



## Federal Contracting Investigative Tips

What do you need to learn when a contract seems wasteful or has hints of conflicts of interest? Here are some questions you should get answered for each stage of a contract.

### 1. Planning

- A. Does the government want or need the goods or services?
- B. Is the acquisition coordinated and integrated through a comprehensive plan for fulfilling the agency's need in a timely manner and at a reasonable cost?
- C. Who is pushing—an agency, an advisory committee, Congress, a Federally Funded R&D Center (FFRDC), the private sector—for the procurement of the goods or services?
- D. Was the procurement created by a direct or indirect legislative or executive branch mandate or earmark?
- E. Are the services an inherently governmental function, or can it be performed by contractors?
- F. Does any person or entity involved in the planning of the procurement have a personal or organizational conflict of interest?

### 2. Pre-Award

- A. Are there existing contracts that could be utilized to prevent the government from starting anew?
- B. Did the government advertise the solicitation to the fullest extent possible?
- C. How long was the solicitation open?
- D. Should small or disadvantaged businesses be considered?
- E. Should domestic preference laws be applied (the Buy American Act or the Berry Amendment)?
- F. What procurement vehicle was chosen (cost-reimbursement, fixed-price, IDIQ, interagency, schedule, Time & Material, Commercial Item, OTA, etc.)?
- G. If the acquisition is a commercial item or service, is there a genuine commercial market for the good or service? If the item is merely “offered” for sale, but no commercial sales have been recorded, did the government receive a true fair and reasonable cost or price?
- H. Is the commercial item or service “of a type” (meaning that the item isn't the same as what is being sold on the commercial market, which can cause issues with pricing)?
- I. Was the commercial item purchase sole source, which can also cause pricing concerns?
- J. How is the contract being financed?
- K. Is the government leveraging its buying power (e.g. is a bulk order more appropriate than frequent small orders)?
- L. Are contracting officers utilizing all discounts and attempting to negotiate prices lower than what is listed?
- M. What is the length of the contract?
- N. Who drafted the contract's requirements? Were the requirements well defined?
- O. Did the scope of work and requirements permit the maximum amount of competition (sometimes they are very narrowly defined as to favor one contractor and exclude all others)?

- P. What was the justification if something other than full and open competition was used?
- Q. Were contract requirements bundled resulting in limited or no genuine competition?
- R. Was proper market research performed?
- S. Have the requirements been modified or amended to favor a contractor?
- T. Are there any conflicts (personal or organizational) that might bias the award of the contract?
- U. Is the revolving door an issue?
- V. Did the bidder provide timely, accurate, and complete cost or pricing data (certified or other than certified) to the government?
- W. Have all of the bidders had a comprehensive performance and responsibility review? Was SAM and FAPIIS reviewed to ensure the contractor isn't suspended or debarred, or doesn't have a history of terminations for fault or cause, tax defaults, fraud, corruptions, or labor violations?
- X. Was a pre-award audit performed to verify bidders' projected costs, prices, and overhead rates, etc.?
- Y. Does the contractor have a comprehensive ethics, compliance, and disclosure program?
- Z. Were all certifications made, including not being delinquent on taxes?
- AA. Should the contract contain indemnification or immunity clauses?
- BB. How many levels of subcontractors will be used by the prime contractor?

### **3. Award**

- A. How many bids were received?
- B. Has the agency properly justified its source selection process?
- C. Did the selected contractor genuinely offer "best value" or the lowest price?
- D. Was the contract awarded to a responsible contractor (including a satisfactory performance and business-ethics record)?
- E. Were contractors properly classified in the case of small business designations or set-asides?
- F. Were any bid protests filed with the Government Accountability Office (GAO) or the Court of Federal Claims? If so, on what grounds? What was the outcome of the protest?

### **4. Administration**

- A. Is the government properly overseeing the contract? Is a contractor managing other contractors (lead systems integrators)?
- B. Is the contractor complying with government oversight requests?
- C. Has the scope of work, requirements, or financial terms been modified? Why?
- D. How many times has the contract been modified or amended?
- E. Has the contract been definitized (a contract with agreed upon terms, specifications, and prices)?
- F. Is the contract on time?
- G. Is the contract on budget?
- H. Are the costs or prices allowable, allocable, and reasonable?
- I. Is the government receiving the supplies or services for which it contracted? Beware of mission creep!
- J. What are possible termination outlets for the contractor?
- K. How is the contract being financed?
- L. Are contract fees appropriate (especially award, incentive, or performance fees)?
- M. Is the contractor properly paying its subcontractors?

- N. Have any conflicts of interest (personal or organizational) arisen that might bias performance of the contract?
- O. Has the Defense Contract Audit Agency (DCAA), Defense Contract Management Agency (DCMA), an IG, or the GAO audited the contract?
- P. Are there any IG or audit reports that indicate fraud, waste, or abuse?
- Q. Did the agency send the contractor any show cause letters, cure notices, or corrective action requests?
- R. Has the government accurately graded contractor performance?
- S. Is the contract information correct in FPDS-NG, SAM, FAPIIS, and PPIRS?
- T. Should a referral be made to the DOJ, the Inspector General, or the suspension and debarment office?
- U. Are labor laws (Davis-Bacon, the Service Contract Act, OSHA, and EO 13673 Fair Pay and Safe Workplaces) being followed?
- V. If termination of the contract is being considered, what liabilities exist and what are the potential termination costs? Are the termination costs greater than proceeding with the contract?
- W. Are there indemnification or immunity clauses that will shield the contractor?

#### **5. Close-Out**

- A. Is the contracting file up to date and accurate?
- B. Were performance appraisals accurate?
- C. Has the contractor accomplished all contract requirements?
- D. Did the contractor receive prompt payment and pay all subcontractors?
- E. Was the contractor's performance evaluated properly and entered properly into FAPIIS?
- F. Would the government choose to contract with the contractor again?
- G. Was the contract completed on time and on budget?