

**§ 101-45.804**

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(3) Where the bidder furnishes evidence in support of an alleged mistake, the case shall be referred to the appropriate authority together with the following data:

(i) All evidence furnished by the bidder.

(ii) A copy of the bid and the invitation for bids.

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

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

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

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

(c) Most recent contract price for a like item(s) involved, when sold, in what quantity, relative condition, etc.;

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

(e) Any additional evidence considered pertinent, including copies of all correspondence between the sales contracting officer and the bidder concerning the alleged mistake; and

(f) The course of action with respect to the bid that the sales contracting officer considers proper on the basis of the evidence.

(4) When time is of the essence, because of the expiration of bids or otherwise, the sales contracting officer may refer the case by telegraph or telephone to the designated authority. Ordinarily, however, sales contracting officers will not refer mistake in bid cases to the designated authority by telegraph or telephone, particularly when the determinations set forth in paragraphs (a)(2) and (3) of this §101-45.803 are applicable, since actual examination of the evidence is generally necessary to determine the proper action to be taken.

(5) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the sales contracting officer shall consider the bid as submitted unless there are indications of error so clear as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders, in which case it may be rejected. This action will be cleared through counsel serving the cognizant sales contracting

officer. The attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(e) Nothing contained in this §101-45.803 shall deprive the Comptroller General of his statutory right to question the correctness of any administrative determination made hereunder nor deprive any bidder of his right to have the matter determined by the Comptroller General should he so request. All doubtful cases shall be submitted to the Comptroller General for advance decision in accordance with agency procedures.

(f) Each agency shall maintain records of all administrative determinations made in accordance with this §101-45.803, the facts involved, and the action taken in each case. Copies of all such administrative determinations shall be included in the case file. Where a contract is awarded, the General Accounting Office copy of the contract, whenever filed, shall be accompanied by a signed copy of any related determination.

[32 FR 16270, Nov. 29, 1967, as amended at 42 FR 31455, June 21, 1977; 42 FR 34881, July 7, 1977]

**§101-45.804 Mistakes disclosed after award.**

(a) When a mistake in bid is not discovered until after the award, the mistake may be corrected by supplemental agreement if correcting the mistake would make the contract more favorable to the Government without changing the essential requirements of the contract.

(b) In addition to the cases contemplated in §101-45.804(a), heads of executive agencies are authorized, under the circumstances set forth in §101-45.804(c), to make the administrative determinations described below in connection with mistakes in bids alleged or disclosed after award. This authority is in addition to that provided by Public Law 85-804 (50 U.S.C. 1431-1435) or that which may be otherwise available.

(1) A contract may be rescinded in its entirety where the original total contract amount does not exceed \$10,000.

(2) A contract, irrespective of amount, may be reformed (i) by deleting the item or items involved in the mistake where the deletion does not reduce the contract amount by more than \$10,000; or (ii) by decreasing the price where the resultant decrease in price does not exceed \$10,000 and the reformed contract price is not less than that of the otherwise next high bid under the original invitation for bids.

(c) Determinations under §101-45.804(b) may be made only on the basis of clear and convincing evidence that a mistake in bid was made, and either that the mistake was mutual or that the unilateral mistake made by the purchaser was so apparent as to have charged the sales contracting officer with notice of the probability of the mistake. If the evidence does not warrant a determination under paragraph (b)(1) or (2) of this §101-45.804, determination may be made that no change shall be made in the contract as awarded.

(d) Heads of executive agencies may delegate to one central authority in their agencies, without power of redelegation, authority to make the determinations under this §101-45.804.

(e) Each proposed determination shall be approved by the agency's General Counsel, Deputy or Associate General Counsel, an Assistant General Counsel, or other comparable legal officer.

(f) Mistakes disclosed after award shall be processed as follows:

(1) Whenever a mistake in bid is alleged or disclosed after award, the sales contracting officer shall advise the purchaser to support the alleged error by written statements and by all pertinent evidence, such as the purchaser's file copy of the bid, his original worksheets and other data used in preparing the bid, and any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended.

(2) Where the purchaser furnishes evidence in support of an alleged mistake, the case shall be referred to the appropriate authority together with the following data:

(i) All evidence furnished by the purchaser.

(ii) A copy of the contract, including a copy of the bid.

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

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

(a) Specific information as to how and when the mistake was alleged or disclosed;

(b) A summary of the evidence submitted by the purchaser;

(c) His opinion whether a bona fide mistake was made in the bid and whether he was, or should have been, on constructive notice of the mistake before the award, together with the reasons or data upon which his opinion is based;

(d) Most recent contract price for a like item(s) involved, when sold, in what quantity, relative condition, etc.;

(e) Any additional evidence considered pertinent, including copies of all relevant correspondence between the sales contracting officer and the purchaser concerning the alleged mistake;

(f) The course of action with respect to the alleged mistake that the sales contracting officer considers proper on the basis of the evidence; and

(g) The status of performance and payments under the contract, including contemplated performance and payments.

(g) Nothing contained in this §101-45.804 shall deprive the Comptroller General of his statutory right to question the correctness of any administrative determination made hereunder nor deprive any purchaser of his right to have the matter determined by the Comptroller General should he so request.

(h) Each agency shall maintain records of all administrative determinations made in accordance with this §101-45.804, the facts involved, and the action taken in each case. A copy of the determination shall be attached to each copy of any contract rescission or reformation resulting therefrom.

(i) Where administrative determination is precluded by the limitations set forth in this section, the matter will be submitted to the Comptroller General for decision in accordance with agency procedures.

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(j) Nothing contained in this §101-45.804 prevents an agency from submitting doubtful cases to the Comptroller General.

[32 FR 16270, Nov. 29, 1967, as amended at 40 FR 59439, Dec. 24, 1975]

### § 101-45.805 Mistakes disclosed after award in negotiated sales.

When a mistake in a purchaser's quotation is not discovered until after award, the authority to correct mistakes contained in this subpart 101-45.8 may be utilized in accordance with the limitations and procedures set forth herein.

[35 FR 12121, July 29, 1970]

## Subpart 101-45.9—Abandonment or Destruction of Personal Property

SOURCE: 53 FR 16122, May 5, 1988, unless otherwise noted.

### § 101-45.900 Scope of part.

This subpart prescribes the policies and methods governing the disposition of personal property by abandonment or destruction by executive agencies and by a State agency. Additional guidelines regarding the abandonment or destruction of hazardous materials are prescribed in part 101-42.

[57 FR 39137, Aug. 28, 1992]

### § 101-45.901 Authority to abandon or destroy.

Property may be abandoned or destroyed by an executive agency in accordance with this subpart when a written determination is made by a duly authorized official that the property has no commercial value, or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, except that:

(a) No abandonment or destruction shall be made in a manner which is detrimental or dangerous to public health or safety, or which will cause infringement of the rights of other persons.

(b) In accordance with §101-44.205(k), a State agency is required to notify the appropriate GSA regional office before taking any abandonment or destruction action. The notification shall in-

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clude a detailed and accurate description of the property and its condition. If the GSA regional office does not contact the State agency within 30 calendar days, the property may be disposed of under this subpart.

(c) If at any time prior to the actual abandonment or destruction, donation becomes feasible, such procedures will be implemented.

### § 101-45.902 Findings justifying abandonment or destruction.

#### § 101-45.902-1 Notice of proposed abandonment or destruction.

Public notice of intent to abandon or destroy property shall be given, except as noted in §101-45.902-2. Included in the notice shall be an offer to sell in accordance with §101-45.304-2. Such public notice shall be provided in a local newspaper and/or through the posting of signs in one or more common use facilities available to the public. Specific format or timeframe for advertising shall be in accordance with holding agency regulations.

#### § 101-45.902-2 Abandonment or destruction without notice.

(a) Property may be abandoned or destroyed, without public notice, by an executive agency upon a written finding by an authorized official that was approved by a reviewing official who is not directly accountable for the property, that:

(1) The value of the property is so little or the cost of its care and handling is so great that its retention for advertising for sale, even as scrap, is clearly not economical; or

(2) Abandonment or destruction is required because of health, safety, or security reasons.

(b) Any item of property with an original cost (estimated if unknown) of less than \$500 shall normally be considered for abandonment or destruction, without public notice, due to the expense and difficulty of care and handling, such as used or obsolete charts, electric light bulbs, radio tubes, and resistors.