received at the Government facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the invitation for bids cannot be ascertained,

the contracting officer immediately shall notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence—

- (a) Of the content of the bid as originally submitted; and
- (b) That the unreadable condition of the bid was caused by Government software or hardware error, malfunction, or other Government mishandling.

14.407 Mistakes in bids.

14.407-1 General.

After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this section [14.407](#). Such actions shall be taken before award.

14.407-2 Apparent clerical mistakes.

(a) Any clerical mistake, apparent on its face in the bid, may be corrected by the contracting officer before award. The contracting officer first shall obtain from the bidder a verification of the bid intended. Examples of apparent mistakes are—

- (1) Obvious misplacement of a decimal point;
- (2) Obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);
- (3) Obvious reversal of the price f.o.b. destination and price f.o.b. origin; and
- (4) Obvious mistake in designation of unit.

(b) Correction of the bid shall be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.

(c) Correction of bids submitted by electronic data interchange shall be effected by including in the electronic solicitation file the original bid, the verification request, and the bid verification.

14.407-3 Other mistakes disclosed before award.

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

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

(b) If—

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A signed copy of the bid involved.

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

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

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

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

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

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

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

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

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

(F) Any additional pertinent evidence; and

(G) A recommendation that either the bid be considered for award in the form submitted, or the bidder be authorized to withdraw or modify the bid.

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

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

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

14.407-4 Mistakes after award.

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

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

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

(1) To rescind a contract;

(2) To reform a contract—

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

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

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

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

(1) Mutual; or

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

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

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

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

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

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

14.408 Award.

14.408-1 General.

(a) The contracting officer shall make a contract award (1) by written or electronic notice, (2) within the time for acceptance specified in the bid or an extension (see [14.404-1\(d\)](#)), and (3) to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only price and the price-related factors (see [14.201-8](#)) included in the invitation. Award shall not be made until all required approvals have been obtained and the award otherwise conforms with [14.103-2](#).

(b) If less than three bids have been received, the contracting officer shall examine the situation to ascertain the reasons for the small number of responses. Award shall be made notwithstanding the limited number of bids. However, the contracting officer shall initiate, if appropriate, corrective action

to increase competition in future solicitations for the same or similar items, and include a notation of such action in the records of the invitation for bids (see [14.204](#)).

(c)(1) Award shall be made by mailing or otherwise furnishing a properly executed award document to the successful bidder.

(2) When a notice of award is issued, it shall be followed as soon as possible by the formal award.

(3) When more than one award results from any single invitation for bids, separate award documents shall be suitably numbered and executed.

(4) When an award is made to a bidder for less than all of the items that may be awarded to that bidder and additional items are being withheld for subsequent award, the award shall state that the Government may make subsequent awards on those additional items within the bid acceptance period.

(5) All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document. The award is an acceptance of the bid, and the bid and the award constitute the contract.

(d)(1) Award is generally made by using the Award portion of [Standard Form \(SF\) 33](#), Solicitation, Offer, and Award, or [SF 1447](#), Solicitation/Contract (see [53.214](#)). If an offer from a [SF 33](#) leads to further changes, the resulting contract shall be prepared as a bilateral document on [SF 26](#), Award/Contract.

(2) Use of the Award portion of [SF 33](#), [SF 26](#), or [SF 1447](#), does not preclude the additional use of informal documents, including electronic communications, as notices of awards.

14.408-2 Responsible bidder—reasonableness of price.

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

(b) The price analysis shall consider whether bids are materially unbalanced (see [15.404-1\(g\)](#)).

14.408-3 Prompt payment discounts.

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

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

14.408-4 Economic price adjustment.

(a) Bidder proposes economic price adjustment.

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

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

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

(b) Government proposes economic price adjustment.

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

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

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

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

14.408-5 [Reserved]

14.408-6 Equal low bids.

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

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

(2) Other small business concerns.

(3) Other business concerns.

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

(c) When an award is to be made by using the priorities under this [14.408-6](#), the contracting officer shall include a written agreement in the contract that the contractor will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.

14.408-7 Documentation of award.

(a) The contracting officer shall document compliance with [14.103-2](#) in the contract file.

(b) The documentation shall either state that the accepted bid was the lowest bid received, or list all lower bids with reasons for their rejection in sufficient detail to justify the award.

(c) When an award is made after receipt of equal low bids, the documentation shall describe how the tie was broken.

14.408-8 Protests against award.

(See [Subpart 33.1](#), Protests.)

14.409 Information to bidders.

14.409-1 Award of unclassified contracts.

(a)(1) The contracting officer shall as a minimum (subject to any restrictions in [Subpart 9.4](#))—

(i) Notify each unsuccessful bidder in writing or electronically within 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;

(ii) Extend appreciation for the interest the unsuccessful bidder has shown in submitting a bid; and

(iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

(2) For acquisitions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see [25.408\(a\)\(5\)](#)), agencies must include in notices given unsuccessful bidders from World Trade Organization Government Procurement Agreement or Free Trade Agreement countries—

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

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

(b) Information included in paragraph (a)(2) of this subsection shall be provided to any unsuccessful bidder upon request except when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office. In such circumstances, only information concerning location of the abstract of offers need be given.

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

(d) Requests for records shall be governed by agency regulations implementing [Subpart 24.2](#).

14.409-2 Award of classified contracts.

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

< PREV

NEXT >