

**FISCAL YEAR 2004  
FINDINGS OF THE NIH BOARD OF CONTRACT  
AWARDS**

LIST OF ACRONYMS

AP	Acquisition Plan
CI	Commercial Item
C/PD	Cost or Pricing Data
CRD	Competitive Range Determination
CT	Contract Type
D&B	Dun and Bradstreet
DFAS	Division of Financial Advisory Services
DO	Delivery Order
FedBizOpps	Federal Business Opportunities
FP	Fixed-Price
FPR	Final Proposal Revision
FY	Fiscal Year
ICR	Indirect Cost Rate
IDIQ	Indefinite-Delivery-Indefinite-Quantity
IR	Internal Reviews
ISSO	Information Systems Security Officer
ITSS	Information Technology Systems Security
MMR	Minimum Mandatory Requirements
MR	Market Research
PBC	Performance-Based Contracting
PO	Project Officer
POP	Period Of Performance
PP	Past Performance
RD	Responsibility Determination
RFC	Request for Contract
RFQ	Request for Quotation
SAPFO	Structured Approach Project/Fee Objective
SB	Small Business
SON	Summary of Negotiation
SOW	Statement of Work
SP	Subcontracting Plan
SSD	Source Selection Document
TO	Task Order

**CONTRACT TYPE (CT)**

Failure to describe the factors used in selecting the CT in the Request for Contract (RFC)/Acquisition Plan (AP). *See FAR 7.105(b)(4).*

Although the project risk was minimal and the types of studies were well understood and well defined, a Fixed-Price (FP) contract was not considered. *A FP contract should be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty and there are lessons learned from ongoing similar types of services. See FAR 16.103(b). Combinations of CT (i.e., FP and Cost-Reimbursement) should be considered, as appropriate.*

The RFC did not include a discussion regarding the consideration of cost-sharing. *See HHSAR 335.070-1(b).* [2 comments].

Educational Institutions and Non-Profit organizations are eligible to receive award fee contracts. *Per advice from the Division of Financial Advisory Services (DFAS).*

Quantities in requirements contracts should be reflected as “estimated,” since the exact quantity is unknown. *See FAR 16.503(a).*

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

The term “estimated cost” should not be used in IDIQ FP contracts. [3 comments]

Different (maximum) quantities were specified in the solicitation/contract. [2 comments]

It was unclear if the maximum amount per multiple award contract was reasonable. *This may negatively impact the negotiation of a meaningful Subcontracting Plan (SP).*

Failure to include all of the information pertaining to the Task Order (TO) and Delivery Order (DO) Ombudsmen in the solicitation/contract.

Failure to include the ordering information in the solicitation/contract as required by FAR 16.505(a)(6).

Minimum [2 comments] and maximum [3 comments] dollar amounts were not specified in the solicitation/contract.

It was unclear if a TO would be awarded in Fiscal Year (FY) 2004 to warrant the obligation of FY 2004 funds.

The basis for minimum and maximum amounts were not documented in the contract file.

Failure to submit presolicitation files for multiple award (Indefinite Delivery and/or multi-agency/Government-wide Agency Contract) acquisitions to the Board for review. *See NIH Policy Manual 6304.7, Presolicitation and Preward Review & Approval of Proposed Contract Actions.*

The rationale for selecting a low scored, higher priced offeror whose proposal included unresolved technical issues was questioned in a multiple award situation.

**INTERNAL REVIEWS (IR)** See Paragraph H.8.c. of NIH Policy Manual 6304.71-Presolicitation and Preaward Review & Approval of Proposed Contract Actions

It could not be determined if an IR was performed prior to submitting the files to the Board. [5 comments]

There was no explanation why the recommendations resulting from the IR were not acted upon.

### **OPTIONS**

The parameters by which options may be exercised were not described in the contract. It was not clear if the option had been negotiated or how it would be funded. See FAR 17.204.

Options that will encompass two years or more must be fully funded, since the NIH only receives yearly appropriations.

### **OTHER MATTERS**

Incidents of typographical errors or information [41 comments], use of incorrect references [12 comments], incorporation of duplicate clauses in solicitations/contracts [3 comments], inconsistent terms used [4 comments], errors in tense [4 comments], incorrectly named tabs, incomplete sentences [4 comments], misfiled documents [3 comments], confusing outline format in the Statement of Work (SOW) [1 comment], failure to spell out words prior to the use of acronyms [2 comments], incorrect organization identification [2 comments], or use of various fonts, newly typed pages, photocopied pages from other sources and NCI workform provisions.

A Congressional Liaison Notification Letter is not needed if the contract action does not exceed \$3 million. See FAR 5.303 and HHSAR 305.303(a).

### **PERFORMANCE BASED CONTRACTING (PBC)**

Although the RFC indicated that PBC was not applicable to the project, some (delivery requirements, turnaround schedules and quality control standards) or all performance measures were being used. *In such instances, a performance work statement and quality assurance surveillance plan should be fully implemented [Guidance on PBC is available at the HHS Know Net Performance-Based Contracting Desk Reference at <http://www.ogam2000.com/acquisition.pbc.htm>.]* [2 comments]

The rationale for not using PBC methods was not provided in the RFC. See FAR 7.105(b)(4) and HHSAR 307.7105(a)(4).

Failure to include measurable standards against which to rate the contractor's performance. Failure to include performance incentives that exceed the performance requirements. See FAR 37.602-1, FAR 37.601, and FAR 37.602-2.

### **PREAWARD DOCUMENTATION**

Failure to use the legal names of offerors throughout the file and in the contract. [2 comments]

Documents were missing from the file [5 comments], non-applicable documents were mentioned or included in the file [1 comment], or applicable documents were listed as not applicable [1 comment]. Inclusion of a firm's name on file documents although the firm did not submit a proposal.

Failure to document the decision to change the Period of Performance (POP) from one year with four-twelve month options, as advertised in the solicitation, to a five-year POP. *The solicitation should have been amended and the decision should have been documented. See FAR 15.206.*

Failure to include any conclusion about cost reasonableness or explain cost differences between offerors in the Competitive Range Determination (CRD).

The Summary of Negotiations (SON) [6 comments] and CRD [1 comment] included incorrect information (i.e., the wrong POP or inaccurate pricing information from an offeror's Final Proposal Revision (FPR)).

The rationale used to make funding decisions was not documented in the SON. [2 comments]

The information letters to offerors did not comply with FAR 15.503(b)(v).

The Project Officer (PO) must not contact offerors prior to award.

Documents to support statements in the CRD were not included in the file. CRDs should include if/how offerors met mandatory criteria.

Technical evaluators failed to provide narrative comments to support their assigned scores or failed to sign the evaluation score sheets.

The term "CRD" should not be used when award is made without discussions.

### **Cost/Price Analysis**

Failure to document that the PO questioned the level of staffing and how the issue was resolved.

Failure to document the actual cost comparison in the SON. It was stated that costs were compared favorably to several contracts (only the contract numbers were listed) for similar services. [3 comments]

Failure to obtain supporting documentation to support costs (direct labor rates, historical salary increases, and materials and supplies). [12 comments]

Failure to include a most recent copy of the Indirect Cost Rate (ICR) Agreement in the file. As a result, it appeared that the rates stated in the SON were not consistent with the ICR Agreement.

Failure to explain how the negotiated amounts were established/negotiated (e.g., why labor costs were reduced by half, why a subcontract was added, why ICRs were reduced significantly, etc.). [4 comments]

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*. [4 comments] Further, the documentation provided did not relate to the proposed/negotiated amounts.

Failure to conduct negotiations to correct a \$30,000 shortfall caused by spreadsheet errors.

When applying two ICRs in one year, the rates should be prorated to calculate one weighted-average rate (e.g., 53% for 5 months and 54% for 7 months would equate to 53.58%).

Failure to use rates recommended by DFAS. [2 comments]

A certificate of current C/PD was in the file, although a price analysis was used to determine that the price was fair and reasonable. *See FAR 15.403-1*.

Failure to document how the proposed/negotiated escalation for options years and other costs were determined to be reasonable. [4 comments]

It was not clear if salaries were compliant with the HHS salary rate limitation.

The SON did not state that the Structured Approach Project/Fee Objective (SAPFO) was used to determine a fair and reasonable fixed fee. The SAPFO did not address an offeror's status as a non-profit organization. As a result, the fee was overstated. [*Per HHSAR 315.404-4(d)(iv)(B), an adjustment of up to three percentage points should be subtracted from the total profit objective percentage for contracts with nonprofit organizations where profit is involved.*]

### **Incomplete File Documentation**

The 1688-1 was not complete [1 comment] or was not included in the file [1 comment].

File documents were unsigned (e.g., source selection document, waiver of SP, technical evaluation reports, funding documents, concept review minutes, and RFC). [13 comments]

### **Responsibility Determination (RD)**

Failure to include an RD for the proposed contractor [*See FAR 9.104-1*], or proposed subcontractor [*See FAR 44.202-2(a)(7)*].

Failure to include documentation or adequate documentation to support the RD (current financial statements, analysis of the financial statements, a review of Dun and Bradstreet (D&B) reports, or current/recent Balance Sheets). [9 comments] *See FAR 9.105-1*.

The existence of Internal Revenue Service liens on a D&B report warrant asking the offeror to provide

additional details on the liens and comment on the expected outcome. *The finding should be documented in the file before affirmatively stating that the offeror has a satisfactory record of integrity and business ethics.*

### **Source Selection Document (SSD)**

The SSD included technical scores that were not consistent with the technical evaluation report. [6 comments]

The SSD did not adequately document the rationale for the selection decision.

### **PRESOLICITATION DOCUMENTATION**

A determination and findings to solicit competitive proposals in lieu of sealed bids is no longer required. *See FAR 6.401.* But, the RFC should discuss whether sealed bidding or negotiation will be used and why. *See FAR 7.105(b)(4).* [2 comments]

**Market Research (MR)** (*FAR 7.102 (a)(1), 10.002(b), 12.101(a), and NIH Policy Manual Chapter 6012/26012-1, Acquisition of Commercial Items, paragraph E.2.f.*)

Failure to perform and/or document MR activities to determine if Commercial Item (CI) or non-developmental services/products were available to meet the requirement. [4 comments] *CI acquisition procedures are to be used if the Government's need can be met by a type of service/supply customarily available in the commercial marketplace. Issuance of a sources sought synopsis to locate sources, such as Small Business (SB) concerns, that could perform the requirements does not constitute MR activities for the purpose of making CI determinations.*

### **Minimum Mandatory Requirements (MMR)**

Mandatory requirements: should be included in the evaluation factors for award as MMR [3 comments]; should specify who must meet the criteria (the contractor or contractor personnel); and be justified in the file [3 comments]

Restrictive educational requirements should not be used.

### **RFC/AP**

The RFC included a different contract start date than the Federal Business Opportunities (FedBizOpps) notice or solicitation. [3 comments]

The following information was missing: the names of the PO and Alternate PO [*See HHSAR 307.7105(b)(1)*]; a source list [*See FAR 7.105(b)(1) and HHSAR 307.7105(a)(6)*]; evidence of PO training [3 comments][*See HHSAR 307.170*] or the PO certification was not complete; if sealed bidding or the negotiated method of contracting would be used and why. [*FAR 7.105(b)(4)*]; why it was not appropriate to evaluate the elements of Past Performance (PP), as defined in FAR 42.1501; and milestone completion dates [2 comments].

The Paperwork Reduction Act applies if information will be collected from patients in a clinical trial. [*Refer to HHSAR 307.7105(b)(4)*]

Erroneous statements were found. [5 comments]

### **SB Issues**

It was unclear why an acquisition was set-aside for SB Concerns where only one technically acceptable offer was received on the previous competition. MR was not performed to determine if there was a reasonable expectation of receiving offers from at least two responsible SB Concerns. *See FAR 19.502-2(b) and FAR 10.002(b)(1)(vii).*

The HHS Form 653 was not in the file [2 comments] or was not signed [2 comments].

### **Synopsizing**

Solicitations cannot be released until the required days (15 days) advance notice has expired (except for the CI acquisitions). *See FAR 5.203(a).* [2 comments]

Synopses should include FedBizOpps numbered note 26 when, based on MR, FAR Part 12 is not used for the acquisition. [2 comments]

### **SOLICITATIONS AND CONTRACTS**

Cover letters should not duplicate much of the proposal and award requirements.

Be consistent in the use of “will, must, and shall” when describing the contractor’s responsibilities. [3 comments]

Articles should be modified to match existing legislation [2 comments] or include the Executive Level I salary rate limitation [6 comments] at the time of contract award. Public laws that are not applicable for the period of the contract should not be included [2 comments].

Consider using the following terms and conditions from the NCI generation document (workform), as applicable: non-personal services and inherently Government functions in Section B when work will be performed at the Government site [2 comments], reporting requirements and deliveries formats (Sections C and F); Key Personnel (Section G); Invoice Submission (Section G); Post evaluation of PP (Section G)[2 comments]; Needle Exchange (Section H); Privacy Act (Section H); Access to NIH E-mail (Section H)[3 comments]; Press Releases (Section H); Anti-Lobbying (Section H); and NIH (RC)-7, Procurement of Certain Equipment (Section J).

Failure to include Articles or solicitation provisions in the appropriate Section [e.g., Safety and Health Articles in Section E instead of Section H.]. [3 comments] *See FAR 15.204-1 and the FAR Matrix.*

Discrepancies were found between Sections of an RFP [e.g., Section F listed 3 places of performance whereas the SOW listed 6 places of performance]. [5 comments]



Inapplicable Articles, or FAR clauses and provisions were included [8 comments], applicable FAR, HHSAR, or NIH clauses or provisions were not included [8 comments], outdated clauses/provisions/NCI workform terms and conditions were included [10 comments], the full text of solicitation provisions or clauses were not included as required by the FAR Matrix [3 comments], or prescriptive notes were not deleted.

Failure to maintain anonymity of potential offerors. An amendment was e-mailed to potential offerors, but not all offerors from the original source list. The bcc line should be used to maintain confidentiality of the offerors who are possibly preparing proposals.

Solicitation language should be eliminated from the subsequent contract. [2 comments]

Erroneous information was attached to the contract. Incorrect references were included. [3 comments]

The recommendations of the Information Systems Security Officer (ISSO) regarding Information Technology Systems Security (ITSS) did not correspond to the terms and conditions in Sections H and L.

Portions of the RFP were not submitted to the Board for review.

A Request For Quotation (RFQ) did not include the RFQ number.

Amendments to solicitations should be included in the file.

Failure to complete sections of clauses with fill-ins. [5 comments]; and failure to insert accurate information in clause fill-ins [2 comments].

#### Section A

Failure to complete all applicable blocks [6 comments]. Letter of Credit numbers should appear in Block 14 of the SF-26.

Failure to include OMB No. 0990-0115 in the upper-right hand corner. [4 comments] *See HHSAR 301.106(b)*.

#### Section B

The Article entitled “Provision Applicable to Direct Costs” should be modified as appropriate by the instant acquisition (e.g., acquisitions involving patient care costs should not be included in this Article as an unallowable cost). [4 comments]

Advance understandings should be clearly written [4 comments] and the correct negotiated amount should be shown [3 comments].

Failure to include cost-sharing amounts or related terms and conditions where cost-sharing was mentioned in the FPR.

The incremental funding amount was not consistent with the amount stated in the SON.

All costs associated with a supply contract were not included.

Failure to include an estimated total quantity in an indefinite delivery, requirements type contract. *See FAR 16.503(a)(1)*.

### Section C

Failure to include clearly stated contract deliverables [2 comments] or a clearly stated SOW [2 comments].

The volumes of work specified in the SOW failed to match those in the independent government cost estimate or the quantities in Section B.

In FP contracts, final reports should be submitted by the contractor on or before the last day of the contract period since the business relationship with the contractor ends on that day.

Language referring to the contracting officer's consent and "approval" of subcontract awards should only refer to consent of subcontract awards per FAR Part 44.

Section F - Failure to list all deliverables required by Section C.

### Section H

The ITSS Specifications Article should include the position security designation level.

Consult with the ISSO to help determine the appropriate position security designation level. *See the Center for Information Technology website at <http://irm.cit.nih.gov/security/table3.htm> and Chapter VII of the HHS Automated Information Systems Security Program Handbook at <http://irm.cit.nih.gov/policy/aissp.html>.*

Section I - Either hard copy general clauses or the URL link to general clauses should be included.

### Section J

Failure to cite the correct NIH form number.

The POP [2 comments] and dollar amount [1 comment] in the SB SP and contract did not coincide.

An Small Disadvantaged Business SP was not attached. [2 comments]

All information was not completed in an Attachment.

### Section L

Instructions to offerors should not include C/PD when offerors are only required to submit Information Other Than C/PD. *See FAR Subpart 15.4.*

The instructions did not specify which portion of the proposal to include PP information. [2 comments]

## Section M

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

Failure to include a basis for award. *See FAR 15.304.*

The relative importance of all evaluation factors was not clearly stated. *See FAR 15.304. Also see FAR 15.101-1(b)(2) when tradeoff process is used.* [3 comments]

The approach for evaluating offerors with no relevant PP history must be described. *See FAR 15.305(a)(2)(iv).* [3 comments]

Multiple methods should not be used to evaluate PP.

Subjective criteria, unclear criteria [2 comments], or restrictive evaluation factors [2 comments] should not be used.

## TO

The TO amount did not agree with the amount specified in the SON.

Requests for TOs should not be issued prior to contract award.