

IS A GOVERNMENT CONTRACT FORMED WHEN THE CONTRACTOR RECEIVES A “NOTICE OF AWARD”?

Copyright 2026 Richard D. Lieberman, Consultant & Retired Attorney

You submitted your offer (either a bid or a proposal) to the government agency that issued the solicitation. Instead of receiving a contract to sign, you receive a “Notice of Award” from the contracting officer (the only person in the Federal Acquisition Regulation authorized to sign a contract). Do you have a contract or not? The simple answer is “yes,” the notice of award seals the bargain and forms a contract together with your offer. Even if the contracting officer sends you a complete contract later and requests your signature and the return of the signed copy, this is merely a formality. The contracting officer is not allowed to make changes from the offer that you submitted in response to the solicitation when he or she requests your signature on the complete copy of the contract.

The simple fact is that the letter “Notice of Award” is an effective official written document that is in compliance with the method for making award described in Standard Form 33, “Solicitation, Offer and Award.” The last line of Form 33 states: **“Important-Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.”**

The Government Accountability Office has taken the position that the Government’s written acceptance of an offer is effective on the date *it is placed in the mail*. See B-179371, Feb. 25, 1974. The placement in the mail is consistent with the idea of the “mailbox rule” that has been in existence for a long time in contract law. But once this has taken place, only three caveats remain. They are: (1) The solicitation responded to in the offer, and the acceptance by the government must encompass all the essential elements of a contract; (2) the notice of award must be signed by a person authorized to sign (i.e. a contracting officer) and (3) it is not voidable because it is tainted with illegality due to the violation of statutes or regulations having the force and effect of law. (For example, if the agency lacks the funds necessary but makes the award anyway, there is a likely violation of the Anti-Deficiency Act. Other improper things might be collusive bids or other violations of laws relating to competitive bids).

Takeaway. As previously stated, the Notice of Award cannot include terms and conditions (including price, quality and quantity) that are materially different those which were negotiated by the parties, for example, during discussions between the parties. Where that happens, the Notice of Award will not form the contract, rather it will serve as a counter-offer by the government that must be accepted by the offeror in order for a contract to come into existence. See, e.g. *Data Gen. Corp.*, ASBCA No. 22568, 79-2 BCA ¶ 14185 (1979), where the contractor’s offer specified it would supply the contractor’s standard product produced to Data General’s specification. The Government’s specification, included in the Notice of Award, required a two hour “data save” function which was not included in the contractor’s offer. The contractor never expressed acceptance of this counter-offer, and the Board, in the case cited, held that no valid contract had ever come into existence.

For other helpful suggestions on government contracting, visit:

Richard D. Lieberman's FAR Consulting & Training
at <https://www.richarddlieberman.com/>, and **Mistakes in Government Contracting**
at <https://richarddlieberman.wixsite.com/mistakes>.