Office of Inspector General

August 2005
Report No. 05-029

Contract Solicitation and Evaluation

AUDIT REPORT

Office of Audits

oig

Office of Audits

oig

Background and Purpose of Audit

The FDIC Division of Administration's (DOA) Acquisition Services Branch (ASB) has overall responsibility for the acquisition process. The *FDIC Acquisition Policy Manual* (APM) describes the FDIC's acquisition process and contains guidance related to the solicitation and award of contracts for goods and services to ensure the best value for the FDIC.

In addition to contracting independently, the FDIC has the option to obtain goods and services by placing orders against the General Services Administration's (GSA) Multiple Award Schedule (MAS) contracts. MAS contractors may accept any size order; however, each MAS contract has an established maximum order threshold. The maximum order threshold is the dollar-value threshold at which the ordering activity must seek additional price reductions. GSA also advises ordering activities to seek price reductions when the maximum order threshold has not been reached but requirements warrant a reduction in price.

The objective of this audit was to determine if the FDIC (1) achieved adequate price competition in its contract solicitation process in order to obtain fair and reasonable prices for goods and services and (2) complied with the APM solicitation and proposal evaluation requirements.

To view the full report, go to www.fdicig.gov/2005reports.asp

Report No. 05-029
August 2005

Contract Solicitation and Evaluation

Results of Audit

Based on our review of a sample of 17 competitive contracts and 6 noncompetitive procurements that had been awarded from October 1, 2003 through January 4, 2005, we determined that ASB generally complied with the APM's solicitation and evaluation requirements. The 17 competitive contracts were valued from $2 million to $26.4 million, while the 6 noncompetitive contracts were valued from $158,000 to $1.2 million.

Furthermore, ASB achieved adequate price competition for the purpose of obtaining fair and reasonable prices. However, the FDIC did not always request price reductions on contracts awarded through GSA's MAS program. Requesting price reductions from MAS contractors could result in more favorable pricing due to market fluctuations that cause discounts to be offered.

We have issued a separate memorandum to management regarding improvements needed in the documentation of solicitation activities and market research. The improvements are related to isolated instances of noncompliance with documentation requirements that did not warrant recommendations or inclusion in the report.

Recommendation and Management Response

DOA should revise the APM to require the Contracting Officer (CO) to seek price reductions on contracts awarded through GSA's MAS program unless there are extenuating circumstances, or based on price analysis or other assessment, the CO determines that the MAS contract price represents the best value at the lowest possible price. In such cases, the CO should be required to document the reason for not seeking a price reduction.

DOA did not agree that the APM should be modified. However, DOA agreed that the CO must adequately document the basis for determining that prices are fair and reasonable and represent the best value for the FDIC. DOA has reminded the COs of their responsibility to evaluate and document price evaluations and has established a training program related to price evaluation. DOA's alternative corrective actions are responsive.

APM Requirements for Price Reductions

Before placing an order, the Contracting Officer may but is not required to: "Seek price reductions from the schedule contractor(s) appearing to provide the best value (considering price and other factors); and place the order with the schedule contractor that provides the best value and results in the lowest overall cost alternative after seeking price reductions. If further price reductions are not offered, an order may still be placed, if the Contracting Officer determines that it is appropriate."

TABLE OF CONTENTS

Federal Deposit Insurance Corporation
801 17th Street NW, Washington, DC 20434

Office of Audits
Office of Inspector General

DATE: August 11, 2005

MEMORANDUM TO: Arleas Upton Kea, Director
Division of Administration

FROM: Russell A. Rau [Original signed by Stephen M. Beard for Russell A. Rau]
Assistant Inspector General for Audits

SUBJECT: *Contract Solicitation and Evaluation*
(Report No. 05-029)

This report presents the results of the Federal Deposit Insurance Corporation (FDIC) Office of Inspector General's (OIG) audit of contract solicitation and evaluation. The overall objective of this audit was to determine if the FDIC (1) achieved adequate price competition in its contract solicitation process in order to obtain fair and reasonable prices for goods and services and (2) complied with the *FDIC Acquisition Policy Manual* (APM) solicitation and proposal evaluation requirements. Details on our objective, scope, and methodology are presented in Appendix I. In relation to compliance with APM solicitation and evaluation requirements, we have issued a separate memorandum to management, addressing improvements needed in the documentation of solicitation activities and market research. The improvements are related to isolated instances of noncompliance with documentation requirements that did not warrant recommendations or inclusion in this report.

BACKGROUND

The FDIC Division of Administration's (DOA) Acquisition Services Branch (ASB) has overall responsibility for the acquisition process. The APM describes the FDIC's acquisition process and contains guidance related to the solicitation and award of contracts for goods and services to ensure the best value for the FDIC.

The APM requires the Contracting Officer (CO) to prepare the solicitation package using information received from the program office requesting the goods or services and appropriate standard solicitation documents. The CO tailors the Request for Proposal (RFP) to the specific requirements of the procurement. Proposals received are evaluated in accordance with the evaluation criteria stated in the RFP. The proposal evaluation is the process of assessing each offeror's ability to successfully perform the FDIC's stated requirements. Therefore, the criteria must be defined in enough detail in the RFP to provide offerors a reasonable opportunity to understand the basis of the evaluation. Technical proposals are evaluated by a Technical Evaluation Panel (TEP) established for each contract, and price proposals are evaluated by the CO and TEP. The CO is responsible for ensuring adequate contract price competition. APM Paragraph 4.D.5.a. states that adequate price competition is obtained when competitive proposals are solicited and the solicitation has identified price as an evaluation criterion. To promote competition, the CO should solicit at least three sources. In circumstances where the FDIC is unable to compete its requirements and the contract is over $5,000, the program office is required to prepare a Justification for Noncompetitive Procurement, in accordance with APM Paragraph, 2.J.1.

A price reasonableness determination is important to ensure that the FDIC does not pay prices that are exorbitant or not in line with the general marketplace. Price competition normally ensures reasonable prices, but there are instances when competitive pressures are not sufficient to ensure reasonable prices. APM Paragraph 4.D.5.a. specifies the following four methods for the CO to use when determining price reasonableness:

1. Compare each price with the same or similar items or services in comparable quantities acquired under previous or existing contracts.
2. Compare proposed prices with the FDIC cost estimate and the CO's personal knowledge of the item being procured, or any other reasonable basis.
3. Verify that law or regulation sets prices when that claim is made.
4. Compare proposed prices with competitive published catalogs or lists, published market prices or commodities, similar indices, and discount or rebate arrangements.

All price analysis techniques should rely on data obtained from sources other than the offeror.

The FDIC has the option to obtain goods and services by placing orders against the General Services Administration's (GSA) Multiple Award Schedule (MAS) contracts. MAS contracts offer a simplified process for obtaining commonly used commercial goods and services from commercial firms at "most favored customer" pricing. Quantity discounts may also be available. While MAS contractors may accept any size order, each MAS contract has an established maximum order threshold. The maximum order threshold is the dollar-value threshold at which the ordering activity must seek additional price reductions for its requirement. The maximum order varies from contract to contract and is listed in *GSA Advantage!*®[1] and every GSA contractor's pricelist. Additionally, in accordance with the Federal Acquisition Regulation (FAR) 8.404(b) (3), the maximum order threshold represents the point at which it is advantageous for customers to seek price reductions. The FAR is not applicable to the FDIC but is applicable to most other federal agencies.

From October 1, 2003, through January 4, 2005, the FDIC awarded 237 contracts, totaling $252.5 million, with gross purchase order amounts over $100,000. The FDIC competed 199 of the contracts, totaling $230.6 million, and did not compete 38 of the contracts, totaling $21.9 million. Appendix II provides details on the 17 competitive and 6 noncompetitive contracts reviewed during this audit.

---

[1] *GSA Advantage!*® is a GSA online shopping and ordering system that provides access to contractor-provided services and products. Only a federal government employee with a government-wide SmartPay purchase card or a GSA Activity Address Code may shop on GSA *Advantage!*.®

RESULTS OF AUDIT

ASB generally complied with the APM's solicitation and evaluation requirements for the competitive and noncompetitive procurements. Furthermore, ASB achieved adequate price competition for the purpose of obtaining fair and reasonable prices. However, the FDIC did not always request price reductions on procurements through GSA's MAS program. Requesting price reductions from MAS contractors could result in more favorable pricing due to market fluctuations that cause discounts to be offered.

REQUESTING PRICE REDUCTIONS ON GSA MAS CONTRACTS

The FDIC requested price reductions on only one of the seven contracts in our sample that had been awarded through the GSA's MAS program and that exceeded the MAS maximum order threshold. APM guidance does not require that price reductions be routinely requested from a MAS contractor on orders exceeding the maximum order threshold. Consequently, the FDIC may not be taking full advantage of additional discounts that may be offered as a result of competition, technological changes, and other factors in the commercial marketplace.

Guidance for Seeking Pricing Discounts

GSA MAS Program Guidance. The FDIC frequently uses GSA's MAS program to procure goods and services. MAS contracts are designed to offer "most favored customer" pricing to government agencies; however, additional quantity discounts may also be available upon request.

GSA has stated that it is a proven best practice for ordering activities to seek additional price reductions/increased discounts and/or concessions when placing an order under a MAS contract. Contractors will often reduce prices on a MAS contract to obtain a large order. However, MAS contractors are not required to pass on to all MAS program users a price reduction that had been extended only to an individual customer for a specific order.

Reasons to seek price reductions include cases in which the ordering activity has determined that a service or product is available elsewhere at a lower price or when establishing blanket purchase agreements (BPAs) to fill recurring requirements. The potential volume of orders under BPAs offers the opportunity to secure price reductions or increased discounts, regardless of the size of individual orders. Ordering activities using the MAS program should also seek price reductions when the annual review of a BPA determines that estimated quantities or amounts have been exceeded.

GSA advises ordering activities to seek further price reductions when the maximum order threshold has not been reached but requirements warrant a reduction in price. Price reductions allow ordering activities to take advantage of the flexible and dynamic pricing in the commercial marketplace. By requesting a price reduction, an ordering activity can maximize its use of MAS contracts by taking advantage of such factors as a competitive environment, technological changes, labor conditions, supply and demand, industry sales goals, and inventory reductions.

FAR Guidance. For orders exceeding the maximum order threshold, the FAR instructs customers to generally seek price reductions from MAS program contractor(s) appearing to provide the best value (considering price and other factors). Additionally, agencies are encouraged and empowered to seek price reductions, not only for orders over the maximum order threshold but also for orders below the threshold (when circumstances warrant) in order to ensure that when using MAS contracts, the best value is obtained at the lowest overall cost.

The FDIC's APM. The APM acknowledges the benefit of seeking price reductions for orders over the maximum order threshold. However, the APM does not require the CO to routinely seek price reductions on GSA's MAS contracts that exceed the maximum order threshold, or in other appropriate circumstances, as discussed in the GSA MAS guidance.

APM Paragraph 4.I.4.c. states that the CO may seek price reductions on orders exceeding the maximum order threshold from the MAS program contractor(s) appearing to provide the best value (considering price and other factors) and may place the order with the contractor that provides the best value and lowest overall cost alternative after seeking price reductions.

In response to the ordering activity's request for a price reduction, the contractor may offer a lower price, offer the current MAS contract price, or decline the order. If further price reductions are not offered, the order may still be placed if the ordering office determines that it is appropriate because GSA has already determined that the MAS contract prices are fair and reasonable.

FDIC MAS Contract Awards

As of January 4, 2005, the FDIC had 128 active contracts that exceeded the MAS $500,000 maximum order threshold. The total value of these contracts was about $325 million. Our sample of 17 contracts included 7 contracts that exceeded the maximum order threshold. The 7 contracts, with a total value of $33.0 million, represented approximately 10 percent of the total dollar value of FDIC contracts for the period reviewed.

For those seven contracts, we did not find evidence in the contract files to suggest that the contract prices were unreasonable. However, the FDIC requested a price reduction on only one contract, and the winning bidder had not reduced its price.

The ability to seek additional price reductions and concessions allows the government not only to leverage its combined requirements to obtain favorable prices, terms, and conditions but also to leverage agency requirements to take advantage of quantity or spot discounts available in a fluid, commercial pricing environment.

Furthermore, the Government Accountability Office (GAO) recently concluded that GSA cannot be sure that fair and reasonable prices have been negotiated on GSA MAS contracts. GAO's report, *Opportunities to Improve Pricing of GSA Multiple Award Schedule Contracts*, GAO-05-229, dated February 11, 2005, states that 37 (about 60 percent) of the 62 contracts awarded or extended during 2003 (at 7 MAS acquisition centers) lacked sufficient documentation to clearly establish that contracts had been effectively negotiated. Specifically, the contract documentation did not establish that negotiated prices had been based on accurate, complete, and current vendor information; adequate price analyses; and reasonable price negotiations. Without an underlying assurance of negotiated low prices, GAO concluded that MAS users could be overpaying for goods and services before quantity discounts are applied.

Unless the FDIC routinely requests discounts on purchases in excess of the maximum order threshold on MAS contracts, the Corporation may not be taking full advantage of additional discounts that may be offered as a result of competition, technological changes, and other factors in the commercial market place.

Recommendation

We recommend that the Director, DOA, revise the APM to require the CO to seek price reductions on contracts awarded through GSA's MAS program unless there are extenuating circumstances, or based on price analysis or other assessment, the CO determines that the MAS contract price represents the best value at the lowest possible price. In such cases, the CO should be required to document the reason for not seeking a price reduction.

CORPORATION COMMENTS AND OIG EVALUATION

On August 4, 2005, the Director, DOA, provided a written response to the draft report. The response is presented in its entirety in Appendix III. DOA did not agree that the APM should be revised. DOA stated that discounts from the GSA schedule prices should not be requested in all situations. However, DOA agreed that GSA prices should be carefully evaluated and that the FDIC cannot assume that GSA prices offer the best value for the FDIC's requirements. DOA also agreed that the CO must adequately document the basis for determining that prices were fair and reasonable and that the best value for the FDIC was obtained. Accordingly, the ASB Associate Director has formally reminded all ASB personnel of their responsibility to carefully evaluate all prices being offered and to provide adequate documentation that the price is fair and reasonable.

In addition, DOA responded that ASB has recently established a training program for contracting personnel that includes a formal class in price evaluation. This training is designed to help improve the ability of ASB personnel to make sound evaluations of price reasonableness based on the unique circumstances of each negotiation.

DOA's planned alternative corrective actions are responsive. The recommendation is resolved, dispositioned, and closed. Appendix IV contains a summary of management's response to our recommendation.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of this audit was to determine whether the FDIC (1) achieved adequate price competition in its contract solicitation process in order to obtain fair and reasonable prices for goods and services and (2) complied with the APM solicitation and proposal evaluation requirements. We performed the audit from September 2004 through May 2005 in accordance with generally accepted government auditing standards.

Scope

For this audit, we judgmentally selected a sample of 17 contracts awarded from October 1, 2003 through January 4, 2005 and valued at $2 million or more, to determine whether the FDIC had complied with the most significant APM requirements relating to the contract solicitation and evaluation process. Two contracts were eliminated from our sample because they had been the subjects of prior OIG reviews.

We also selected six noncompetitive procurements for review to determine whether they had been properly justified in accordance with the FDIC's APM, Chapter 4, Section 4.G, *Justification for Noncompetitive Procurements* (JNCP).

We used computer-based data from the FDIC's Contract Monitoring Information Application report system (a tracking system for all FDIC contracts) to select our sample. We used the gross purchase order amounts as the source for our sample selection. We assessed the reliability of the gross purchase order amount data elements by comparing a sample of data to source documents. We determined that the data was sufficiently reliable for the purposes of this assignment. No other computer-based data was used in this audit.

Details on our samples are contained in Appendix II.

Methodology

For the sampled contracts, we determined whether the FDIC:

- included a price reduction clause in the technology contracts;
- had an adequate basis for selecting the winning bidder;
- held discussions with, and solicited best and final offers from, offerors and if so, the savings that resulted;
- requested price reductions after initial evaluations of the proposals for contracts procured through the GSA MAS program;

- had solicitation and procurement evaluation practices that were consistent with other best practices in the federal government and private industry; and

- complied with the APM regarding the contracting solicitation and proposal evaluation phase.

Additionally, we compared the documents in the contract file folders to APM requirements for 14 significant solicitation attributes and 34 significant evaluation attributes.

We judgmentally selected six contracts to determine if the program office and the CO conducted market research in order to identify possible sources for the goods or services required and to determine if the results had been documented and submitted with the JNCP. We have issued a separate memorandum to management, addressing the documentation of solicitation activities and market research.

SAMPLE SELECTION

Initially, we judgmentally selected for review 17 contracts (each valued at $2 million or more) from the period October 1, 2003 through January 4, 2005 (see Table 1). Two of the seventeen contracts had been the subjects of prior OIG audits. Seven of the original 17 contracts had been awarded using the GSA MAS.

Table 1: Competitive Contracts Sampled

Contractor[a]	FDIC Division[b]	Gross Purchase Order Amount			
			Applicable Audit Area		
		Total Sample	Adequate Price Competition	Compliance With APM Solicitation and Evaluation Requirements	Sample of Contracts Awarded Using GSA MAS
1	DOA	$26,411,939	$26,411,939	$26,411,939	0
2	DIT[c]	$19,818,737	$19,818,737	0	0
3	DRR[d]	$15,715,080	$15,715,080	0	0
4	DIT[d]	$12,250,468	$12,250,468	$12,250,468	$12,250,468
5	DIT[c]	$9,630,623	$9,630,623	0	0
6	DIT	$5,923,203	$5,923,203	0	$5,923,203
7	DIT	$5,671,801	$5,671,801	$5,671,801	0
8	DIT	$4,950,000	$4,950,000	$4,950,000	0
9	DRR	$4,576,985	$4,576,985	$4,576,985	$4,576,985
10	DIT	$4,518,300	$4,518,300	$4,518,300	0
11	DRR	$4,466,480	$4,466,480	$4,466,480	0
12	DRR	$3,370,672	$3,370,672	$3,370,672	$3,370,672
13	DIT	$3,344,547	$3,344,547	$3,344,547	0
14	DIT	$3,036,268	$3,036,268	$3,036,268	0
15	DIT	$2,560,744	$2,560,744	$2,560,744	$2,560,744
16	DIT	$2,386,269	$2,386,269	$2,386,269	$2,386,269
17	DIT	$2,000,000	$2,000,000	$2,000,000	$2,000,000
Total		**$130,632,116**	**$130,632,116**	**$79,544,473**	**$33,068,341**

Source: We selected our sample from the FDIC's *Contract Monitoring Information Application* report dated January 4, 2005.

[a] Names of contractors and contract numbers will be provided under separate cover.
[b] FDIC division: DOA – Division of Administration
DIT – Division of Information Technology
DRR – Division of Resolutions and Receiverships
[c] This contract was the subject of a prior OIG audit and was therefore excluded from the portion of our review dealing with compliance with the APM. Audit report titles will be provided under separate cover.
[d] This contract file was not complete and could not be used in determining compliance with APM requirements.

We judgmentally selected six noncompetitive contracts (see Table 2) to determine whether the program office and the CO conducted market research in order to identify possible sources for the goods or services required and whether the results had been documented and submitted with the Justification for Noncompetitive Procurement. Our audit did not disclose any significant reportable conditions related to noncompetitive procurements. However, we brought an issue related to file documentation to management's attention in a separate memorandum.

Table 2: Noncompetitive Contracts Sampled

Contractor*	Procurement Description	Gross Purchase Order Amount
1	To provide Westlaw database services.	$1,239,000
2	Technical support related to the Control Totals Module (CTM) Project and other DOF systems as required.	$530,199
3	Ongoing operational, technical, and programming support for the Documentum environment.	$500,000
4	Mainframe disk storage maintenance service.	$237,764
5	Information technology consulting and research services.	$193,501
6	Enterprise Architecture consulting services.	$158,400
Total		**$2,858,864**

Source: Judgmental sample of noncompetitive contracts from the FDIC's *Contract Monitoring Information Application Report*, dated November 1, 2004.
* Names of contractors and contract numbers will be provided under separate cover.

CORPORATION COMMENTS

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990
Division of Administration

DATE: August 04, 2005

MEMORANDUM TO: Stephen M. Beard
Deputy Assistant Inspector General for Audits

FROM: Arleas Upton Kea, Director
Division of Administration
[Electronically produced version; original signed by Arleas Upton Kea]

SUBJECT: Draft Report Entitled *Contract Solicitation and Evaluation (Assignment Number 2004-065)*

The Division of Administration (DOA) has completed its review of the subject Office of Inspector General (OIG) report. DOA appreciates the OIG for its acknowledgement that the DOA Acquisition Services Branch (ASB) generally complied with the Acquisition Policy Manual's (APM) solicitation and evaluation requirements and achieved adequate price competition for the purpose of obtaining fair and reasonable prices. Although the OIG found general compliance, the OIG did report one recommendation that pertained to orders placed against the General Services Administration's (GSA) Multiple Award Schedule (MAS) contracts. We have evaluated the finding and have provided a detailed response to the recommendation made.

MANAGEMENT DECISION

Finding: Requesting Price Reductions on GSA MAS Contracts

Condition: The FDIC requested price reductions on only one of the seven contracts in our sample that had been awarded through the GSA's MAS program and that exceeded the MAS maximum order threshold. APM guidance does not require that price reductions be routinely requested from a MAS contractor on orders exceeding the maximum order threshold. Consequently, the FDIC may not be taking full advantage of additional discounts that may be offered as a result of competition, technological changes, and other factors in the commercial market place.

Recommendation: OIG recommends that the Director, DOA, revise the APM to require the CO to seek price reductions on contracts awarded through GSA's MAS program unless there are extenuating circumstances, or based on price analysis or other assessment, the CO determines that the MAS contract price represents the best value at the lowest possible price. In such cases, the CO should be required to document the reason for not seeking a price reduction.

Management Response: DOA agrees with the OIG's assertion that prices established on GSA Federal Supply Schedules or Multiple Award Schedules should be carefully evaluated. FDIC cannot merely assume these GSA prices offer the best value for FDIC requirements. However, in each of the contracts reviewed by the OIG, the prices paid by FDIC were determined to be fair and reasonable and to represent the best value for the FDIC based on adequate competition. In none of these examples did the FDIC Contracting Officer rely on the GSA prices alone.

DOA does not believe it is necessary or appropriate to establish a requirement for Contracting Officers to request discounts from the GSA schedule prices in all situations. Each procurement action must be evaluated based on the unique circumstances surrounding the immediate procurement. To require discounts be requested in every instance is not consistent with the need to have each action stand on its own. However, we do agree that the Contracting Officer must adequately document the basis for determining the price to be fair and reasonable and the best value for the FDIC. The Associate Director for Acquisition Services has formally reminded all ASB personnel of their responsibility to carefully evaluate all prices being offered and to provide adequate documentation that the price is fair and reasonable.

ASB has recently established a training program for contracting personnel. This program requires that all personnel take a formal class in the area of price evaluation. Exposure to this type of training should help improve the ability of ASB personnel to make sound evaluations of price reasonableness based on the unique circumstances of each negotiation.

If you have any questions regarding the response, our point of contact for this matter is Andrew Nickle, Audit Liaison for the Division of Administration. Mr. Nickle can be reached at (202) 942-3190.

cc: James H. Angel, Jr., OERM
Glen Bjorklund, DOA
Ann Bridges Steely, DOA ASB

MANAGEMENT RESPONSE TO RECOMMENDATION

This table presents the management response on the recommendation in our report and the status of the recommendation as of the date of report issuance.

Rec. Number	Corrective Action: Taken or Planned/Status	Expected Completion Date	Monetary Benefits	Resolved:[a] Yes or No	Dispositioned:[b] Yes or No	Open or Closed[c]
1	DOA formally reminded all ASB personnel of their responsibility to evaluate all prices being offered and to provide adequate documentation that the price is fair and reasonable. ASB established a training program for contracting personnel that includes a formal class in price evaluation.	N/A	$0	Yes	Yes	Closed

[a] Resolved – (1) Management concurs with the recommendation, and the planned corrective action is consistent with the recommendation
(2) Management does not concur with the recommendation, but planned alternative action is acceptable to the OIG.
(3) Management agrees to the OIG monetary benefits, or a different amount, or no ($0) amount. Monetary benefits are considered resolved as long as management provides an amount.

[b] Dispositioned – The agreed-upon corrective action must be implemented, determined to be effective, and the actual amounts of monetary benefits achieved through implementation identified. The OIG is responsible for determining whether the documentation provided by management is adequate to disposition the recommendation.

[c] Once the OIG dispositions the recommendation, it can then be closed.