

FISCAL YEARS 2001 AND 2002

FINDINGS OF THE

NIH BOARD OF CONTRACT AWARDS

SUBJECT INDEX

<u>Subject</u>	<u>Page Number(s)</u>
Approvals, Clearances, Determinations, and other Request for Proposal/Acquisition Plan Information	4-5 , 6 , 10 , 20
Award File Documentation	20
Departmental Contracts Information System	21
Technical Evaluation/Technical Evaluation Panel/Peer Review	2 , 21
Letters to Unsuccessful Offerors	21
Source Selection Determination	22
Missing Documentation	22
Summary of Negotiations	22-23 , 25 , 29
Inadequacies in the areas of Reasonableness of Prices or Costs and Cost or Price Analysis	1 , 2 , 23-25
Best Value Determination	5
Clarifications/Communications/Discussions	1 , 5-6
Competitive Range	1 , 21
Contract Type	6 , 9
Determination of Responsibility	1 , 29
Funding	1-2
Geographic Restrictions, Restrictive Minimum Qualifications, and Overly Prescriptive Requirements	6-7
HHSAR/FAR References	4 , 7 , 8 , 15 , 19
HHS Form 653	7-8
Improper Evaluation	2
Inconsistencies	8
Indefinite-Delivery-Indefinite Quantity Contracts	2 , 8-9 , 10 , 13 , 14 , 18 , 21 , 25
Internal Reviews/Board Reviews	10
Mandatory and Non-Mandatory Sources of Supply	10
Market Research	10
Missing Signatures	10

SUBJECT INDEX (CONTINUED)

<u>Subject</u>	<u>Page Number(s)</u>
Options	11
Other Matters	28-29
Past Performance	11 , 20
Performance-Based Contracting	11-12 , 19
Preaward Equal Employment Opportunity Clearance	1
Project Officer Responsibilities	12 , 27
Proper Safeguards	1
Request For Contract/Acquisition Plan	3-5 , 10 , 25
Research and Development vs. Non-Research and Development	13
Scope of Contract	1 , 9
Service Contract Act	3 , 13 , 24
Solicitations and Contracts	14-15 , 25
Pricing Strategy	9 , 16
Section A	15-16 , 25 , 26
Section B	2 , 16 , 25 , 26
Section C	16-17 , 26
Section F	17 , 27
Section G	17 , 27
Section H	17-18 , 27
Section I	19
Section J	19 , 27
Section K	28
Section L	19-20
Section M	20
Subcontracting Plan	3 , 7 , 19 , 27
Synopsis	13 , 14
Technical Evaluation Criteria	2 , 14
Unenforceable Contract	1

LIST OF ACRONYMS

CAN	Common Account Number
CO	Contracting Officer
CPI	Consumer Price Index
CR	Competitive Range
CIT	Center for Information Technology
D&F	Determination and Findings
DCIS	Departmental Contracts Information System
DEC	Determination of Exceptional Circumstances
DFAS	Division of Financial Advisory Services
DO	Delivery Order
FAC	Federal Acquisition Circular
FADV	Final Anticipated Dollar Value
FPR	Final Proposal Revision
FP	Fixed Price
FSS	Federal Supply Schedule
FY	Fiscal Year
GSA	General Services Administration
IDIQ	Indefinite-Delivery-Indefinite-Quantity
IGCE	Independent Government Cost Estimate
IT	Information Technology
MC	Manual Chapter
MEO	Most Efficient Organization
NTE	Not-To-Exceed
OASPA	Office of the Assistant Secretary for Public Affairs
OGC	Office of General Counsel
OHRP	Office for Human Research Protections
OMB	Office of Management and Budget
PBC	Performance-Based Contracting
PO	Project Officer
R&D	Research and Development
RFC/AP	Request for Contract/Acquisition Plan
ROC	Record of Call
SBIR	Small Business Innovative Research
SCA	Service Contract Act
SDB	Small Disadvantaged Business
SF	Standard Form
SON	Summary of Negotiations
SOW	Statement of Work
SSD	Source Section Determination
TEP	Technical Evaluation Panel
TO	Task Order

TSBSA Total Small Business Set-Aside

I. SUBSTANTIVE ISSUES

A. Competitive Range

1. Exchanges identified as “clarifications” were “discussions.” A Competitive Range (CR) should have been established. [*FAR 15.306(c)*][2001]
2. In an attempt to award without discussions and avoid establishing a CR, a number of proposals did not receive consideration for award because of weaknesses found in the business proposal. A CR should have been established so that the weaknesses could be addressed during negotiations. [2001]

B. Contractual Issues

1. Sufficient funds were not available for award. [*FAR 32.702 and HHSAR 315.371(c)*][2002; 3 comments-2001][**1985, 1987**]
2. Unenforceable contract where the apparent successful offeror had not signed the Standard Form (SF) 33. [2001]
3. Failure to ensure proper safeguards and objectivity where the contractor would be responsible for performing a lease assessment for the Government and furnish leased equipment. [*FAR 9.505-3*][2 comments-2001][**2000**]
4. Failure to include the scope or define terms for “special services” in a Fixed-Price (FP) contract, although a line item for an estimated quantity of services was included. [*FAR 16.202-2*][2001]
5. Failure to state funding parameters (i.e., what portion of the requirement was funded) in an incrementally funded FP contract. No breakdown or explanation was provided in the file. [2001][**1997**]
6. Improper inclusion of funds in a requirements contract. [*FAR 52.216-21(a)*][2001]

C. Documentation Issues

1. Failure to perform determination of responsibility. Failure to assess financial responsibility. Inappropriate reliance on Dun and Bradstreet Reports alone to determine responsibility. [*FAR 9.103, 9.104-1, 9.104-3, and 9.105-2*][2001]
2. Failure to obtain a Preaward Equal Employment Opportunity Clearance for a proposed \$25,000,000 acquisition. [*FAR 22.805(a)(1)*][3 comments-2002][**1987, 1991-1992, 1999**]
3. Lack of documentation to support price evaluation or negotiations. Failure to determine

reasonableness of prices offered. [FAR 15.402][2001] Lack of cost breakdown and analysis and crucial information in support of the price evaluation or negotiations. [HHSAR 315.372] [2002; 2 comments-2001][1984, 1992]

D. Improper Evaluation

1. Award could not be made where prices or costs were not evaluated because the offeror failed to submit a sample Task Order (TO) as required in the solicitation. [FAR 15.304(c)(1)][2001] [1999]
2. Improper use of predetermined cut-offs scores. [HHSAR 315.305(a)(v)][2001]
3. Improper comparison of prices, or prices/costs were not evaluated at all. Failure to evaluate sub-RFPs (Total Small Business Set-Aside (TSBSA), 8(a) Set-Aside, and Full and Open Competition) properly. [FAR 15.304(c)(1)][2001][1991]
4. Failure to include Small Disadvantaged Business (SDB) Participation as an evaluation factor. [FAR 15.304(c)(4) and 19.1202-2][6 comments-2002][2000] Failure to evaluate offers consistent with the SDB Participation evaluation factor, such that the points assigned were skewed. [FAR 15.305][2001]
5. Failure of all members of the Technical Evaluation Panel (TEP) to individually review and score all proposals. [2001] Failure to document strengths and weaknesses of proposals. [FAR 15.305(a) and HHSAR 315.305(a)(3)(v)][3 comments-2001]

E. Indefinite-Delivery-Indefinite-Quantity (IDIQ) Contract

1. If funds are obligated for the minimum quantity, the first TO must be issued prior to the end of the Fiscal Year (FY). Issuance of the first TO in the new FY with prior year funds is a violation of statutory prohibitions pertaining to the bona fide needs rule. [FAR 32.703-2][2002]
2. Failure to include the negotiated schedule of prices in Section B. [2 comments-2002]
3. Use of an IDIQ contract was strongly urged where the availability of funds was threatened by a September 30 award of a "FP" contract arrangement. In addition, portions of the Statement of Work (SOW) did not appear to lend themselves to a "FP" arrangement. [FAR 16.201][2002]
4. Section B was structured as a definite-quantity contract, instead of the intended IDIQ. [FAR 16.502 and 16.504][2001]

F. **Service Contract Act (SCA)**

Failure to include SCA-related clauses and wage determinations where a proposed contract was identified as a service contract (the principal purpose of the contract was to furnish services by service employees) by the Board in a presolicitation review. [FAR 22.1002][2002; 2001][**1989, 1990, and 2000**]

G. **Subcontracting Plan**

Failure to negotiate a subcontracting plan for contracts in excess of \$500,000 and competed on a nonrestrictive basis. [FAR 19.702. *NIH Manual Chapter (MC) 6016-2 requires subcontracting plans for IDIQ contracts that have subcontracting possibilities and are expected to exceed \$500,000. Unless otherwise specified in the FAR, a specific dollar threshold is the Final Anticipated Dollar Value (FADV) of the action. In actions involving maximum quantities, the FADV is the highest final priced alternative to the Government, including the dollar value of all options (FAR.1.108)*][4 comments-2002; 1 comment-2001][**1984, 1987, 1988, 1989, 1991, and 2000**]

II. ADVISORY ISSUES

A. **The Request For Contract/Acquisition Plan (RFC/AP) did not address or inadequately addressed elements contained in FAR 7.105, Acquisition Plan**

1. Contractor vs. Government performance considerations [FAR 7.105(b)(8)][4 comments-2002; 5 comments-2001][**1998 and 1999**], and failure to include the determination required by FAR 37.205 [2 comments-2002].
2. Inherently governmental functions. [FAR 7.105(b)(9)][5 comments-2002; 15 comments-2001][**1997, 1998, 1999, and 2000**]
3. Independent Government Cost Estimate (IGCE). [2002] Failure to include estimated costs for the entire period in the IGCE. [2002; 2 comments-2001][*HHSAR 307.7105(a)(3) and FAR 7.105(b)(5)*][**1985, 1989, 1991, 1992, 1993, and 1999**]
4. Failure to change the IGCE, as appropriate, when the initial requirement was changed. Failure to document the reason for the changed requirement. [2002]
5. Environmental and energy conservation objectives. [FAR 7.105(b)(16)][1 comment-2002; 1 comment-2001]
6. Government-furnished property. [FAR 7.105(b)(14)][2002]

7. List of prospective sources. [FAR 7.105(b)(1)][1 comment-2002; 4 comments-2001]. A prospective source list for a TSBSA inappropriately included large businesses and universities. [1 comment-2002][1999,2000]

B. **Appropriate approvals, clearances, determinations, and other required information not included in the RFC/AP or Presolicitation File**

1. Questionable reliance on a concept review that took place years earlier than the present project and may no longer be valid due to an increased and/or changed workscope or science. [2002][1984, 1985, 1987, 1990]
2. Failure to address Information Technology (IT) security requirements [11 comments-2002; 5 comments-2001][1997, 1998, 1999, and 2000] Examples: Contractors: accessing the NIH mainframe computer via remote onsite terminals; maintaining sensitive records on IT equipment; publishing material on a Government Web site; creating Web sites and/or Web pages, and developing other IT (videos); and implementing and maintaining computer databases and other related tasks. [Contracts involving IT, including those that are not directly involved in IT but use IT to store or retrieve information must, per the NIH Center for Information Technology (CIT) Security Policy and Office of Management and Budget (OMB) Circular A-130, address IT security requirements. "NIH APPLICATION/SYSTEM SECURITY PLAN TEMPLATE for Major Applications and General Support Systems," has been established to assist with compliance. The CIT provides additional information on IT security requirements at <http://irm.cit.nih.gov/security/secplantemp.html>. Mr. Jaren Doherty, Director, Division of Security Standards, Policy and Planning, CIT, is available to help address the issue of covering this requirement].
3. Failure to describe how an employer-employee relationship would be avoided where: the Contractor would receive substantial input and direction from the Project Officer (PO) [1 comment-2002; 2001]; and Government and contractor employees would be working within close proximity [2 comments-2001][FAR 37.104][1985].
4. Failure to do a determination of nonpersonal services for a services type contract. [FAR 37.103] [2001][1992, 1997] A nonpersonal services determination and SOW incorrectly stated that the Government may remove contractor employees for misconduct or security reasons. [FAR 37.104][3 comments-2002]
5. Failure to address the requirement for OMB Approval of a survey instrument (questionnaire). [Paperwork Reduction Act][3 comments-2001][1998 and 1999]
6. Failure to obtain foreign research clearance. [HHSAR 307.7105(b)(4)(viii), and NIH MCs 1895 and 6325-1][2002][1985]
7. Failure to obtain approval of publications development projects (print products, electronic

bulletin boards, posting on the internet) from the Office of the Assistant Secretary for Public Affairs (OASPA). [HHSAR 307.7105(b)(4)(iv) and NIH MC 1183][2002; 3 comments-2001][1997]

8. Failure to obtain approval of projects involving audiovisuals, regardless of the audio, video, or audiovisual medium employed by OASPA. [HHSAR 307.7105(b)(4)(vi) and NIH MC 1183][2002][1997, and 2000]
9. Failure to include a contract completion date. [HHSAR 307.7105(a)(2)][2002]
10. The current FY Common Account Number (CAN) and obligation cannot be cited on a requirement to be awarded in the next FY. [HHSAR 307.7105(a)(3)][2002 and 2001]
11. Lack of evidence that the PO and Alternate PO [2 comments-2002; 3 comment-2001] or fifty percent of the technical proposal evaluators [4 comments-2002; 2 comments-2001] had taken PO training. Failure to execute waiver allowing an individual to act as PO until training had been completed. [2002][HHSAR 307.170 and 307.7105(a)(7)][1991, 1992, 1993, and 1998]
12. Caution must be taken when including statements such as “data contained in reports may not be disclosed without written permission of the IC.” FAR 52.227-14, Rights in Data - General, allows the CO to limit some of the contractor’s rights to data. However, the restrictions must be consistent with statute. Consult Mr. Richard Lambert, Counsel for Intellectual Property, Office of NIH Legal Advisor, Office of General Counsel (OGC), regarding these types of issues. [2 comments -2002; 2001]
13. Failure to include an analysis of lease versus purchase. [FAR 7.401][2002]
14. Failure to execute an economy act determination. [2001]
15. Failure to execute a Determination and Findings (D&F) for use of time-and-materials or labor-hour contracts. [FAR 16.601(c)][3 comments-2002]
16. Questionable inclusion of a task for messenger services in a clearinghouse requirement. [2002]

C. **Best Value Determination**

Failure to properly perform Best Value Determinations. Best value is a trade-off decision that, in the Government's estimation, provides the greatest overall benefit. [FAR 2.101] Use of cost as a determining factor or reference to a tie situation is not consistent with best value. [FAR 15.101][2 comments-2002; 2001]

D. **Clarifications/Communications/Discussions**

1. The solicitation stated that a short list of offerors, that was created based on technical merit (including past performance) and price, may be invited to give Oral Presentations without discussions. Since it was anticipated that award would be made without discussions (and without establishing a CR), all offerors should have been permitted to make oral presentations. [*FAR 15.102 and FAR 15.306*][2002 and 2001]
2. Failure to describe the scope and content of exchanges that may occur as part of the oral presentations in the solicitation. [*FAR 15.102(d)*][2002]
3. An offeror changed its technical proposal, by letter, as a result of questions raised by NIH during a site visit. The letter also stated that changes to the business proposal might be necessary. File documentation (including the Summary of Negotiations (SON)) stated that award was made without discussions. However, the questions raised during the site visit constituted discussions with, at least, one offeror. Since the answers provided at the site visit constituted an amended technical proposal [*FAR 15.306(c) and (d)*], a CR should have been established. In addition, the CO should have attended the site visits. [2002]

E. **Contract Type**

1. Inappropriate use of a cost-reimbursement type contract since the services were currently being acquired on a FP basis, and no apparent changes to the SOW were made. [*FAR 16.202-2 and 16.301-2*][2002][**1999**]
2. Failure to specify the contract type in the solicitation. [*FAR 16.105*][2002]
3. Incorrectly stating that the Government would partially obtain the required services from the contractor in a requirements contract. [*FAR 16.503(a) and FAR 52.216-21*][2002]
4. Failure to include all FAR, HHSAR, and agency-specific clauses in hybrid contracts (FP-Cost Reimbursement). [2002]
5. Improper use of the term “TO” when the contract was structured as a “Work Assignment” contract. [2001][**1998**]

F. **Geographic Restrictions, Restrictive Minimum Qualifications, and Overly Prescriptive Requirements**

1. Failure to justify and obtain approval of a D&F for restricting competition to offerors within the U.S. from the Competition Advocate. [*FAR 6.202 and HHSAR 306.202*][2001]
2. Unclear basis and justification for locality (radius) restrictions (e.g., requiring the establishment of a headquarters and processing facility within commuting distance of NIH) and requiring face-

to-face meetings given the availability of electronic interfaces. [2 comments-2002][**1984, 1985, 1987, 1988, 1989, 1993, 1998, 1999, and 2000**]

3. Failure to justify required levels of experience, years of experience, responsibilities of personnel, Government “preferences” for education or degrees, and fluency in certain languages. [6 comments-2002] Failure to determine that the Government’s needs could not be met without minimum experience and certain educational requirements for an IT acquisition. [*FAR 39.104*][2002]
4. Excessive number of positions listed under key personnel (e.g., All professional personnel, and Project Managers and Task Managers) gives the appearance of a personal services relationship. [1 comment-2002][**1999 and 2000**]
5. Overly prescriptive where the contractor was instructed how to provide training [2 comments-2002] and required to use only in-house resources [2001]. This restricts use of more productive and cost effective methods and requires justification. [*FAR 11.002*] Requiring a contractor to be available within 24 hours notice for meetings and receipt and delivery of reports and materials is restrictive, and requires justification. [2002]
6. Overly restrictive where offerors were required to have an approved Animal Welfare Assurance prior to submission of the offer. [*HHSAR 352.270-9*][2002]

G. **HHSAR/FAR References**

1. Inappropriate inclusion of PHS Clauses, which should no longer be used. The new version of the HHSAR has been in effect since January 2001. [6 comments-2002; 4 comments-2001]
2. Correct FAR, HHSAR, and NIH references/titles were not used in the RFC/AP, or presolicitation or preaward file documentation. [24 comments 2002; 7 comments-2001]

H. **HHS Form 653**

1. Failure to include a completed form in the file. All applicable blocks should be completed and all signatures should be obtained prior to release of the synopsis. [3 comments-2002; 4 comments-2001][**1991, 1997, 1998, 1999, 2000**]
2. Failure to return a changed requirement to the NIH Small Business Office to request a new determination. The basis for a full and open competition determination was initially based on acquiring two supply items. But, the solicitation only included one item. In a similar instance, the Form included a Not-To-Exceed (NTE) amount of two billion dollars. But, the RFP included a NTE amount of six billion dollars. The file should also document the reason for the change(s), and how the change affects the IGCE. [2 comments-2002]
3. The subcontracting plans and SDB preference blocks were incorrectly checked “No” where a

full and open competition determination had been made. [2002]

4. Failure to include referenced attachments. [2002]
5. Failure to appropriately conduct a Pro-Net search. Incorrect wording for the size standard yielded no small business sources. [2002]
6. The contracting office inappropriately added additional services to the acquisition once the Small Business Administration withdrew an 8(a) set-aside. [2001]

I. **Inconsistencies**

1. There were instances of inconsistencies between the RFC/AP, IGCE, RFP, and file documentation in the following areas: contract types; synopses; contract documents; presolicitation conferences; HHS Form 653s; acceptance periods; delivery dates; specifications [3 comments]; numbers of report copies; reports' media (electronic versus hard copies); number of anticipated awards; periods of performance [3 comments]; contract amounts [2 comments]; minimum quantities; proposal acceptance periods; inspection and acceptance terms and conditions; North American Industry Classification System Codes and Small Business Size Standards [4 comments]; descriptions of projects; and the need for bid samples vs. reverse auctioning. [2002 and 2001][**1998, 1999, 2000**]
2. The RFC/AP required offerors to propose on three of six functional areas, whereas the RFP specified that offerors must propose on all six functional areas. [2002]
3. Two different IGCEs were included in the file. [2002]
4. One Article stated that an award would be made to an 8(a) firm. Elsewhere, it stated that two awards would be made - one to a Small Business Concern and the other to an 8(a) firm. [2002]
5. Two Articles with the same title included different contents. [2001]
6. There were inconsistencies between the individual score sheets of technical evaluators and the technical evaluation report. [2002]

J. **IDIQ**

1. Failure to document the basis for the maximum and minimum quantities/dollar values. [*NIH MC 6016-2, paragraph G.6*][2001] Failure to specify minimum and maximum quantities/amounts. [*FAR 16.504(a)(4)(ii)*][2002; 2 comments-2001][**1999 and 2000**] Inappropriately stating quantities were "estimated" as if a requirements contracts. [*FAR 16.503 and 16.504*][2001]
2. Failure to include applicable FAR clauses in the umbrella contract. [*FAR 16.506*][2 comments-

2002; 2001] Failure to include applicable clauses in hybrid contracts (part IDIQ and part requirements, and FP with possible cost-reimbursement line items in TOs). [2001]

3. Failure to use the programmatic dollar amount for each contract in an RFP for multiple awards. An individual dollar amount from the total programmatic dollar amount was used instead. In doing so, contractors would be eliminated from further consideration once their contract ceilings were reached. [*NIH MC 6016-2, paragraph G.6*][2002]
4. Failure to use hourly rates by labor classification in an IDIQ contract for services instead of negotiating hourly rates by TO. [*NIH MC 6016-2, paragraph G.4*][2002]
5. Inappropriate change of contract terms and conditions by TO. This should not be done unless otherwise specified in the contract. [*FAR 52.216-22*][2002]
6. Failure to state or clearly state ordering procedures and media for TOs, Delivery Orders (DOs), and Records of Call (ROC). [*FAR 16.504(a)(4)(iv)*][12 comments-2002; 3 comments-2001][**1997 and 2000**]
7. Failure to state if contractors were required to compete on all TOs for multiple awards. The ordering procedures also did not take into account multiple contractors proposing on each TO. [*FAR 16.504(a)(4)(ii) and (iv)*][2002 and 2001] The Fair Opportunity and Ordering Procedures did not comply with FAR 16.505(b). [2 comments-2002]
8. Lack of a real or hypothetical TO used in the solicitation to ensure a reasonable method for evaluating prices, as recommended in NIH MC 6016-2, Paragraph G.5. [2001][**1989, 1990, 1992, 2000**]
9. The TO/DO/ROC number should be added to the list of information that must be included on a proper invoice. [**2 comments-2002**]
10. It was unclear how additional services that were not defined and priced would be ordered. [*FAR 16.504(a)(4)(iii)*][**2002**]
11. It was unclear why the Requirements Clause was used instead of the Indefinite-Quantity Clause because the quantities represented in Section B were not estimates, but were firm minimum and maximum quantities for the basic contract and option periods. FAR 16.503(b) states that requirements contracts are appropriate when recurring requirements are anticipated, but the precise quantities cannot be predetermined. FAR 16.503(a) states that realistic estimated total quantities must be stated in the contract, and the contract may also specify maximum or minimum quantities that may be ordered under each individual order, and the maximum that may be ordered during a specified period of time. FAR 16.504(b) states that indefinite-quantity contracts may be used when it cannot be predetermined, above a specified minimum, the precise quantities needed. [2002]

K. Internal Reviews/Board Reviews

1. Failure of the contracting office to conduct a review prior to the Board's review. [*NIH, MC 6304.71, Paragraph H.8.c.*][2002][**1989, 1990, 1991, 1999**]
2. Failure to include the Board's Presolicitation and Preaward Minutes, and the contracting office's response to the Board's Presolicitation Minutes in the file. [*MC 6304.71, Paragraph H.8.d.*][2002]
3. All multiple award IDIQ actions were not submitted to the Board for review, as required by NIH MC 6304.71 [2002].
4. Failure to provide responses (resolution) to the Board's Presolicitation Review Minutes prior to submission of the file to the Board for preaward review. [2 comments prior to preaward review-2002][**1984, 1989**]
5. Failure to submit a copy of the RFP for review. [*NIH MC 6304.71, Paragraph H.8.a.*][2002]

L. Mandatory and Non-Mandatory Sources of Supply

1. Cost or pricing data may not be obtained when a commercial, competitive buy is made from the General Services Administration (GSA) Federal Supply Schedules (FSS). Other than cost and pricing data can be obtained. [*FAR 8.404(a) and 15.403-1*][2002]
2. Failure to consider mandatory and nonmandatory sources of supplies/services. [*FAR 8.002(a)*][2 comments-2002; 2 comments-2001]
3. Failure to include, at a minimum, information included in FAR 8.405-2 in TOs and DOs placed against the FSS, and any information required by the GSA contract. [2002]

M. Market Research

Failure to perform and document the file of market research activities to determine if commercial item services/products were available to meet the requirement. Commercial item acquisition procedures are to be used if the Government's need may be met by a type of service customarily available in the commercial marketplace. [*FAR 7.102, 10.002, and 12.101*][5 comments-2002 and 15 comments-2001][**1997, 1998, 1999, and 2000**]

N. Missing Signatures

Lack of required signatures on documents, including: RFC/APs [3 comments-2002]; CO's

Certifications [2 comments-2002]; a D&F for the Authority to Evaluate Options [2001]; a requisition [2002]; PO's Technical Questionnaires [1 comment-2002; 1 comment-2001]; and a D&F for

Advance Payments [*HHSAR 332.402(e)*][2001][**1989 and 1990**].

O. Options

1. Failure to include justification pertaining to the quantities, terms of the options, option notification periods [5 comments-2002; 1 comment-2001], or any limitations on option prices [*FAR 17.205*][2 comments-2002].
2. A justification for the inclusion of options was in the file, but no options were included in the solicitation. [2001]
3. Incorrectly stating that "The Contracting Officer (CO) may exercise this option at any time, one or more times, in any amount so long as the total number of hours exercised, does not exceed 174,800." Since the optional level of effort was broken down by position and total hours per year, hours could not be carried over from one FY to the next FY. [2002]
4. Failure to address the evaluation of options in the solicitation, although instructions for proposing options were included. [*FAR 17.203*][2002]

P. Past Performance

1. Failure to explain the need to waive evaluation of past performance. [2002; 4 comments-2001]**1997, 1998, and 1999** The document that supports this rationale should be signed. [*FAR 15.304(c)(3)(iv)*][2002]
2. Failure to state how past performance would be evaluated in the solicitation. [*FAR 15.304*][2002; 2001][**1998, 2000**]
3. Inappropriate variance from the standard past performance rating system in NIH MC 6015-2 [2002; 2001].
4. Failure to include information pertaining to interim and final performance evaluations in the solicitation/contract. [2002; 2001] Failure to state that the contractor could access its performance evaluation electronically [2 comments-2002; 2 comments-2001], or that interim evaluations were required in the solicitation/contract. [2002][*FAR 42.1502(a)*]. Also, see the *NCI RFP Generation document for suggested language.*]
5. Failure to state how offerors with no relevant performance history would be evaluated in the solicitation. [*FAR 15.305(a)(2)(iv)*][2 comments-2002][**1997**]

Q. Performance-Based Contracting (PBC)

1. Failure to describe strategies for implementing PBC methods or the rationale for not using them for service contracts in the RFC/AP. [*HHSAR 307.7105(a)(4)*, *FAR 7.105(b)(4)*, and *FAR Subpart 37.6*][9 comments-2002; 3 comments 2001][**1999 and 2000**]
2. One file stated that PBC was not suitable because the SOW was described in general terms. But, PBC could have been used, as the SOWs for each TO could have complied with the elements of PBC. [*FAR 37.602-1*][2002]
3. Improper use of boilerplate statements to address PBC, which are not project specific. Two files stated that PBC was not used because work was described in terms of “how” it should be accomplished, and that the emphasis was not on achieving predetermined end results. However, the contractor could have developed innovative and cost-effective methods in reaching results. One file stated that performance standards would be difficult to measure for maintenance services because a wide variety of tasks would be performed, and the PO would provide substantial input and direction. Contractors are not generally told how to keep equipment in optimal operating condition. In both instances, experience gained from the current contracts should have been relied on to use PBC to the maximum extent practicable. [*FAR 37.602-5*][2 comments-2002][**1987, 1998, 1999**]
4. Failure to include measurable standards [*FAR 37.602-1*][2 comments-2002; 2001][**1999**], a Quality Assurance Surveillance Plan [*FAR 37.602-2*][3 comments-2002], a Quality Assurance Program [2002], or the base fee and maximum award fee that a contractor may earn [*FAR 16.405-2(a)(1) and (2)*][2001].
5. Failure to include deductions for unsatisfactory performance [2001][**1999**] or language regarding the application of deductions. [2002]
6. Two different types of performance standards were identified. [2002][**1999**]
7. An “Award Mechanism” Article incorrectly stated that payment of the award fee would be made after a “written administrative change order” was executed. Use of a unilateral/bilateral modification (depending on the terms of the contract) is appropriate instead of a change order. [2002]

R. **PO Responsibilities**

Inappropriate delegation of CO authority/responsibilities given to the PO. [5 comments-2002; 3 comments-2001][**1988, 1989**] These authorities/responsibilities should remain with the CO (approval of formats used, notification of deductions [2002; 2001], receipt of reports and plans, authorize payments, approval or removal of samples for testing, approval of substitutions, issuance of requests for TO proposals, receipt of notifications that work has been completed by the contractor, issuance of TOs/DOs [**1991**], and approval of work outside the hours specified in the

contract).

S. **Research and Development (R&D) vs. Non-R&D**

1. Inappropriate inclusion of language pertaining to research efforts (no concept review was conducted and an intramural CAN was used) in a support services contract. [2001] Improper issuance of a TO against a non-R&D contract to support an R&D project, since peer review was not conducted. [*NIH MC 6315-1*][2002]
2. Improper use of an Extramural CAN for a non-R&D project. [2 comments-2001][**2000**]
3. It was unclear why concept review and peer review was conducted for a non-R&D requirement. [2001] Lack of a justification for use of non-Government individuals to review proposals received in response to a non-R&D acquisition. [*HHSAR 315.305(a)(3)(i)(B)(2)*, *HHSAR 315.305(a)(3)(ii)(F)*, and *NIH MC 6315-1*][2001][**1997**]
4. A synopsis for a non-R&D acquisition was improperly classified as an R&D requirement. [2001]
5. A non-R&D acquisition was improperly assigned a NO1 contract number, which is used for R&D and research support contracts. [2002; 2 comments-2001]

T. **SCA**

1. Lack of a justification to exempt a requirement involving service contract workers from the requirements of the SCA. [*FAR 22.10*][2002; 2 comments-2001][**1989, 1990, 1997, 1998, and 2000**]
2. New wage determinations that are subject to annual appropriations must be obtained prior to exercising an option. [*FAR 22.1008-5 and FAR 22.1008-7(a)*][2002]
3. Failure to include the current wage determination in a contract subject to the SCA. Failure to include the current Health and Welfare rate in the wage determination. [*FAR 22.10*][2002; 2001]

U. **Synopsis**

1. Failure to include the following in presolicitation notices: language stating that the acquisition was a TSBSA [*FAR 5.207(c)(4)*, *5.207(d)(2)(xiii)* and *FAR 5.207(e)*][2 comments-2002][**1997, 1999, and 2000**]; the substance of numbered note 26 or the Government's intention not to use Part 12 of the FAR [*FAR 5.207(f)(4)*][5 comments-2002]; a statement that all responsible sources may submit a proposal, which shall be considered by the agency [*FAR 5.207(d)(2)(xv)*][2002]; include all required items of information [*FAR 5.207(d)*][2002]; and, specifying the

Government's intention to include options. The options will have to be synopsised prior to exercising the options unless an exempted by FAR 5.202. [*FAR 17.207(c)(4)*][2 comments-2002; 2001].

2. Failure to include a presolicitation notice in the file. [*FAR 5.101(a)(1)*][2002]
3. Failure to comply with the 15-day minimum posting time. [*FAR 5.203*][2 comments-2001][**1989**]
4. Failure to prepare the award synopsis in the proper format. [*FAR 5.302*] Failure to state the programmatic amount in the award synopsis instead of the TO amount. [*FAR 5.207(c)(13)*][2002]

V. **Technical Evaluation Criteria**

1. Inappropriate use of the phrase “considerations include, but are not limited to.” Proposals can only be evaluated on the factors and subfactors specified in the solicitation. [*FAR 15.305(a)*][2002]
2. The term “unsatisfactory” was not clearly defined where it stated that proposals considered unsatisfactory in a specific criterion would not be evaluated further. [2002]

W. **Solicitation and Contracts (Comments pertaining to contracts only can be found on page 25)**

1. The table of contents was not consistent with the contents of the solicitation/contract. [2002; 2 comments-2001]
2. Failure to include updates through the latest Federal Acquisition Circular (FAC). [*FAR 1.108(d)*][60 comments - 2002; 17 comments 2001] If the “NIH Request for Proposal Directory Streamlined RFP References, Standard RFP Instructions and Provisions” is used, the contracting office must update it through the latest FAC. It should not be used if it conflicts with RFP attachments. [2 comments-2002]
3. Failure to include the anticipated award date. [2 comments].
4. Consult the FAR Matrix to determine the section where clauses and provisions should appear, and if they should be incorporated in full text or by reference. [5 comments-2002]
5. Incorrect references to other parts of the RFP and contract were made. [7 comments-2002; 2 comments-2001][**1998**] References from another solicitation were included. [4 comments-2001]
6. If a number of patentable research tools will result from the acquisition, the CO and PO should review information on research resources at http://ott.od.nih.gov/NewPages/RTGuide_final.html. If determined appropriate, the NIH Article entitled “Obtaining and Disseminating Biomedical

Research Resources” should be included in solicitations and contracts for R&D. [2002]

7. Ensure consistency in the use of terms (shall, must, or will, TO, DO, ROC). [10 comments-2002]
8. Failure to described how violations of page limitations would be handled for acceptance and review purposes. Instructions conflicted with the requirements of FAR 52.204-4. [2002]
9. Failure to select information by the removal of brackets. [5 comments-2002; 7 comments-2001]
10. Incorrectly referring to offerors as “applicants.” [2002]
11. Failure to include applicable FAR and HHSAR clauses and provisions, and NIH terms and conditions. [67 comments-2002; 41 comments-2001][**1985, 1987, 1988, 1989, 1990, 1992, and 1999**]
12. Inappropriate use of clauses, alternates to clauses, provisions, and terms and conditions. Examples: construction clauses in nonconstruction acquisitions, FP clauses in a cost-reimbursement contract. [15 comments-2002; 20 comments-2001][**1988, 1989, 1990, 1992, and 1999**]
13. Clauses with fill-ins should either be provided in full text or the fill-in information should be provided. [8 comments-2002 and 14 comment 2001]
14. It was unclear why proposals could be received during normal weekdays between 8:00 a.m. and 4:00 p.m. prior to the proposal due date, but must be received by 3:00 p.m. on the proposal due date. [2002]
15. Failure to include in the file a waiver of the 30-day response time for a non-R&D solicitation. [*FAR 5.203(c)*][2002]
16. **Pricing Strategy**
 - a. It was unclear why the pricing structure for services included a FP line item for monthly services and another line for 80 hours of emergency services per year, although the SOW stated that emergency services would be performed at no cost. [2002]
 - b. Failure to include a line item or ordering procedures to cover major component replacements that were specified in the SOW. [2002][**2000**]
 - c. It was unclear how offerors could propose work on a FP basis when the SOW frequently used the phrase “The contractor may be requested....” [*FAR 16.202-2*][2002]

17. **Section A**

- a. Missing SF number from a computer generated version of the form. [3 comments-2001]
- b. Failure to include OMB No. 0990-0115 in the upper right corner. [*HHSAR 301.106(b)*][5 comments-2002; 4 comment-2001]
- c. The SF-1442 (Block 11) included a completion date of 365 calendar days after the notice to proceed although an IDIQ contract was anticipated. [2002]
- d. Failure to use SF-1449 for a commercial item acquisition. [*FAR 12.204*][2001]
- e. Failure to complete the following: Requisition No. (Block 4) [2002 and 2001], Prompt Payment (Block 9) [2 comments-2002; 2 comment 2001]; Submit Invoices (Block 10) [2002]; and Authority for Using Other Than Full and Open Competition (Block 13) [2002; 2 comments-2001].

18. **Section B**

- a. It is unclear why a contractor was directed to develop a \$700,000 subcontract with a specific organization, instead of NIH establishing a contract directly with the organization. [2002]
- b. Brand Name or Equal provisions were included, but no brand name was mentioned. [2002]
- c. Failure to include columns for offerors to provide prices for options [2 comments-2002] or unit prices. [2001]

19. **Section C**

- a. Failure to include specifications for supply items where no brand name was specified. [*FAR 11.002*][2002]
- b. Failure to specify or clearly state reporting requirements, including the number of reports and recipient of reports. [2002; 4 comments-2001][**1984, 1985, 1987, 1988, 1989, 1990, and 1991**] It was unclear how deliverables could be due within 30 days after contract award in an IDIQ contract. [2002] It was unclear how the contractor would comply with a requirement to submit a service project schedule within ten calendar days of receipt of a TO when call-back services were required within 24 hours, and on-site response for emergency calls was required within five hours. [2002]

- c. The IGCE should not be disclosed. Per FAR 36.204, price ranges should state the magnitude of construction projects. [2002]

- d. Failure to provide an adequate description of work so that offerors could propose prices/costs. Failure to provide sufficient information in the Travel Requirements so that offerors could propose travel costs. [2002] If exact destinations are not known, hypothetical destinations should be included to allow for the evaluation of proposed travel costs. [2002 and 2001]
- e. Failure to specify the date that the Government expects the contractor to become fully operational to perform services. [2002]
- f. The text of a paragraph was not consistent with the title. [2002]
- g. Failure to include instructions to offerors contained in Section C in Section L. [2001] Failure to include personnel experience requirements contained in Section C in Section M. [2002]

20. **Section F**

- a. Failure to specify dues dates for deliverables. [2002; 2001][1987]
- b. Section F should include the list of reporting requirements, deliverables, quantities, and due dates. Contracts should include the full addresses of the PO and CO. [4 comments-2002 and 7 comments-2001]
- c. It was unclear what the contractor would do for the remainder of the performance period where the contract was for 4 years and delivery was due within 27 months after the start of the contract. [2002]

21. **Section G**

- a. Consider appointing task managers to assist POs in overseeing TO projects instead of Alternate POs. [2002]
- b. Article "Invoice Submission/Contract Financing Request Report" in the contract document failed to list actual categories. [2001]

22. **Section H**

- a. Government-furnished Property list was not included. [2001]
- b. Use these special clauses in commercial activities' contracts [2002]:

Organizational Conflict of Interest – The contractor and all its present and future affiliates and subsidiaries agree not to compete or assist others in competing for any procurement of supplies or services for commercial activities described in the work under study. The above

prohibition shall also apply to the contractor's employees, subcontractors, consultants or any person who participates in the performance of this contract. The contractor shall require such persons to sign a statement agreeing to the above restrictions.

Confidentiality of Information – In accordance with Clause HHS 352.224-70, "Confidentiality of Information," hereby incorporated in the contract, the contracting officer and contractor agree that the following information is subject to the provisions of paragraph (c) of the clause:

Any and all information, provided by the Government or ascertained by the contractor during the course of the contract, that may be used by any party or parties, or their agents, to enhance the party or parties understanding of the Government's existing operation in order to more effectively compete for any resultant A-76 contract shall be kept confidential.

Separation of Responsibilities – The contractor agrees to keep the responsibilities of the staff that works on the development of the Work Statement separated from those that assist in the development of any related Most Efficient Organization (MEO) proposal. The individuals or groups working on the development of the WS shall not share information or in any other way influence the development of MEO.

- c. Consider including the following terms and conditions from the NCI RFP/Contract Generation Document, as appropriate: Needle Exchange [2001]; Option Provisions [3 comments-2002 and 2 comments-2001]; Subcontracting Provisions [3 comments-2002]; Electronic and Information Technology Standards [2 comments-2002; 2 comments-2001]; Environmental Protection Agency Energy Star Requirements [5 comments-2002]; Press Release [2 comments-2001]; Year 2000 Compliance [2 comments, and 3 comments-2001][**1998**]; Government Property [2 comments-2002], and IT Systems Security [6 comments-2001]; Publication and Publicity [2001]; Reporting Matters Involving Fraud, Waste, and Abuse [2001]; Human Materials (Assurance of the Office of Human Research Protections (OHRP) Compliance) [2001]; Publications and Publicity [2001]; and Hotel Fire and Safety Act of 1990 (P.L. 101-391)(when the possibility of a federally funded, in whole or in part, meeting, convention, conference or training seminar exists). [3 comments-2002; 1 comment-2001]
- d. Failure to include the kinds and amounts of applicable insurance required by FAR 52.228-5, Insurance – Work on a Government Installation. [2001]
- e. Failure to include the telephone number, facsimile number, and e-mail address of the TO Ombudsman. In one case, the wrong Ombudsman was listed. Dr. Anthony Demsey is the

R&D Ombudsman and Dr. Philip Chen is the non-R&D Ombudsman. [*FAR 16.504(a)(4)(v) and 16.505(b)(5)*][3 comments-2002][**1999 and 2000**]

23. **Section I**

- a. Include FAR 52.215-12, Subcontractor Cost or Pricing Data when 52.215-10, Price Reduction for Defective Cost or Pricing Data is included. Include FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data-Modifications and FAR 52.215-13, Subcontractor Cost or Pricing Data-Modifications when FAR 52.215-10 and FAR 52.215-12 are not included. [*FAR 15.408(b) through (e)*][4 comments]
- b. The fill-in to FAR 52.219-23, Notice of Price Evaluation Adjustment for SDB Concern included a factor of zero percent. But, Section L included a factor of five percent. [2002]
- c. Do not use Alternate I to FAR 52.233-1, Disputes, unless approval has been granted by the Chief of the Contracting Office. [*HHSAR 333.213*][3 comments-2002; and 1 comment-2001]
- d. Failure to complete FAR 52.212-5 by checking the appropriate clauses. [2002]
- e. Failure to obtain prior authorization and approval before including deviations to clauses. [*FAR Subpart 1.4 and HHSAR 301.4*][6 comments-2002; 2 comments-2001][**1989, 1992**]

24. **Section J**

- a. Failure to include the most recent version of the subcontracting plan format. [2002]
- b. Failure to include Attachments that were referenced elsewhere in the solicitation. [11 comments-2002; 3 comments-2001]
- c. Conflicting instructions for submission of a subcontracting plan. Offerors were instructed to submit the plan with offers. However, Just-In-Time procedures were also included. These procedures state that only offerors in the competitive range are required to submit a plan. [2002]
- d. Failure to include current “Instructions for Submission of Cost or Pricing Data” in a solicitation. [2002]

25. **Section L**

- a. Failure to include Veteran-Owned Small Business Concerns in the Small Business Subcontracting Plan Requirements. [2 comments-2002]

b. Failure to include business proposal instructions. [FAR 15.204-5][2002]

c. Failure to specify the number of anticipated awards. [2 comments-2002]

d. Failure to specify HHSAR 352.215-1 as an authorized deviation of FAR 52.215-1(e). [HHSAR 315.209][2002; 2 comments-2001]

e. Failure to include the terms and extent to which and how offeror-proposed performance-based payment terms would be evaluated. [FAR 32.1004(e)][2002]

f. Consider including the following information from the NCI RFP Generation Document, as appropriate: Commitment of Public Funds [2001]; Preparation Costs; Communications Prior to Award [2001]; Release of Information [2001]; Use of the Metric System of Measurement [2002], and the evaluation of Historically Underutilized Business Zone Small Business Concerns and the Extent of SDB Participation. [2 comments-2002; 3 comments-2001]

g. Failure to include a common due date, late proposal provisions, and other instructions to offerors. [FAR 15.204-5][2002]

26. **Section M**

a. Failure to state the relevant importance of all evaluation factors. [FAR 15.203, 15.304, and HHSAR 315.204-5][4 comments-2002; 2 comments-2001][1989, 1990, 1998]

b. Failure to specify the basis for award. [2002; 2001]

c. Proposals failing to satisfy all mandatory requirements should not be eliminated from further consideration until given an opportunity to change, clarify, or revise the proposal. [Per advice from Legal Counsel, OGC][2002]

d. Failure to specify how, when, and by who the determination would be made that intellectual property plans were approved. As a condition of award, offerors had to submit an acceptable or “approved” plan. It was stated that “reviewers” would comment on the adequacy and feasibility of the plan but would not score the plans. [2002]

X. **AWARD FILE DOCUMENTATION**

1. Inappropriately including a D&F authorizing advance payments for a Phase II Small Business Innovative Research (SBIR) contract in the file of a Phase I SBIR acquisition. [2002]

2. Failure to determine the adequacy of the contractor’s accounting/purchasing system. [FAR 44.305-1(a)][3 comments-2002]

3. Questionable use of contract funds to pay for travel expenses for career development training of contract employees. [FAR 31.205-44][2001]

4. Failure to include a discussion of acceptable proposals, Past Performance, and Mandatory Qualification factors in the CR. [*FAR 15.306(c)*][2002]

5. Failure to include the following legend at the bottom of each page of the CR “Source Selection Information - See FAR 2.101 and 3.104.” [*FAR 2.101 and 3.104-4*][2002][1997]
6. **Departmental Contracts Information System (DCIS)**
 - a. Forms 1759, 1759-1, and 1688 are obsolete and have been replaced by the DCIS NIH Data Collection Sheet. [2002 and 2 comments-2001]
 - b. Inaccurate coding of DCIS NIH Data Collection Sheets. Examples: Code Block 9 C - New Definitive Contract instead of L - Order Under a Multiple Award Schedule for open market acquisitions; Blocks 21 - Bundling of Contract Requirement, 59 - Cost Accounting Standards, and 57 - Estimated Completion Date with Option were not completed. [2002 and 2001][1989]
7. **Technical Evaluation/TEP/Peer Review**
 - a. The technical evaluators failed to sign conflict of interest or confidentiality statements. [2 comments-2001][1997] All technical evaluators had not signed the technical evaluation report. [2 comments-2001]
 - b. Failure to obtain approval from the Deputy Director for Extramural Research where a peer reviewer had a conflict of interest with an offeror, and was recused from the review. The class deviation to the HHSAR dated April 27, 1999, which permits this type of recusal, was not followed because the approval was not obtained. [2 comments-2002][1999]
 - c. Failure to verify, review, or score past performance information as stated in the evaluation criteria. [*FAR 15.305*][2002; 2 comments-2001]
 - d. Lack of rationale to support scores given and inaccuracies or inconsistencies in mathematical computations of scores. [2002][1989] Incomplete technical evaluation sheets. [*HHSAR 315.305*][2001]
8. **Letters to Unsuccessful Offerors**

Failure to include letters to unsuccessful offerors [2001] or include the number of offerors solicited and, in general terms, the reason why the offeror’s proposal was not accepted. [*FAR 15.503(b)(1)*][1997] A copy of the technical evaluation report should not be attached to letters to unsuccessful offerors. [2002] In another instance, letters included language that delayed the possibility of a debriefing. An offeror may request a preaward debriefing within three days after

receipt of the notice of exclusion from the competition. [*FAR 15.505*][2002]

9. **Source Selection Determination (SSD)**

- a. The SSD referred to “oral discussions” instead of oral presentations. [*FAR 15.102*][2002]
- b. The determination was not signed [2002], and the number of awards was not specified [2001].

10. **Missing Documentation**

- a. Completed Representations and Certifications [2 comments-2001][**1989, 1990, 1991, 1999, 2000**]; Final Proposal Revision (FPR) where award was made with discussions [*FAR 15.307*][2001]; and Certificate of Current Cost or Pricing Data when the file stated that a certificate was required [*FAR 15.406-2*][2002; 2001][**1991, 1997, 1998, and 1999**].
- b. PO’s Technical Questionnaire [2001; 2002][**1988, 1989**]; Revised and actual completion dates on the milestone/AP plans [2002; 2 comments-2001]; Notification of award letters to unsuccessful offerors [*FAR 15.503*][2002; 2001]; Congressional Liaison notification. [*HHSAR 305.303*][2002][**1991, 1992, and 1993**]; Award synopsis [*FAR 5.301*][2001]; Preaward notices for a TSBSA Program [*FAR 15.503(a)(2)*][2001][**1991, 1992, and 1993**]; Handling of late proposals [*FAR 15.208*][2001][**1991**]; DCIS Sheet [2002]; and SSD [2002].

11. **SON**

- a. Failure to explain how the obligated amount was derived. [2002]
- b. Failure to check appropriate blocks. [2 comments-2002]
- c. Improperly stating the fixed-fee amount in terms of a percentage instead of dollars, which is contrary to the prohibition against fee as a percentage of cost. [*FAR 16.102(c)*][2002]
- d. Failure to include analyses and documentation to support determinations of responsibility (analysis of current financial statements, etc.). [9 comments-2002, and 10 comments-2001][**1999 and 2000**] Failure to conduct further analysis of financial stability where the solvency ratio was low. [2001]
- e. Failure to include a cost breakdown [2 comments-2001][**1992 and 1993**], failure to specify the contract type [2002], and failure to sign the SON [3 comments-2001][*HHSAR 315.372*].
- f. Failure to include the amounts negotiated, the contract type, and Government-furnished

property that would be provided in the SON for a TO. [2002]

g. Inappropriate action of relaxing a mandatory requirement during negotiations. [2002]

h. Inconsistencies between amounts shown in the contract, FPR, and SON. [2002; 2 comments-2001][**1985, 1987, 1988, 1989, 1990, 1997**]

i. Inconsistent or incorrect statements or references. [20 comments-2002; 15-2001]

j. Questionable compliance with the requirements of limitation on subcontracting. [*FAR 19.508(e)*][2002][**1989, 2000**]

k. Failure during negotiations to pursue negative statements on the PO's Technical Questionnaire that more justification was needed from the offeror for direct labor. [2002][**1997**]

l. Failure to include a copy of the GSA schedule contract, which formed the basis for the labor rates in the TO. [2002]

m. **Inadequacies in the areas of Reasonableness of Prices or Costs and Cost or Price Analysis**

(1) It was stated that negotiated elements of cost were either consistent with the prenegotiation objective or field pricing support recommendations. But, field pricing assistance was waived, and there were no individual cost objectives in the prenegotiation objective. [2 comments-2001]

(2) Failure to perform a proper price analysis in an attempt to determine that proposed prices were fair and reasonable. It is an unacceptable method to include the prices of technically unacceptable proposals received in response to the solicitation in a comparison of prices. [*FAR 15.403-1(c)(1)(i)*][2 comments-2002; 2001]

(3) Failure to include analyses and documentation to support the reasonableness of prices/costs offered. [18 comments-2002; and 62 comments-2001][**1991, 1992, 1999, and 2000**]

(4) Failure to include sufficient documentation to support cost or price analysis. [6 comments-2002, and 14 comments-2001][**1984, 1985, 1987, 1988, 1989, 1990, 1991, 1992, and 1998**] Failure to perform analysis, although documentation supporting the cost analysis was in the file. [1 comment-2002]

(5) Inconsistencies between documentation for elements of costs and proposed costs. [7 comments-2002, and 3 comments-2001]

- (6) Failure to use the contractor's policies and historical data to determine reasonableness of salary increases. Estimated budgetary increases were improperly used. [3 comments-2002, and 2 comments-2001][**2000**] Improper use of pay increases received by Government employees to justify proposed increases. [2002] Improperly applying salary

increases to the contract period instead of prorating the increases. [2002]

- (7) The recommended use of the weighted average annual Consumer Price Index (CPI) for escalating other direct costs by the Division of Financial Advisory Services (DFAS) should not be confused with DFAS' standard practice of accepting the CPI plus or minus 1 percent for direct labor escalation factors. [1 comment-2002, and 3 comments-2001]
- (8) It was questionable if proposed wage rates conformed to the Department of Labor SCA Wage Determination. [*FAR 22.1002-2*][2 comments-2002]
- (9) It was unclear how a labor rate was calculated and determined to be reasonable. [15 comments-2002]
- (10) Failure to apply the correct Fringe Benefit rate to salaries. [2002]
- (11) Incorrect calculation of direct work years. 2080 hours should not be used as the direct work year, but should only be used to calculate each individual's hourly rate. Since vacation, sick and holiday costs are accounted for as part of fringe benefits costs, use of 2080 hours as the direct work year results in a duplication of vacation, sick and holiday costs in direct labor and again in fringe benefits. [2002 and 2 comments-2001]
- (12) Failure to include escalation over the life of a contract. [2002]
- (13) Failure of the offerors to obtain more than one quote for costs. [2002]
- (14) The original proposal included an item as a direct cost. The item was reclassified as an indirect cost when a justification for the item was requested. The CO failed to obtain evidence that this treatment of the item was consistent with the offeror's accounting system. [2002]
- n. Failure to include the reasons for departure from pertinent DFAS audit report recommendations. [4 comments-2002][**1984, 1985, 1987, 1988, 1989, 1990, 1999**]
- o. Inclusion of a Certificate of Current Cost or Pricing Data in the file despite the appearance of adequate price competition. Therefore, the prohibition on obtaining cost and pricing data would apply. [*FAR 15.403-1*][7 comments-2002, and 6 comments-2001]

12. Failure to have the Certificate of Current Cost or Pricing Data signed and dated as close as

practicable to the date when price negotiations were concluded and the contract price was agreed upon. [FAR 15.403-4(b)][2002][1984, 1987, 1988, 1989, 1993, 2000]

13. Failure to include a copy of the complete negotiated Indirect Cost Rate Agreement (including the applicable bases and the signature page). [2 comments-2002, and 3 comments-2001][1999]

FISCAL YEAR 2001 & 2002

25

FINDINGS OF THE NIH BOARD OF CONTRACT AWARDS

14. Include an advance understanding of the negotiated indirect cost rates that will be used for billing purposes until the Indirect Cost Rate Agreement is negotiated. [2002; 2001][1999]
15. It is recommended that all prime contractors and subcontractors complete NIH's Overhead Worksheet form and reconcile the figures on the worksheet to their most recently completed (preferably audited) financial statements. The form is available on the DFAS "Resources & Links" Web page at <http://ocm.od.nih.gov/DFAS/resources.htm>. [2002]
16. Failure to explain why an offeror's exception to the Government Property Clause was accepted. [2001][2000]

Y. CONTRACT DOCUMENT

1. Failure to clearly state cost sharing language that was consistent with the SON. [2002; 2001][1984, 1987, 1989]
2. Failure to include the correct performance period. [3 comments-2002]
3. Failure to adjust option year schedules to account for leap year. [2002]
4. Failure to delete solicitation language from the contract document. [4 comments-2002][1988, 1992]
5. Failure to include changes made to Sections C through J by amendment. [2002; 5 comments-2001]
6. Reconsider incorporating portions of the contractor's proposal or quote in the contract, since the information would/may be releasable under FOIA. [4 comment-2001][1998]
7. Inconsistencies between amounts shown on the face page of the contract, Section B, SON, FPR, and/or the RFC/AP. [4 comments-2002; 6 comments-2001][1985]
8. Section A
 - a. Failure to complete the following: Delivery (Block 8) [3 comments-2002; 3 comments-2001], Discount for Prompt Payment (Block 9) [2 comments-2002; 2 comment 2001], Accounting and Appropriation Data (Block 14), and Total Amount of Contract (Block 15G) [2002].

- b. Include the following: the entire anticipated period of performance (i.e., base year and options) in Block 15B and Section B [2 comments-2002], the minimum and maximum quantities/amounts per year in 15G [2002], the period of performance, and contract type that may be issued by TOs in 15G [2002], and Block 17 [2001].

- c. Complete Block 17 instead of Block 18, if the contractor is required to sign the SF-26. [2002]
- d. Incorrect references were provided. [2 comments-2001]

9. **Section B**

- a. Failure to incorporate the agreed upon price list. [2002][1998]
- b. Failure to include the General and Administrative expense as a percentage of a base rather than as a lump sum. It was unclear how the contractor would bill for this cost. [2001]
- c. Failure to obtain funding for a contingency within the total estimated cost of the contract. It was unclear if the actions would fall within a change within scope or by the application of value engineering techniques in FAR Part 48. [2002]
- d. Failure to include appropriate language when it is anticipated that a deviation from FAR 52.227-13, Patent Rights, Acquisition by the Government will be used. [2002][2000]
- e. Inability to understand the term “materially” as used in this sentence: “The contractor was permitted to adjust costs from year to year, but the adjustment shall not materially exceed a given year’s allotment.” [2001]
- f. Failure to state that subscriptions purchased with Government funds are the property of the Government, and shall be transferred to the Government at the end of the contract. [2001]
- g. Failure to include financial reporting requirements in a cost-plus-fixed fee contract. [2001]
- h. In a “Subcontract” Article, “CO approval” should be changed to “CO consent.” [*FAR Part 44.2*][2 comments-2002]
- i. Hiring consultants to perform management activities until the contractor achieves acceptable standards and practices appears to exceed the Government’s authority. [2002]
- j. Although it was stated that approval of a Determination of Exceptional Circumstances (DEC) was pending, DAPE was unaware of the DEC request. [2002]

10. **Section C**

- a. Failure to include a referenced appendix. [2001]
- b. Failure to include information about subcontracts and the contractor's ability to match its share of indirect costs in Section B, Advance Understanding. [2001]

11. **Section F**

- a. Failure to include options in the period of performance Article. [2001]
- b. Delivery dates failed to match the dates in the FPR. [2001]

12. **Section G**

- a. The PO's responsibilities were not defined. Alternate POs should only perform PO duties when the PO is unavailable. [2001]
- b. Failure to include Government property terms and conditions where the contractor would be using Government property. [*FAR 45.102*][2 comments-2002]

13. **Section H**

Failure to list SDB concerns considered in the evaluation of proposals. Failure to include language requiring the contractor to notify the CO of any non-SDB substitutions. [*FAR 19.1202-4(b)*][2001]

14. **Section J**

- a. Failure to include the subcontracting plan. [2001][**1992**]
- b. The contract amounts in the subcontracting plan differ from the contract document. [2002; 2 comments-2001]
- c. The CO did not sign the subcontracting plan. [2002]
- d. Include SF-294 and SF-295 in contracts that require submission of the subcontracting reports or the FAR Web site address where the forms can be found. [2002]
- e. Failure to include the Privacy Act System of Records. [2002][**1991**]
- f. Failure to include NIH Form 1688-1 in R&D contracts. Require the contractor to complete the form per the instructions. [2002]
- g. Failure to include the SOW. [2002]

- h. Failure to explain why bonding requirements, which were included in the solicitation, were deleted. [2002]

15. **Section K**

Failure to incorporate by reference. [2001]

III. OTHER MATTERS

- A. Section J of solicitations and contracts. Titles of attachments were listed multiple times, attachments were unnumbered and untitled [3 comments-2002], and the dates on attachments were incorrect or not consistent with dates found elsewhere in the contract. [2 comments-2002]
- B. Incidents of typographical errors. [88 comments-2002; 12 comments-2001]
- C. Incidents of missing pages, paragraphs, and duplicate pages and paragraphs. [10 comments-2002]
- D. Incorrect terms used:
 - 1. “Office of Contracts Management” instead of “Office of Acquisition Management and Policy.” [3 comments-2001]
 - 2. “Division of Computer Research and Technology (DCRT)” instead of “CIT.” [2002]
 - 3. “Commerce Business Daily” instead of “Federal Business Opportunities.” [8 comments-2002]
 - 4. “Safety and Standards” instead of “Safety and Health.” [2002]
 - 5. “Office for Protection from Research Risks (OPRR)” instead of “OHRP, OS, DHHS.” [3 comments-2002]
 - 6. “Division of Financial Analysis Services” instead of “Division of Financial Advisory Services.” [2 comments-2002]
 - 7. “NIH, DFAS, Indirect Cost Branch” instead of “NIH, DFAS, Special Reviews Branch.” [2002]
 - 8. “ADP” instead of “IT.” [2001]
 - 9. “Best and Final Offer” instead of “FPR.” [2002][**2000**]
 - 10. “NIH Past Performance Database” instead of “NIH Contractor Performance System.” [2001]

E. Improperly using past FY appropriations or current appropriations for awards being made in the next FY. [6 comments-2002; 5 comments-2001] Use of the formats from the NCI RFP Generation document should eliminate this problem.

F. Improperly scheduling proposal due dates on Saturdays and Sundays. [2001; 2002]

FISCAL YEAR 2001 & 2002

29

FINDINGS OF THE NIH BOARD OF CONTRACT AWARDS

G. Failure to spell out acronyms. [9 comments-2002; 3 comments -2001]

H. Incorrect Web site addresses were cited. [2002]

I. Incorrect use of footnotes in Section J. [2 comments-2002]

J. Incorrect statement pertaining to Section 508 of the Americans with Disabilities Act. Although the Act did not apply to a particular acquisition, the file stated that the Act did not apply because of "undue burden." [2002]

K. Inaccurate paragraph numbering and lettering format was used. [2 comments-2002]

L. Failure to include the following language in the Award Notice:

"No later than 15 calendar days from the date of receipt of this notice of award, you must provide the contracting officer with the following information:

1. Contractor's Department, Service, Laboratory or Equivalent Designation
(i.e., Department Name)

2. Contractor's major subdivision (i.e., Major Component Code)

3. An abstract of the project objectives, using the enclosed NIH Form 1688-1.

[September 13 message from the Division of Acquisition Policy and Evaluation to the NIH 1102 List Serve for associated information.][2 comments-2002]

M. Failure to correctly reference the contractor's name in at least in four places in back-up documentation to the Determination of Responsibility. [2002]

N. Failure to correctly reference the Tab numbers in the SON. [2002]

O. Failure to file documentation in the proper place [2 comments-2002], and failure to include documentation stated to be in the file. [3 comments-2002, and 1 comment-2001].