

FISCAL YEAR 2005

REPETITIVE OR SIGNIFICANT

FINDINGS OF THE

NIH BOARD OF

CONTRACT AWARDS

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REPETITIVE OR SIGNIFICANT FINDINGS OF THE NIH BOARD OF CONTRACT
AWARDS

CONTRACT TYPE (CT)

- Failure to describe the factors used in selecting the CT in the Request for Contract/ Acquisition Plan (RFC/AP). *See FAR 7.105(b)(4)*.
- The RFC did not include a discussion regarding the consideration of cost-sharing. *See HHSAR 335.070-1(b)*.

INDEFINITE-DELIVERY-INDEFINITE QUANTITY (IDIQ) *See FAR 16.504 and NIH Policy Manual Chapter 6016-2, Task and Delivery Order Contracting.*

- The SOW guaranteed all contractors at least one award during the period of performance. This conflicts with the policy to compete all task orders.
- A sample or real task order must be included in the solicitation based on numerous Comptroller General Decisions.
- Failure to include all of the information pertaining to the Task and Delivery Order Ombudsmen in the solicitation/contract.
- Failure to include the ordering information in the solicitation/contract as required by FAR 16.505(a)(6).
- Minimum and maximum dollar amounts were not specified in the solicitation.
- The basis for minimum and maximum amounts was not documented in the file.
- Failure to include a Period of Performance.

INTERNAL REVIEWS (IR)

See NIH Policy Manual Chapter 6304.71-Presolicitation and Preaward Review & Approval of Proposed Contract Actions.

- There was no evidence that an IR was performed by a person other than the contract specialist responsible for drafting the documents prior to submitting the files to the NIH Board of Contract Awards.
- There was no explanation why the recommendations resulting from the IR were not acted upon prior to the submission to the NIH Board of Contract Awards.

OPTIONS

- The file did not contain the required D&F to evaluation options (FAR 17.205).
- The solicitation did not offer any explanation on the treatment of the numerous options for source selection purposes.
- The award document did not reflect the value of all option years.
- Inappropriate use of options where there was no SOW and offerors did not submit a cost proposal.
- The contract failed to include the period of time within which the CO may exercise the option.
- The contract places a restriction on the amount of escalation that the offeror may propose for the option years. The rationale for doing so was not included in the file.

PAST PERFORMANCE (PP)

- The rationale for not evaluating PP as a standalone factor is not provided in the document (*FAR 15.304 (c)(iv)*).
- The solicitation failed to include complete information on the contractor's right to rebuttal of evaluations received.

PERFORMANCE BASED ACQUISITION (PBA)

- The rationale for not using PBA methods was not provided in the RFC/AP. *See FAR 7.105(b)(4) and HHSAR 307.7105(a)(4)*.
- The rationale for use of a performance-based contract for services on other than a firm fixed price basis was not included in the file. *See FAR 7.105 (b)(4) and FAR 37.102(a)*.
- Both the RFC and solicitation failed to include performance incentives. *See HHSAR 307.7105(a)(4)*.
- Although labeled a performance-based acquisition, the SOW appears to specify how the Contractor shall accomplish the work rather than what needs to be accomplished.

PREAWARD DOCUMENTATION

- File documentation failed to discuss the handling of late proposals.
- Failure to include any conclusion about cost reasonableness or explain cost differences between offerors in the Competitive Range.

- The rationale used to make funding decisions was not documented in the SON.
- Failure to issue preaward notification to unsuccessful offerors under a small business set-aside (*FAR 15.503*).

Cost/Price Analysis

- Failure to document the resolution of the PO's concern on the levels of staffing.
- Failure to document the actual cost comparison in the SON. The SON stated that costs compared favorably to "other mechanisms for similar services" without displaying the comparison or identifying the other mechanisms.
- Failure to obtain supporting documentation to support costs (direct labor rates, historical salary increases, and materials and supplies).
- Failure to include and use the most recent Indirect Cost Rate Agreement in the file for the contractor and multiple subcontractors.
- Failure to explain in the SON how the negotiated amounts were established.
- Failure to obtain enough information other than Cost or Pricing Data (C/PD) to support a determination of cost realism. *See FAR 15.403-3*.
- Failure to use rates recommended by DFAS.
- A Certificate of Current C/PD was in the file, although the CO determined that negotiated prices were based on adequate price competition. *See FAR 15.403-1*.
- The Certificate of Current C/PD failed to reflect a date as close as possible to the date of the last negotiations.
- Failure to document how the proposed/negotiated escalation for options years and other costs were determined to be reasonable.
- It was unclear if salaries were compliant with the HHS salary rate limitation.

Incomplete File Documentation

- The file failed to document the required Project Officer training (*HHSAR 307.7105 (a)(7)*).
- The file did not include a copy of the sources sought announcement or the documented evaluation of the responses.

- File documents were unsigned (e.g., technical evaluation reports, funding documents, concept review minutes, and RFC/AP).
- The file failed to document that at least fifty percent of the in-house evaluation panel had successfully completed PO training (*HHSAR 307.170(b)*).
- The file failed to explain why the acquisition was not handled as R&D and subject to a peer review although language included in the contract might lead one to conclude it is an R&D acquisition.

Responsibility Determination (RD)

- Failure to include documentation or adequate documentation to support the RD (e.g., current financial statements, analysis of the financial statements, a review of Dun and Bradstreet (D&B) reports, or current/recent Balance Sheets). *See FAR 9.105-1.*

Source Selection Document (SSD)

- The SSD did not adequately document the rationale for the selection decision.
- The SSD presents the Project Officer's conclusion that the costs are fair and reasonable but that is the responsibility of the Contracting Officer. *See FAR 15-505-1(a) (1).*

PRESOLICITATION DOCUMENTATION

- The RFC/AP should discuss the determination to use negotiation vs. sealed bidding and why. *See FAR 7.105(b)(4).*
- Failure to perform and/or document Market Research (MR) activities to determine if commercial item or non-developmental services/products were available to meet the requirement. *See FAR 7.102 (a)(1), 10.002(b), 12.101(a), and NIH Policy Manual Chapter 6012/26012-1, Acquisition of Commercial Items.*
- The document did not address the applicability of the Service Contract Act (*FAR 22.1002*).
- The RFC/AP did not acknowledge the requirement for EEO clearance (*FAR 22.805*).
- The RFC/AP did not address if Government Furnished Property/Information is or is not available (*FAR 7.105(b)*).
- The RFC/AP labeled the project as non-R&D; however, the *FedBizOpps* announcement classified it as R&D.

SB Issues

- The solicitation included “Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns” after the program expired.
- HHS Form-653 failed to identify potential sources by size, type of ownership and mailing address (*HHSAR 307.7105(a)(6)*).
- The extent of participation of Small Disadvantaged Business (SDB) concerns in performance of the contract was not included as an evaluation factor (*FAR 19.1202-2*).
- The HHS Form 653 was not complete or omitted from the file.

Synopsizing

- Solicitations cannot be released until the required 15 day advance notice has expired (except for commercial item acquisitions). *See FAR 5.203(a)*.
- Synopses should include *FedBizOpps* Numbered Note 26 when, based on MR, FAR Part 12 is not applicable to the acquisition.
- The synopsis failed to include Numbered Note 1.
- The award file only contains a draft synopsis of the solicitation.
- The file did not include a copy of the sources sought synopsis.

SOLICITATIONS AND CONTRACTS

- The estimated start date of the contract should fall on or after award date.
- Use of outdated Representations and Certifications in the RFP.
- The solicitation/contract failed to address Information Technology Systems Security.
- Inappropriate inclusion of the Salary Rate Limitation in non R&D requirement.
- Failure to include articles or solicitation provisions in the appropriate Section. *See FAR 15.204-1 and the FAR Matrix*.
- Inconsistencies in the information provided in different sections of the solicitation, e.g., estimated level of effort Section L does not match that displayed in Section C.

- Inclusion of inapplicable articles, or FAR clauses and provisions; omission of applicable FAR, HHSAR, or NIH clauses or provisions; and use of outdated clauses/provisions/NCI Workform terms and conditions.

- Failure to eliminate solicitation language from the subsequent contract.

Section A

- Failure to complete all applicable blocks.

- Failure to include OMB No. 0990-0115 in the upper-right hand corner. *See HHSAR 301.106(b).*

Section C

- The contractor should submit the final report on or before the last day of the contract period as the business relationship with the contractor ends on that day.

- Inclusion of language referring to the contracting officer's "approval" of subcontract awards when FAR Part 44 only refers to consent.

Section F

- Failure to list all deliverables required by Section C.

- Failure to include a Period of Performance article.

Section L

- The projected award date is unrealistic and contradicts information in the RFC/AP.

Section M

- Failure to include cost or price as an evaluation factor. *See FAR 15.304(c)(1).*

- Failure to include the requirement for SDB Participation Plan.

- Inappropriate inclusion of SDB Participation Plan in a small business set-aside.

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LIST OF ACRONYMS

C/PD Cost or Pricing Data
CT Contract Type
D&B Dun and Bradstreet
DFAS Division of Financial Advisory Services
FedBizOpps Federal Business Opportunities
IDIQ Indefinite-Delivery-Indefinite-Quantity
IR Internal Review
MR Market Research
Non R&D Non-Research and Development
PBA Performance-Based Acquisition
PO Project Officer
PP Past Performance
R&D Research and Development
RD Responsibility Determination
RFC/AP Request for Contract/Acquisition Plan
SB Small Business
SON Summary of Negotiation
SOW Statement of Work
SSD Source Selection Document