

# UNIT 27: MISTAKES IN BIDS

*October 2003*

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**Overall Duty** Identify and resolve mistakes in bids.

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**Overall Conditions** Given acquisition planning and an invitation for bids.

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**Overall Standard** All bids selected for award are free of substantial mistakes that would diminish the Government's ability to accept the bid or enforce the resulting contract, or prejudice the rights of bidders whose bids are fully responsive. A bidder with a suspected or alleged mistake is not given a chance to substantively modify its bid.

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## **Part A: Preaward Mistakes in Bids**

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**Sub-Duty** Identify and resolve preaward mistakes in bids.

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**Additional Conditions** A bid with suspected or alleged mistake(s) prior to contract award.

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**Sub-Duty Standard** All bids selected for award are free of substantial mistakes that would diminish the Government's ability to accept the bid or enforce the resulting contract, or prejudice the rights of bidders whose bids are fully responsive. A bidder with a suspected or alleged mistake is not given a chance to substantively modify its bid to improve its chance of winning contract award.

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# UNIT 27: MISTAKES IN BIDS

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## Part B: Mistakes After Award

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**Sub-Duty** Identify and resolve post-award mistakes in bids.<sup>1</sup>

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**Additional Conditions** A mistake in bid suspected or alleged after contract award.

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**Sub-Duty Standard** After contract award, if there is clear and convincing evidence of a mistake in bid, correct the mistake when the correction favors the Government and the correcting the mistake will not change the essential characteristics of the contract. Consider rescinding or reforming the contract when a mistake does not favor the Government but is mutual or so apparent that the Contracting Officer should have noticed the probability of a mistake prior to contract award.

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<sup>1</sup> Note that the procedures for resolving mistakes in proposals after contract award are the same as for resolving mistakes in bid after award.

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## Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
14.407 - 4		Mistakes in bids.
15.508		Discovery of mistakes after award.

## Other KSAs

1. Knowledge of contract law on matters related to assent, including such issues as unilateral mistakes, mutual mistakes, misrepresentation, nondisclosure, fraud, duress, and related remedies.
2. Skill in analyzing and determining the credibility of the contractor's clear and convincing evidence submitted to support an alleged mistake.
3. Ability to thoroughly review available information to identify an apparent mistake.
4. Ability to interpret information provided in bids.
5. Ability to communicate with bidders orally and in writing on issues relating to an apparent or alleged mistake.
6. Ability to tolerate the stress inherent in resolving conflicting views on an apparent or alleged mistake.
7. Ability to demonstrate courtesy and tact in resolving conflicting views on an apparent or alleged mistake.
8. Ability to remain open to changing an opinion about an apparent or alleged mistake based on new information.
9. Ability to identify information that explains an apparent or alleged mistake.
10. Ability to maintain the honesty and integrity of the acquisition process.

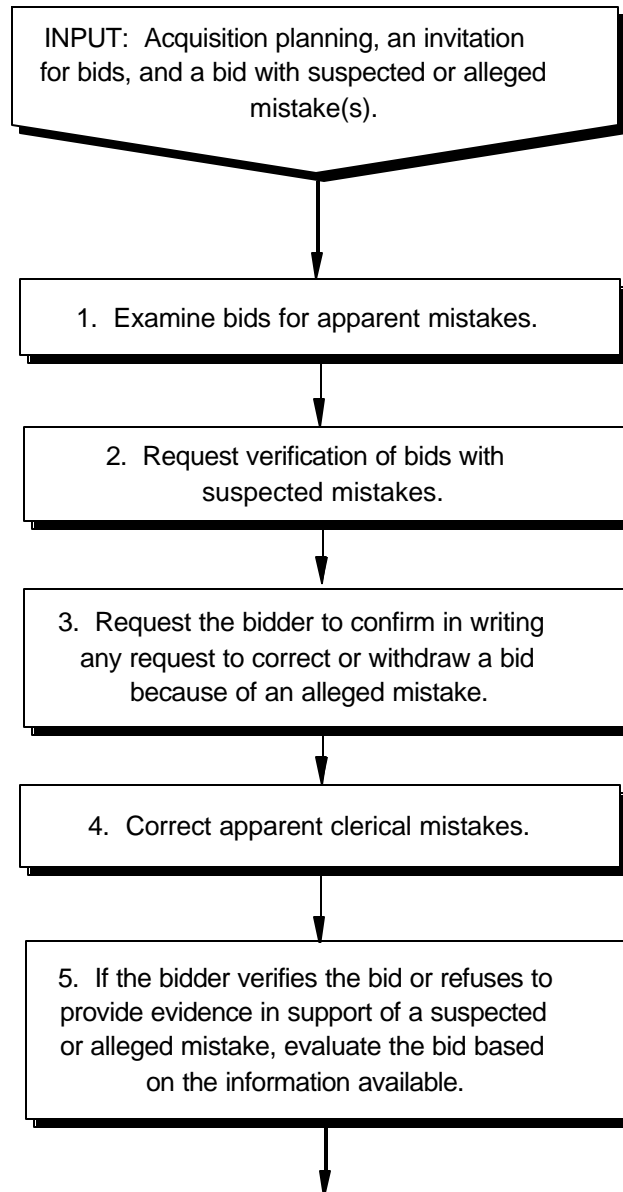
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**Other Policies and References (Annotate As Necessary):**

# UNIT 27: MISTAKES IN BIDS

## Part A: Preaward Mistakes In Bids

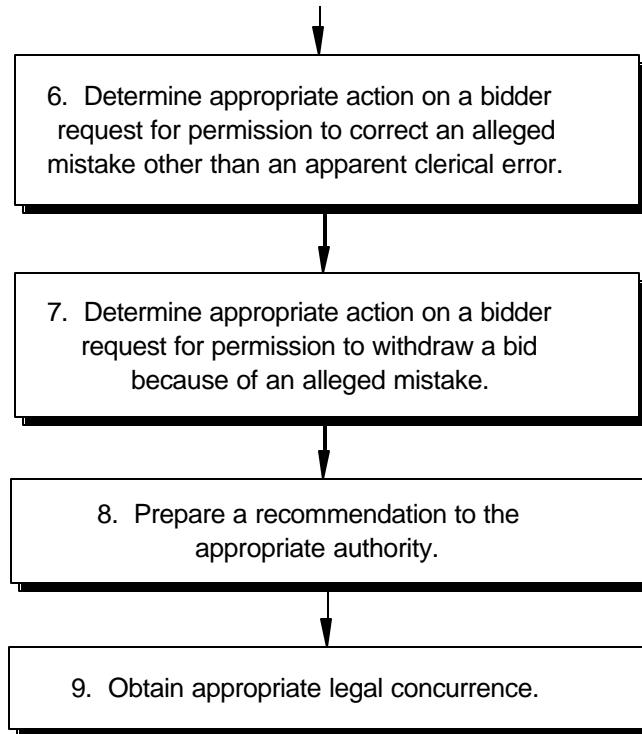
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# UNIT 27: MISTAKES IN BIDS

## Part A: Preaward Mistakes In Bids

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# UNIT 27: MISTAKES IN BIDS

## Part A: Preaward Mistakes In Bids

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Tasks	Related Standards
1. Examine bids for apparent mistakes.	<p>Examine bids to identify:</p> <ul style="list-style-type: none"><li>• Apparent clerical mistakes, such as:<ul style="list-style-type: none"><li>- Obvious misplacement of a decimal point;</li><li>- Obviously incorrect discounts (e.g., 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);</li><li>- Obvious reversal of the price f.o.b. destination and price f.o.b. origin; and</li><li>- Obvious mistake in designation of unit.</li></ul></li><li>• Other apparent mistakes (e.g., extremely low or high price relative to other bids and the Government's estimate).</li></ul>
2. Request verification of bids with suspected mistakes.	<p>If the bid review identified an apparent mistake, immediately request bidder verification of the bid as intended.</p> <ul style="list-style-type: none"><li>• The request must be sufficient to:<ul style="list-style-type: none"><li>- Reasonably assure that the bid as confirmed is without error; or</li><li>- Elicit the allegation of a mistake by the bidder.</li></ul></li><li>• Advise the bidder as appropriate:<ul style="list-style-type: none"><li>- That its bid is so much lower than the other bids or the Government's estimate as to indicate a possibility of error;</li><li>- Of important or unusual characteristics of the specifications;</li><li>- Of changes in requirements from previous purchases of a similar item; or</li><li>- Of any other information, proper for disclosure, that leads to the belief that there is a mistake in bid.</li></ul></li><li>• Request that the bidder respond in writing, either:<ul style="list-style-type: none"><li>- Verifying the bid as written; or</li><li>- Alleging a mistake and requesting permission to either:<ul style="list-style-type: none"><li>▪ Correct the bid to the bid intended; or</li><li>▪ Withdraw the bid.</li></ul></li></ul></li></ul>

# UNIT 27: MISTAKES IN BIDS

## Part A: Preaward Mistakes In Bids

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Tasks	Related Standards
3. Request the bidder to confirm in writing any request to correct or withdraw a bid because of an alleged mistake.	<p>Request the bidder to:</p> <ul style="list-style-type: none"><li>• Provide evidence of the mistake and the bid intended. Evidence might include:<ul style="list-style-type: none"><li>- Certified copies of work papers and other data used in preparing the bid;</li><li>- Copies of subcontractor or supplier quotes;</li><li>- Published price lists;</li><li>- Comparison with other line items; or</li><li>- Comparison with previous bids.</li></ul></li><li>• State in writing whether the firm requests permission to:<ul style="list-style-type: none"><li>- Correct the bid to the bid intended; or</li><li>- Withdraw the bid.</li></ul></li></ul>
4. Correct apparent clerical mistakes.	<p>Any clerical mistake, apparent on its face in the bid, may be corrected before award.</p> <p>If the bidder identifies or confirms an apparent clerical mistake:</p> <ul style="list-style-type: none"><li>• Correct the bid by attaching the verification to the original bid and a copy of the verification to the duplicate bid.</li><li>• Never correct the face of the bid.</li><li>• Reflect the correction in the award document.</li></ul> <p>Correct bids submitted by electronic data interchange by including in the electronic solicitation file the:</p> <ul style="list-style-type: none"><li>• Original bid,</li><li>• Verification request, and</li><li>• Bid verification.</li></ul>

# UNIT 27: MISTAKES IN BIDS

## Part A: Preaward Mistakes In Bids

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### Tasks

### Related Standards

5. If the bidder verifies the bid or refuses to provide evidence in support of a suspected or alleged mistake, evaluate the bid based on the information available.

Consider the bid as submitted unless a conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders is justified because:

- The amount of the bid is so far out of line with the amount(s):
  - Of other bid(s) received;
  - Estimated by the agency; or
  - Determined by the Contracting Officer to be reasonable; or
- There are other clear indications of error that reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders.

Fully document attempts made to obtain the information required and the action taken with respect to the bid.



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## Part A: Preaward Mistakes In Bids

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Tasks	Related Standards
6. Determine appropriate action on a bidder request for permission to correct an alleged mistake other than an apparent clerical error.	<p>An agency head may make a determination permitting the bidder to correct an alleged mistake if the correction would:</p> <ul style="list-style-type: none"><li>• Not result in displacing a lower bid and there is clear and convincing evidence of the mistake and the bid actually intended; or</li><li>• Result in displacing one or more lower bids and the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself.</li></ul> <p>Unless otherwise provided by agency procedures, an official above the Contracting Officer may make a determination permitting the bidder to withdraw the bid if the:</p> <ul style="list-style-type: none"><li>• Evidence of a mistake is clear and convincing only as to the mistake but not as to the intended bid; or</li><li>• Evidence reasonably supports the existence of a mistake but is not clear and convincing,</li></ul> <p>If the evidence does not warrant permission to correct or withdraw the bid, the agency head may make a determination that the bid be neither withdrawn nor corrected.</p>

# UNIT 27: MISTAKES IN BIDS

## Part A: Preaward Mistakes In Bids

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### Tasks

### Related Standards

<p>7. Determine appropriate action on a bidder request for permission to withdraw a bid because of an alleged mistake.</p>	<p>If the bidder requests permission to withdraw a bid because of an alleged mistake:</p> <ul style="list-style-type: none"><li>• Unless otherwise provided by agency procedures, an official above the Contracting Officer may make a determination permitting the bidder to withdraw the bid if the:<ul style="list-style-type: none"><li>- Evidence of a mistake is clear and convincing only as to the mistake but not as to the intended bid; or</li><li>- Evidence reasonably supports the existence of a mistake but is not clear and convincing.</li></ul></li><li>• The agency head may make a determination to correct the bid and not permit its withdrawal if the:<ul style="list-style-type: none"><li>- Evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended; and</li><li>- Bid, both as uncorrected and as corrected, is the lowest received.</li></ul></li></ul>
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# UNIT 27: MISTAKES IN BIDS

## Part A: Preaward Mistakes In Bids

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Tasks	Related Standards
<p>8. Prepare a recommendation to the appropriate authority.</p>	<p>When the bidder furnishes evidence supporting an alleged mistake, refer the case to the appropriate authority together with the following data:</p> <ul style="list-style-type: none"><li>• A signed copy of the bid involved.</li><li>• A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake.</li><li>• An abstract or record of the bids received.</li><li>• The written request by the bidder to withdraw or modify the bid, together with the bidder's written statement and supporting evidence.</li><li>• A written statement by the Contracting Officer setting forth:<ul style="list-style-type: none"><li>- A description of the supplies or services involved;</li><li>- The expiration date of the bid in question and of the other bids submitted;</li><li>- Specific information as to how and when the mistake was alleged;</li><li>- A summary of the evidence submitted by the bidder;</li><li>- 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;</li><li>- Any additional pertinent evidence; and</li><li>- 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.</li></ul></li></ul> <p>When time is of the essence, the case may be referred by telegraph or telephone. Normally, do not refer a case by telegraph or telephone when actual examination of the file is necessary to determine whether the evidence presented is clear and convincing.</p>

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## Part A: Preaward Mistakes In Bids

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### Tasks

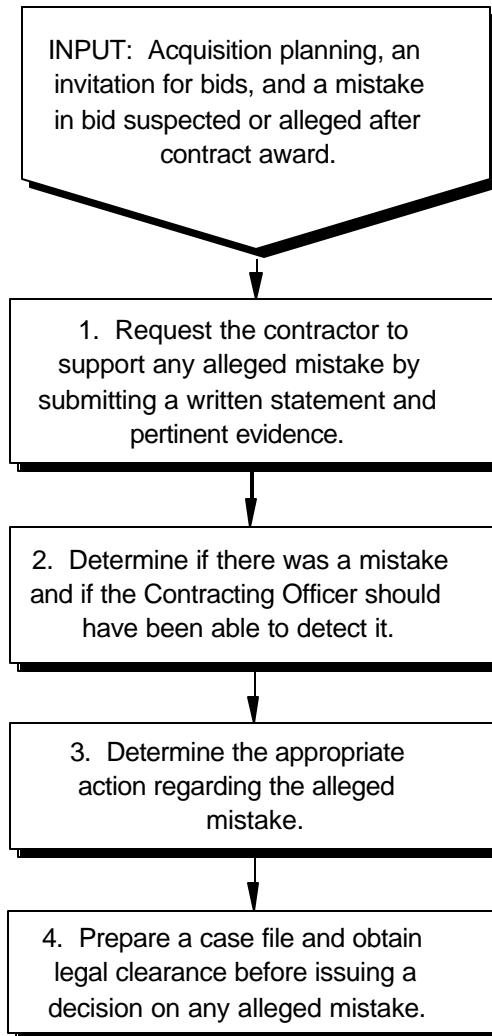
### Related Standards

9. Obtain appropriate legal concurrence.	Assure that legal concurrence within the agency is obtained before any determination is released.
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# UNIT 27: MISTAKES IN BIDS

## Part B: Mistakes After Award

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# UNIT 27: MISTAKES IN BIDS

## Part B: Mistakes After Award

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Tasks	Related Standards
1. Request the contractor to support any alleged mistake by submitting a written statement and pertinent evidence.	Request the contractor to provide a written statement concerning an alleged mistake, how it occurred, and the bid actually intended. Pertinent evidence should include information, such as: <ul style="list-style-type: none"><li>• The contractor's file copy of the bid;</li><li>• The contractor's original worksheets and other data used in preparing the bid;</li><li>• Subcontractors' and suppliers' quotations, if any;</li><li>• Relevant published price lists; and</li><li>• Any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended.</li></ul>
2. Determine if there was a mistake and if the Contracting Officer should have been able to detect it.	Determine if there is clear and convincing evidence that: <ul style="list-style-type: none"><li>• A mistake was made; and</li><li>• The mistake was:<ul style="list-style-type: none"><li>- Mutual; or</li><li>- If unilaterally made by the contractor, so apparent that the Contracting Officer should have noticed the probability of the mistake.</li></ul></li></ul>

# UNIT 27: MISTAKES IN BIDS

## Part B: Mistakes After Award

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Tasks	Related Standards
3. Determine the appropriate action regarding the alleged mistake.	<p>If there is no clear and convincing evidence of a mistake, take no contract action.</p> <p>If there is clear and convincing evidence of a mistake:</p> <ul style="list-style-type: none"><li>• Correct it when:<ul style="list-style-type: none"><li>- Such action is favorable to the Government; and</li><li>- It can be done without changing the essential contract requirements.</li></ul></li><li>• Never take contract action when:<ul style="list-style-type: none"><li>- Correcting the mistake would not be favorable to the Government; and</li><li>- The evidence does not warrant a determination that the mistake was:<ul style="list-style-type: none"><li>? Mutual; or</li><li>? If unilaterally made, so apparent that the Contracting Officer should have noticed the probability of a mistake.</li></ul></li></ul></li><li>• Consider rescinding or reforming the contract when:<ul style="list-style-type: none"><li>- Correcting the mistake would not be favorable to the Government;</li><li>- The evidence warrants a determination that the mistake was:<ul style="list-style-type: none"><li>? Mutual; or</li><li>? If unilaterally made, so apparent that the Contracting Officer should have noticed the probability of a mistake; and</li></ul></li><li>- The contract can be:<ul style="list-style-type: none"><li>? Rescinded; or</li><li>? Reformed to:<ul style="list-style-type: none"><li>? Delete the items involved in the mistake</li><li>? Increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original solicitation.</li></ul></li></ul></li></ul></li></ul>

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## Part B: Mistakes After Award

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Tasks	Related Standards
<p>4. Prepare a case file and obtain legal clearance before issuing a decision on any alleged mistake.</p>	<p>The case file must contain the following:</p> <ul style="list-style-type: none"><li>• All evidence furnished by the contractor in support of the alleged mistake.</li><li>• A signed statement by the Contracting Officer:<ul style="list-style-type: none"><li>- Describing the supplies or services involved;</li><li>- Specifying how and when the mistake was alleged or disclosed;</li><li>- Summarizing the evidence submitted by the contractor and other pertinent evidence;</li><li>- Quoting, where only one bid was received:<ul style="list-style-type: none"><li>? The most recent contract price for the supplies or services involved; or</li><li>? Other estimate of a fair price;</li></ul></li><li>- Setting forth the Contracting Officer's opinion whether there was a bona fide mistake and whether the Contracting Officer was, or should have been, on constructive notice of the mistake before the award, together with support for that opinion;</li><li>- 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 necessary the manner by which the supplies or services will otherwise be acquired; and</li><li>- Disclosing the status of performance and payments under the contract, including contemplated performance and payments.</li></ul></li><li>• A signed copy of the bid involved.</li><li>• A copy of the invitation for bids and any relevant specifications or drawings.</li><li>• An abstract or written record of the bids.</li><li>• 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.</li><li>• A copy of the contract and any related change orders or supplemental agreements.</li></ul>