

FINDINGS OF THE  
NIH BOARD OF CONTRACT AWARDS  
FISCAL YEAR 2003

## LIST OF ACRONYMS

AP	Acquisition Plan	TEC	Technical Evaluation Criteria
BAA	Broad Agency Announcement	TEP	Technical Evaluation Panel
CI	Commercial Item	TER	Technical Evaluation Reports
CO	Contracting Officer	TO	Task Order
C/PD	Cost or Pricing Data	WD	Wage Determination
CR	Cost-Reimbursement		
CRD	Competitive Range Determination		
D&F	Determination and Findings		
DBA	Davis-Bacon Act		
DCAA	Defense Contracting Audit Agency		
DCIS	Departmental Contracts Information System		
DFAS	Division of Financial Advisory Services		
DO	Delivery Order		
DOL	Department of Labor		
EEO	Equal Employment Opportunity		
FF	Fixed Fee		
FP	Fixed-Price		
FPR	Final Proposal Revisions		
FSS	Federal Supply Schedule		
FY	Fiscal Year		
GSA	General Services Administration		
ICR	Indirect Cost Rate		
ID	Indefinite-Delivery		
IDIQ	Indefinite-Delivery-Indefinite-Quantity		
IR	Internal Review		
IT	Information Technology		
IGCE	Independent Government Cost Estimate		
MC	Manual Chapter		
MQC	Mandatory Qualification Criteria		
MR	Market Research		
NAICS	North American Industry Classification System		
OGC	Office of General Counsel		
OMB	Office of Management and Budget		
PBSA	Performance-Based Service Acquisition		
PO	Project Officer		
PP	Past Performance		
QASP	Quality Assurance Surveillance Plan		
R&D	Research and Development		
RD	Responsibility Determination		
RFC	Request for Contract		
RFP	Request for Proposal		
SB	Small Business		
SCA	Service Contract Act		
SDB	Small Disadvantaged Business		
SON	Summary of Negotiation		
SOW	Statement of Work		
SP	Subcontracting Plans		

## **SUBSTANTIVE ISSUES**

- A. Awards must be based on all evaluation factors stated in the Request for Proposal (RFP), not on technical merits alone. [*FAR 15.304 - Award decisions must be based on the evaluation factors and significant subfactors in the RFP.*]
- B. Funds must be sufficient to cover the contract award. [*FAR 32.702. The Contracting Officer (CO) cannot create or authorize an obligation in excess of funds available.*]
- C. Contracts must be funded for the minimum amounts/quantities. [*Per Manual Chapter (MC) 6016-2, funds for the minimum must be obligated at the time of award. The Government Accountability Office requires the minimum amount to be obligated when the contract is executed (Principles of Federal Appropriations Law, Second Edition, Volume II, page 7-17)*][2 substantive comments, 2 advisory comments, and 2 post award review comments]
- D. If an Indefinite-Delivery-Indefinite-Quantity (IDIQ) contract is awarded on or near the end of the Fiscal Year (FY), the first Task Order (TO) must be placed and services must start on or before September 30 [3 comments]. Issuance of the first TO on or after October 1 using prior year funds would be a violation of statutory prohibitions pertaining to the bona fide needs rule. [*FAR 32.703-2*]
- E. Acceptable Subcontracting Plans (SP) must be negotiated and included in contracts in excess of \$500,000 (\$1 million for construction) with large business concerns. [*Awards cannot be made if acceptable SPs are not included in the contract per FAR 19.702 and MC 6016-2*][2 comments and 1 post award review comment.]
- F. Preaward Equal Employment Opportunity (EEO) Clearance must be obtained for contracts and subcontracts exceeding \$10 million (excluding construction). [*FAR 22.805 - The clearance also applies if the maximum per contract for multiple awards exceeds \$10 million (see FAR 1.108(c)). Except as provided in FAR 22.805(a)(4) and (a)(8), the Clearance must be obtained before award.*]
- G. Small Disadvantaged Business (SDB) Participation Plans were not obtained and evaluated from all offerors in a competitive and negotiated acquisition in excess of \$500,000 (\$1 million for construction). [*FAR 15.304(c)(4), 15.305 and 19.1202-2. Offerors were incorrectly informed that small businesses and SDBs did not have to submit plans, although the exceptions in FAR 19.1202-2(b) did not apply.*][1 substantive comment, 2 advisory comments]

## **ADVISORY ISSUES**

### **A. BONA-FIDE NEEDS RULE**

Services must begin in the current FY if current year funds are used. [2 comments] Maintenance services that did not begin until the acceptance of equipment twelve months later did not represent a bona fide need. [*FAR 32.703-3 and 31 U.S.C. 1502*]

### **B. BROAD AGENCY ANNOUNCEMENT (BAA)**

Use of a BAA to establish a consortium of centers was questionable. [*A BAA should describe the agency's research interest, either for an individual program requirement or for broadly defined areas of interest covering the full range of the agency's requirements.*]

It was unclear why a two-phased RFP acquisition strategy was changed to a BAA. [*FAR 2.101 and 35.016*]

**C. DEBRIEFING**

Offerors are entitled to no more than one debriefing per proposal.

An official summary of debriefing was not included in the file. [*FAR 15.505(g)*]

**D. INCORRECT REFERENCES**

Correct or up-to-date FAR [FAR 1.108(d)], HHSAR, and NIH references/titles were not cited in the Request for Contract (RFC)/Acquisition Plan (AP), RFP, contract, or file documentation. [95 comments]

**E. IDIQ**

Improper use of HHSAR 352.232-75 - Incremental Funding in an IDIQ contract. [*Incremental funding can be used for individual TOs, such as Cost-Reimbursement (CR) TOs if such terms are stated in the RFP and master contract.*]

Failure to: state or clearly state ordering procedures and information required by FAR 16.504(a)(4)(iv) [3 comments]; include information pertaining to the TO and Delivery Order (DO) Ombudsmen required by FAR 16.504(a)(4)(v) [12 comments]; cite exceptions to fair opportunity consistent with FAR 16.505(b)(2) [2 comments]; document the basis for the minimum quantities [*NIH MC 6016-2, paragraph G.6*][3 comments]; include enough information in a real or hypothetical TO to ensure a reasonable method for evaluating prices [*NIH MC 6016-2, Paragraph G.5*]; and specify the line items or lots to be awarded under each multiple award contract. [*This information is needed to ensure that fair opportunities are provided when placing orders.*]

Various minimum quantities/amounts/number of awards were specified in the RFP. [3 comments]

Offerors were required to propose costs for several sample TOs, but only one sample TO was addressed in the Summary of Negotiations (SON).

**F. INFORMATION TECHNOLOGY (IT)**

Failure to: include the IT security level designation and certifications of the Project Officer (PO) and Information Systems Security Officer in the RFC/AP; include the complete list of minimum IT Systems Security safeguards in the contract; include the requirements of FAR 39.105, Privacy, (a) through (d) in the Statement of Work (SOW) [3 comments]; determine that the Government's need could not be met without minimum experience qualifications [*FAR 39.104*][4 comments]; and obtain the HHS Chief

Information Officer's approval of awards exceeding \$500,000 involving IT. [3 comments]

The RFP identified IT Systems Security requirements, but the offeror's proposal and the proposed contract did not address IT Systems Security requirements. [*An IT Systems Security plan should be obtained from the offeror, and applicable IT Systems Security clauses and provisions should be in the contract*]

It was unclear if an IT acquisition had been identified per OMB Circular A-130, and if the rapidly changing nature of IT and the application of technology refreshment techniques were considered. [*FAR 39.101*][2 comments]

#### G. **INTERNAL REVIEW (IR)** [*NIH MC 6304.71*]

Failure to: make changes recommended by the Board; document the reasons why changes were not made; provide responses to Board comments [*Paragraph I.2*][2 comments]; and submit files for multiple award Indefinite-Delivery (ID) requirements to the Board for presolicitation and/or preaward reviews. [*Paragraph G.2.b.*][2 comments]

There was no evidence that an IR was performed before the file was submitted to the Board [*Paragraph H.8.c.*][4 comments] or who performed the review. It was not clear if IR comments were resolved.

#### H. **MISSING DOCUMENTS AND MISSING SIGNATURES**

Incidents of missing file documents (e.g., concept review minutes [MC 6304.71]; synopses; business evaluations; RFC attachments; Determination and Findings (D&F); SDB Participation Plan; letters to unsuccessful offerors; 653; technical proposals; technical evaluations; and evaluation scoring sheets [*HHSAR 315.305(a)(e)(v)*][24 comments]

Incidents of missing signatures on documents – 21.

#### I. **OPTIONS**

Failure to: execute a justification document for options [4 comments]; include the notification period for exercising an option in the justification document [3 comments][*FAR 17.205*]; mention options in a presolicitation notice [*In such cases, the options must be synopsized before they are exercised.*][*FAR 17.207(c)(4)*][3 comments]; and include clear option terms (i.e., a five year period of performance in Article F, a base year with four options in Section B, and a six-year period of performance in Section I).

Final reports in contracts with options are due at the expiration of each option period, unless the contract states that the reports are due on the final day of the contract, inclusive of any options that are exercised.

#### J. **OTHER MATTERS**

Incidents of: typographical errors [71 comments]; missing pages [4 comments]; duplicate documents [*include the most recent documents or date the different versions so that the most recent version can be*

*determined*][8 comments]; inclusion of questions concerning another RFP; improper use of acronyms [3 comments]; misfiled documents [7 comments]; incorrect titles and incorrect page numbers [16 comments] in the table of contents; and failure to list all file contents.

Improper references were made. (“Commerce Business Daily” was used instead of “Federal Business Opportunities [7 comments]; “Best and Final Offer” was used instead of “Final Proposal Revision (FPR)” [3 comments]; “Employer’s Identification Number” was used instead of “Taxpayer’s Identification Number.” [2 comments]; and “Purchase order” was used instead of “TO” or “DO” for an order placed against the Federal Supply Schedule (FSS) [2 comments].

Fixed Fee (FF) was referred to as a “rate.” [2 comments][*FF cannot be a percentage of cost, but can only “equate to” a percentage. There is prohibition against cost-plus-percentage-of-cost systems of contracting (FAR 16.102(c)).*

**J. PAST PERFORMANCE (PP) [FAR 15.304, FAR 15.304(c)(3), FAR 15.305(a)(2)(ii) through (v)]**

Failure to properly evaluate PP (i.e., all offerors received the same score whether PP assessments were obtained or not; PP was point scored when the RFP stated that PP would not be point scored; PP was not evaluated after the technical evaluation as stated in the RFP). [3 comments]

RFPs did not: include PP as an evaluation factor or how PP would be evaluated. [3 comments][*PP must be evaluated in all source selections for negotiated competitive acquisitions expected to exceed \$1 million, unless it is documented why PP is not an appropriate evaluation factor.*]; state that offerors with no relevant performance history or offerors with no relevant PP would not be evaluated favorably or unfavorably [2 comments]; and specify that offerors should provide information on problems encountered on previous contracts and the firm’s corrective actions. In one instance, only the corporate PP was considered. [2 comments]

The evaluation of PP must include compliance with SP goals for SDB concerns, monetary targets for SDB participation, and notifications submitted under FAR 19.1202-4(b). [2 comments]

**K. PERFORMANCE-BASED SERVICE ACQUISITION (PBSA)**

The RFC/AP did not describe strategies for implementing PBSA methods or document the rationale for not using them. [*HHSAR 307.7105(a)(4), FAR 7.105(b)(4), and FAR Subpart 37.6*] [5 comments]

The following was not included in the RFP: measurable performance standards [3 comments]; a Quality Assurance Surveillance Plan (QASP) [3 comments]; incentives/disincentives [4 comments]; and notification that a PBSA was intended. [*FAR 37.602-1, FAR 37.601, and FAR 37.602-2*]

Exclude review and approval time by the government from the measure performance requirements. [*The contractor will not risk losing award fees if the government approval is delayed. This information should be included in the performance standards.*]

The RFP included a statement that the “CO may unilaterally change the performance evaluation indicators and standards plan prior to the beginning of an evaluation period.” [*Contractors should not work toward*

*moving targets. While FAR 16.406(e)(3) provides that the contract should expressly provide that the award amount and the award fee determination methodology are unilateral decisions solely at the discretion of the Government, this does not mean that the evaluation criteria or percentages of award fee can be changed unilaterally by the Government. Revisions to the evaluation criteria and percentages must be mutually agreed to by the government and contractor.*] [2 comments].

Prescriptive and non-results oriented SOWs are not desired in PBSAs. [FAR 37.601]

Performance Awards were defined as both points and as award fee and award term incentives with amounts to be determined using the QASP. The QASP used an adjectival rating system, so it was not clear how the points would be used. [If the incentive amounts would be determined using the QASP, the points should be deleted and replaced with award fee and award term incentives.]

There was no documentation to explain how deductions for various deficiencies were derived.

#### L. **PRESOLICITATION DOCUMENTATION**

No consideration was given to the order of priority for services. The reason why services available through FSS were not considered should be documented. [FAR 8.002(a)][4 comments]

#### **Geographic Restrictions, Restrictive Minimum Qualifications, and Overly Prescriptive Requirements**

Radius restrictions must be justified, given the availability of electronic interfaces.

The need to meet radius restrictions by the proposal due date was overly restrictive, since the award date was 13 months later. [The Board recommended compliance on the FPR due date.]

The RFP included conflicting timeframes when the Mandatory Qualification Criteria (MQC) had to be met. [2 comments]

Failure to: document why a mandatory certification requirement was critical; address a Request For Information respondent's claim that the requirement would restrict competition from SBs and SDBs; and justify mandatory exclusion of sources in a D&F and obtain D&F approval from the Competition Advocate. [HHSAR 306.202]

#### **RFC/AP**

Failure to include all information required by FAR 7.105 and/or HHSAR 307.7105 [40 comments]. Examples include no: mention of options, which were included in the RFP; Technical Evaluation Criteria (TEC); inherently governmental functions certification [also see FAR 7.103(q), 7.503(a) and 11.106]; environmental and energy conservation objectives [2 comments]; evidence of PO and Alternate PO training, or evidence that fifty percent of the Technical Evaluation Panel (TEP) had taken PO training [also see HHSAR 307.170]; list of prospective sources; milestone plan/acquisition schedule or schedule completion dates; Office of General Counsel (OGC) approval of an unlimited rights proclamation [consult

*Mr. Richard Lambert, Counsel for Intellectual Property, Office of NIH Legal Advisor, OGC*]; Independent Government Cost Estimate (IGCE), detailed IGCE, or inflationary information; non-personal services determination [*also see FAR 37.103*]; mention of bundling where two acquisitions were combined; indication if Office of Management and Budget (OMB) Circular A-76 cost comparison applied [5 comments]; description of the factors used in selecting the contract type (In one instance, a CR contract was anticipated, but no areas of technical risk existed other than the possibility of a freezer breakdown. [*A Fixed-Price (FP) contract should be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. Lessons learned from ongoing similar types of services should be examined. FAR 16.103(b) – Combinations of contract types (i.e., FP and CR) should be considered, as appropriate.*]); and RFC/AP was developed for an order placed against an FSS [*also see FAR 8.404 (a)(2)*].

Procurement Integrity Certifications for Procurement Officials are no longer required. [*FAR 3.104-12 no longer exists.*] [2 comments]

The concept clearance memorandum did not address the basic purpose, scope, and objectives of the project, identify the reviewers' organizational affiliations, or provide the date of the review. [*NIH MC 6315-1*]

No response was provided to a question raised by a clearance office.

A concept review did not meet the peer review requirements for a Research and Development (R&D) Concept Clearance. [*NIH MC 6315-1*]

If funds are not currently available, a statement of intent to commit funds from the financial management officer is required. [*HHSAR 307.7105(a)(3)*][5 comments]

It was unclear if the use of prior year or no year funds was authorized. [*HHSAR 307.7105(a)(3)*][2 comments]

Market Research (MR) was not performed to determine if Commercial Item (CI) or non-developmental services/products were available to meet the requirement. CI acquisition procedures must be used if the Government's need can be met by a type of service or supply customarily available in the commercial marketplace. Files should reflect MR activities. [6 comments] [*FAR 7.102 (a)(1), 10.002(b), and 12.101(a). Issuance of sources sought synopses to locate SB concerns does not constitute MR activities for CI determinations.*]

### **SB Issues (Including the HHS Form 653)**

When the NAICS code is challenged, the rationale for not changing the code should be documented.

Failure to document a reasonable expectation of receiving two or more offers from HUBZone SB Concerns in an acquisition restricted to HUBZone SB Concerns. [*FAR 19.1305(b)*]

It was unclear why an acquisition was set-aside for SB Concerns. MR was not performed to determine if



there was a reasonable expectation of receiving offerors from at least two responsible SB Concerns. Only one technically acceptable offer was received. [FAR 19.502-2(b)]

### **Synopsis**

The synopsis did not include all required information, including the appropriate numbered notes. [9 comments][FAR 5.207]

The synopsis did not comply with the 15-day minimum posting time for a non-CI acquisition before issuance of the solicitation. [FAR 5.203(a)]

## **M. PREAWARD DOCUMENTATION**

Price scores were not part of the best value analysis, as required by the RFP. [FAR 15.101-1(b) and 15.305]

Failure to document that the contract amount, performance period, and expected benefits were sufficient to justify the additional administrative effort and cost in awarding a cost-plus-award-fee contract. [FAR 16.405-2(c)]

Use of an FP with economic price adjustment contract was questioned because the market stability and labor conditions were not documented. [FAR 16.203-2]

No D&F was executed for a Time-and-Materials contract. [FAR 16.601(c)]

It was unclear how a twelve month and two day contract for severable services would be funded. [FAR 32.703 - *contracts for severable services can be awarded if the contract period crosses FYs but does not exceed one year.*]

A Pre-award clearance was not obtained for the contractor's location. [FAR 22. *The Department of Labor (DOL) on-line National Preaward Registry ([www.dol-esa.gov/preaward/](http://www.dol-esa.gov/preaward/)) can only be applied to contractor specific locations, and not multiple facility locations.*]

SB and 8(a) Concerns must comply with the requirements of FAR 52.219-14, Limitations on Subcontracting.

Although the Representations and Certifications include a statement that, by signing the offer, the offeror certifies that its VETS reporting is current, it is recommended that COs check the Website referred to in FAR 22.1304 to ensure that contractors are listed. In one review, the Board checked the Website and found that only 4 of 17 multiple awardees were listed.

Applicable Representations and Certifications were not completed.

Failure to prepare the Congressional Liaison notification. [HHSAR 305.303][3 comments]

The applicable Animal Welfare Assurance was not obtained. [*HHSAR 370.401*]

Failure to: address all of the general standards of responsibility that a prospective contractor must meet;

include analyses and documentation to support Responsibility Determinations (RD) (analysis of current financial statements accompanied by an analysis and discussion of the offerors financial ratios, e.g. current ratio, and a Dun and Bradstreet report, etc.); and perform an RD (RDs must be made prior to award). It is not sufficient to state that the offer meets the responsibility as set forth in FAR 9.104-1. [19 comments][*FAR 9.103 and 9.104.1*]

### **Award and Pre-Award Notification Letters**

Award notification letters to unsuccessful offerors in the competitive range must be sent within three days after the date of contract award, and must include the information required by FAR 15.503(b). [3 comments]

Preaward notification letters for SB programs must be sent as set forth in FAR 15.503(a)(2).

### **Competitive Range Determination (CRD)**

Describe the ratings of each proposal against all evaluation criteria, and discuss cost/price in the CRD. [*FAR 15.306(c)*] [2 comments]

There was no affirmative statement of the offerors included in/excluded from the competitive range.

The term CRD should not be used when awards are made without discussions. [2 comments]

### **Cost Analysis/Price Analysis/Reasonableness of Price**

Current Cost or Pricing Data (C/PD) certificates should be signed and dated as close as practicable to the date when price negotiations are concluded and the contract price is agreed upon. [*FAR 15.406-2*]

Proposed costs were not determined to be fair and reasonable. [*FAR 15.404-1*][2 comments]

There was no documentation [20 comments] (workpapers, payroll records, quotes, etc.) or analyses [5 comments] to support the cost analysis. [*FAR 15.404-1(c)*] NOTE: Indirect Cost Rate (ICR) agreements for commercial, for-profit organizations, and all other types of organizations (universities, hospitals, state and local governments, and other non-profit organizations) can be viewed on the Commercial Rate Distribution Services [C-RADS] Web site at <http://crads.od.nih.gov>, and <http://rates.psc.gov> (click on Find Rate Agreements).

Do not obtain a Certificate of Current C/PD when a Cost Realism Analysis and an analysis of historical costs from other similar contracts are used. These types of analyses are based on “information other than C/PD. [*FAR 15.403-3*]

It was unclear if or it was found that proposed labor and fringe benefit rates did not comply with the DOL Service Contract Act (SCA) Wage Determination (WD) [6 comments] and Davis-Bacon Act (DBA) labor rates. [FAR 22.403-1 and 22.1002-2]

A cost analysis should not be performed and a Certificate of Current C/PD should not be obtained when adequate competition is received. A price analysis should be performed to determine price reasonableness. [FAR 15.403-1 – One CO's response indicated that C/PD was required because offerors proposed different approaches and specific costs had to be analyzed to make a fair and reasonable determination. In this case, other than C/PD should have been obtained. See FAR 2.101, 15.402(a)(2) and 15.403-3][5 comments]

Direct labor costs were overstated. Since the contract start date was May, and an increase was effective in July, a partial rather than a full increase in Year 1 should have been calculated.

Labor hours were in excess of one full-time position (exclusive of paid absences, i.e., 1880 hours/year).

There were no explanations why the overhead rate exceeded the rate negotiated by the Defense Contracting Audit Agency (DCAA), and ICR were lower than the DCAA approved rates.

It was unclear how fixed labor rates were negotiated and would be charged where two contractors entered into a team arrangement (only the higher rates of the prime contractor were stated in the contract).

Inconsistencies were found between documentation for elements of costs and proposed costs/rates.

C/PD may not be obtained when FSSs are used. Other than C/PD can be obtained for prices/costs that have not been negotiated by the General Services Administration (GSA). [FAR 8.404(a) and 15.403-1][2 comments]

No determination of fair and reasonable prices is needed for FSS prices. [FAR 8.404(a)][3 comments]

A waiver of audit, based on adequate price competition, was written although adequate price competition did not exist where only one offer was found technically acceptable. [FAR 15.403-1(c)(1)] It is inappropriate to use previous prices that are significantly different than proposed prices to determine that prices are fair and reasonable. [Price analysis can be performed by comparing previous and proposed prices if both the validity of the comparison and reasonableness of the previous prices can be established

-  
FAR 15.404-1(b)(2)(ii).] Numerous errors were found that affected the unit prices, total line item prices, and grand total price.

It was unclear if multiple award prices were fair and reasonable. Random sampling comparison of published price lists, discounts or rebate schedules, indicated that a "majority" of the offerors proposed prices that were less than or equal to their published prices...." [Contracting officers must ensure that prices are fair and reasonable per FAR 15.402.]

**Departmental Contracts Information System (DCIS)** [HHSAR 304.602][*The DCIS User's Manual can be found at <http://dcis.hhs.gov>*]

Files did not include draft DCIS forms containing appropriate entries. [*DCIS entries should be made by the fifteenth of each month, and not any time between contract award and September 30.*]

There were instances of inaccurate coding [6 comments] and failure to complete all appropriate fields [2 comments]. Examples: Coding that Cost Accounting Standards applied when they did not; failure to use Code A (Synopsised Prior to Award) in Field 23; failure to use Code C (New Definitive Contract) in Field 9 for a single contract award; completing Field 27 although the acquisition was competitive; using alpha characters instead of numbers; and using the wrong North American Industry Classification System (NAICS) Code in block 13.

### **Late Proposals**

It is improper to reject a proposal/quotation if the electronic version of the proposal is received but the paper version has not been received by the proposal due date. Late delivery of the paper version is a minor informality that should be waived. [*The Comptroller General has ruled that the late proposal rule or policy is not violated where a complete electronic copy of an offeror's proposal is received prior to the time set for receipt of proposals. See Tishman Construction Corporation, B-292097, May 29, 2003.*][3 comments]

Failure to prepare late proposal documentation. [FAR 15.208][2 comments]

### **R&D and non-R&D**

Contracts and file documentation cannot be identified both an N01 (R&D) and N02 (non-R&D) type of acquisition. [2 comments]

Synopses for non-R&D acquisitions (animals and technical and logistical support for laboratory animals) were improperly classified as R&D. [2 comments]

Salary Rate Limitations do not apply to contracts for intramural research. [*See NIH MC 6030-1*].

### **SCA and DBA**

Failure to justify why an acquisition involving service contract workers was exempt from the requirements of the SCA. [*FAR 22.10 - If the positions involve individuals employed in bona fide executive, administrative, or professional capacities as defined in 29 CFR Part 541, the file should be documented why the SCA does not apply.*][6 comments] In one instance, a requirement involving 1,040 hours of collection and dissemination type duties and 20,800 hours for full time technical positions (maintaining inventory and other tasks) did not include SCA clauses. [*Per DOL, the contract was subject to SCA*]

Failure to include SCA-related clauses and the current wage determination. [FAR 22.1002][2 comments]

Failure to justify why an acquisition for laborers and mechanics involving alterations and repairs of public buildings was exempt from the requirements of the DBA. [FAR 22.403]

### **Source Selection Documentation**

An analysis of the technical scores and costs and a decision regarding award based on the analysis was not included.

Statements made were inconsistent with other file documents (e.g., different amounts, difference scores, differences in the number of proposals received, and different dates). [3 comments]

### **SON**

SONs did not include: an explanation of how total estimated costs were derived; the Government and contractor negotiation teams; any aspect of negotiations; tabbed references or appropriate detail where the SON was done in the manner of a form document; a statement whether offerors met the minimum mandatory requirements; an explanation why total costs, which exceeded the IGCE by 89%, were accepted; an explanation of the basis for determining contract related income used to offset contract costs (in addition, documentation to support the proposed income was not obtained or included in the file); an explanation how the point reduction to the fee objective was determined reasonable/appropriate for a contract with a non-profit organization requesting fee [HHSAR 315.404-4(d)(iv)(B)]; negotiated rates [2 comments]; and adequate detail to support the type of contractual instrument used. [HHSAR 315.372]

SONs included inaccurate information based on other files documents (e.g., wrong escalation factor (proposed and negotiated); wrong performance periods; and wrong total contract amounts.). [15 comments]

Once the SON has been signed, subsequent changes must be made by amendment to the SON.

The accepted overhead rate was higher than the rate recommended by the Division of Financial Advisory Services (DFAS).

The profit-analysis factors in FAR 15.404-4(d) were not used to establish the profit objective. [HHSAR 315.404-4(b)(ii)(B)]

Unacceptable proposals should be maintained by the contracting office.

### **TEP/Peer Review, TER and Supporting Documentation**

Technical evaluators did not: assign points to a technical proposal [2 comments]; provide pass/fail (go-no-go) determinations [2 comments] and narratives on the MQC evaluation sheets; complete the technical evaluation sheets; provide acceptability ratings [HHS 315.305][3 comments]; provide narratives (strengths and weaknesses) in support points awarded [4 comments]; or reach a general consensus on a non-R&D

acquisition, which ultimately may have affected source selection [4 comments].

Although TEP written comments provided minimal discussion of the strengths and weaknesses of proposals, the TER discussed the strengths and weaknesses of proposals in detail from which questions were formulated. [*The concern was that minimal comments from the TEP might make it difficult to defend award decisions if later challenged.*]

If a peer reviewer has a conflict of interest with an offeror and is recused from the review, approval from the Deputy Director for Extramural Research is needed.

## SOLICITATIONS AND CONTRACTS

When soliciting for services that are a part of an A-76 acquisition, include a statement that award is contingent upon the outcome of the A-76 acquisition.

Failure to: include applicable FAR, HHSAR, and agency-specific clauses in hybrid contracts [*NIH MC 6016-2, paragraph G.5*][2 comments]; provide an adequate description of the contract type in the RFP [*The contract type was identified as a CR using task ordering instead of IDIQ using a CR arrangement.*]; include sufficient information for offerors to prepare for the oral presentations [*FAR 15.102(d)*][3 comments]; provide requested information to interested parties that was releasable; list and include referenced attachments/forms/information in Section J [8 comments]; select correct choices by removing parentheticals [4 comments]; ensure consistency in dates [7 comments]; be consistent in the use of terms (shall, must, or will, TO, DO, Record of Call) [2 comments], and project and/or attachment titles [2 comments]; complete fill-in information in clauses or provisions [9 comments]; include required [8 comments] and updated [9 comments] agency-specific terms and conditions; include correct Web site address links [5 comments]; include the NAICS code or the correct NAICS code [4 comments]; include appropriate clauses [20 comments], alternates to clauses [2 comments], provisions, and terms conditions; specify the RFP due date [3 comments], an RFP issue date, or the number of required copies of the technical and business proposal copies, and anticipated award dates; incorporate clauses in full text, as required by the FAR Matrix or include clauses in the proper Sections; submit final and complete versions of RFPs to the Board [*No handwritten comments, questions, etc.*]; carry over applicable terms and conditions from the solicitation (particularly amendments) to the contract [3 comments]; delete instructional RFP language and information to offerors from in the contract document [3 comments]; list SDB concerns considered in the evaluation of proposals where the extent of participation of SDB concerns was evaluated; and include the language requiring the contractor to notify the CO of any non-SDB substitutions. [*FAR 19.1202-4(b)*] [3 comments]

It was unclear how multiple award contractors would be directed to perform, e.g., work assignments, TOs, or what method would be used to determine how contractors would be selected. [*ID contracts were recommended if the quantity was definite or IDIQ contracts were recommended if a minimum or maximum quantity could be established.*][*FAR 16.5*]

Vague descriptions of leasing were included, and it was not specified how the leasing process would work. It was unclear how ordering officials would know that they must make the lease versus purchase determinations. [*FAR Subpart 7.4*]

Inappropriate delegation of CO authority/responsibilities given to the PO (performing work as directed by the PO and PO must approve all personnel prior to their initial hiring). [6 comments]

When the Americans with Disabilities Act (Section 508) applies, include applicable terms and conditions in Section H, Section M (TEC), Section C (SOW), and appropriate FAR Part 39 language (36 CFR Part 1194.21, Software applications and operation systems). If an exception applies, the file must be documented. [*FAR 39.204*, and the NCI workform]

Additional clauses and terms and conditions shall not be added to FSS orders unless specifically authorized in the GSA contract or by the GSA CO. [*FAR 8.405-2*][2 comments]

The pilot SP can no longer be used by NIH, as of July 19, 2002.

Proposed contractors did not acknowledge receipt of significant amendments. [2 comments]

### **Section A**

Maximum or Not-To-Exceed amounts should be shown in Block 15G of the SF-26.

Failure to: include OMB No. 0990-0115 in the upper right corner [*HHSAR 301.106(b)*][10 comments]; and complete [15 comments] or properly complete [2 comments] all applicable blocks.

The appropriation data should match the appropriation data in the funding document.

The contractor acknowledged receipt of an amendment that was never issued.

### **Section B**

Failure to: specify “estimated” quantities in a requirements contract [*FAR 16.503*]; specify a clear pricing strategy [5 comments]; include a breakdown of the costs and fees in a cost-plus-award fee type contract; and include the correct ceiling amount for travel and per diem.

There was no clear reference to suggest that the proposal was intentionally incorporated.

The extended total prices of several line items did not match the offeror’s extended prices. [3 comments]

### **Section C**

Unclear statements and conflicting reporting requirements were found. [4 comments each]

Include special qualifications and licensing requirements in the TEC. These are not issues of responsiveness. [*If such requirements are the absolute minimum standards, they should be considered as MQCs.*]

TO SOWs should include the use of the maximum practicable amount of recovered materials. [FAR 36.601-3][2 comments]

Avoid using language that gives the appearance of personal services.

**Section D** – State that deliveries will not be accepted on Federal Holidays. [2 comments]

**Section F** - Include the list of reporting requirements (completion reports), deliverables, quantities, and due dates [7 comments] and state a period of performance. [5 comments]

**Section G** - Failure to: include information concerning interim and final performance evaluations [FAR 42.1502 requires the evaluation of contractor performance for contracts exceeding \$100,000. NIH MC 6015-2 provides policy on interim and final performance evaluations.][6 comments]; include clear invoice instructions [3 comments]; identify Government-furnished equipment or information that will be provided to the contractor [2 comments]; list the correct cognizant audit agency [NOTE: DFAS only negotiates IDC with commercial/for profit contractors/grantees]; and list names in the Key Personnel Article.

### **Section H**

Failure to: include the Article entitled “Work Hours, Holidays, and Administrative Leave” in A-76 acquisitions; include a provision that the contractor may not proceed with surveys or interviews until an OMB Clearance has been obtained and a written notice to proceed has been issued. [*HHSAR 352.270-7*]; and specify the amounts and kinds of required insurance as required by FAR 52.228-5, Insurance-Work on a Government Installation [4 comments][*FAR 28.306*].

If legislation has not been passed and Articles include Public Law, Section Number, FY, and Period Covered categories, it should be stated that the information will be provided as soon as the HHS Appropriation for the current FY is enacted. [13 comments]

Consider including the following terms and conditions from the NCI Generation document, as appropriate: Method of Ordering and Indefinite Delivery Contract Payment Method [2 comments]; TO/DO Contract Ombudsman [4 comments]; Subcontracting Plan Provisions [2 comments]; Electronic and IT [2 comments](for contracts involving the development, purchasing, maintaining, or use of Electronic IT, unless these products for services are incidental to the project); Energy Star Requirements (acquisitions of energy-using products or services involving the provision of energy-using products)[2 comments]; Privacy Rule language; Government Property; Anti-Lobbying (all contracts); Sharing Research Data [2 comments]; Possession, Use and Transfer of Select Biological Agents or Toxins; Year 2000 Compliance (2 comments) if IT will be used or acquisitions requiring systems to perform date/time processing involving dates prior to December 31, 1999; and IT security.



SB Subcontracting Plan provisions were included, but a waiver of the subcontracting plan was in the file.

### **Section I**

Clauses do not need to be included in full text unless required by the FAR Matrix. [3 comments]

The texts of paragraph (c) to FAR 52.219-4 and paragraphs (b) and (c) of FAR 52.219-23 must be included so that HUBZone SB Concerns may waive preference and offerors can waive the evaluation adjustment, respectively.

A table of Employee and Fringe Benefit amounts was not consistent with the DOL WD in Section J.

**Section J** – Failure to: incorporate the SB subcontracting plan [2 comments]; incorporate a signed subcontracting plan; include the correct date of the subcontracting plan; properly number Attachments; and include listed/referenced Attachments/forms/information [9 comments].

### **Section L**

Failure to: include the contract type, the type of anticipated TOs (FP and/or CR (level of effort or completion)), and that multiple awards were anticipated [2 comments]; specify HHSAR 352.215-1 as an authorized deviation of FAR 52.215-1(e) [*HHSAR 315.209*]; and identify the data sensitivity and operational criticality levels so that offerors could propose a meaningful security plan [*The DHHS Automated Information Systems Security Program Handbook* (<http://irm.cit.nih.gov/policy/aissp.html>) identifies security requirements. *CIT*

*offers support in choosing Systems Security levels, as well as an Systems Security Plan Template for use by offerors at <http://www.cit.nih.gov/security-planning.html>.]*

Conflicting/incomplete instructions to offerors were found. [4 comments]

Improperly including requirements for submission of C/PD or information other than C/PD where the acquisition was a HUBZone Set-Aside (two or more offers were expected from HUBZone SB concerns). [*FAR 15.403-1(c) - A determination of price reasonableness would be based on adequate price competition.*]

The type of contract specified was not consistent with the clauses included in the solicitation.

### **Section M**

Failure to: state that award would be made on a best value continuum [*FAR 15.101*]; include price or cost considerations [*FAR 15.304(c)(1)*]; indicate the significance of all evaluation factors compared to price or cost [*FAR 15.304(d) and (e)*][7 comments and 1 post-award comment]; include clear basis for award/source selection process, and to state that points awarded were a guide for source selection and the mathematical outcome would not necessarily be determinative of the awardee; and clearly state how the cost factor would be scored.

Avoid using subjective terms such as “significant” and “the established qualifications must be met to the satisfaction of the CO.” [2 comments]

**TO/DO**

It could not be determined if negotiations on fee included Facilities Capital Cost of Money, which was included in the contractor's proposal. [*HHSAR 315.404-4(d), Profit (v)(4)*]

The IGCE was used to verify the reasonableness of prices for TOs, although work was competed amongst the multiple award contractors. Price reasonableness should have been based on adequate price competition.