



Federal Contracting Investigative Tips

When a contract appears wasteful or suggests potential conflicts of interest, it's important to investigate the details carefully. To assess whether the contract was properly awarded and managed, consider the following key questions relevant to each stage of the contracting process, from planning and award to administration and close-out.

Planning

- Does the government want or need the goods or services?
- 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?
- Who is pushing — an agency, an advisory committee, Congress, a Federally Funded Research and Development Center (FFRDC), the private sector — for the procurement of the goods or services?
- Was the procurement created by a direct or indirect legislative or executive branch mandate or earmark?
- Are the services an inherently governmental function, or something that could be performed by contractors?
- Does any person or entity involved in the planning of the procurement have a personal or organizational conflict of interest?

Pre-Award

- Are there existing contracts that could be used to prevent the government from starting anew?
- Did the government advertise the solicitation to the fullest extent possible?
- How long was the solicitation open?
- Should small or disadvantaged businesses be considered?
- Should domestic preference laws be applied (the Buy American Act or the Berry Amendment, for instance)?
- What procurement vehicle was chosen (such as cost-reimbursement, fixed-price, indefinite delivery/indefinite-quantity, interagency, schedule, Time-and-Materials, Commercial Item, or Other Transaction Authority)?
- 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 truly fair and reasonable cost or price?

- 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)?
- Was the commercial item purchase sole source, which can also cause pricing concerns?
- How is the contract being financed?
- Is the government leveraging its buying power (for instance, is a bulk order more appropriate than frequent small orders)?
- Are contracting officers using all discounts and attempting to negotiate prices lower than what is listed?
- What is the length of the contract?
- Who drafted the contract’s requirements?
- Were the requirements well-defined?
- Did the scope of work and requirements allow the maximum amount of competition (sometimes they are very narrowly defined as to favor one contractor and exclude all others)?
- What was the justification if something other than full and open competition was used?
- Were contract requirements bundled, resulting in limited or no genuine competition?
- Was proper market research performed?
- Have the requirements been modified or amended to favor a contractor?
- Are there any conflicts (personal or organizational) that might bias the award of the contract?
- Is the revolving door an issue?
- Did the bidder provide timely, accurate, and complete cost or pricing data (certified or other than certified) to the government?
- Have all of the bidders had a comprehensive performance and responsibility review? Was the System for Award Management (SAM) 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, corruption, or labor violations?
- Was a pre-award audit performed to verify bidders’ projected costs, prices, and overhead rates?
- Does the contractor have a comprehensive ethics, compliance, and disclosure program?
- Were all certifications made, including not being delinquent on taxes?
- Should the contract contain indemnification or immunity clauses?
- How many levels of subcontractors will be used by the prime contractor?

Award

- How many bids were received?
- Has the agency properly justified its source selection process?
- Did the selected contractor genuinely offer “best value” or the lowest price?
- Was the contract awarded to a responsible contractor (including a satisfactory performance and business-ethics record)?
- Were contractors properly classified in the case of small business designations or set-asides?
- 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?

Administration

- Is the government properly overseeing the contract? Is a contractor managing other contractors (lead systems integrators)?
- Is the contractor complying with government oversight requests?
- Have the scope of work, requirements, or financial terms been modified? If yes, why or why not?
- How many times has the contract been modified or amended?
- Has the contract been definitized (a contract with agreed upon terms, specifications, and prices)?
- Is the contract on time?
- Is the contract on budget?
- Are the costs or prices allowable, allocable, and reasonable?
- Is the government receiving the supplies or services for which it contracted? Beware of mission creep!
- What are possible termination outlets for the contractor?
- How is the contract being financed?
- Are contract fees appropriate (especially award, incentive, or performance fees)?
- Is the contractor properly paying its subcontractors?
- Have any conflicts of interest (personal or organizational) arisen that might bias performance of the contract?
- Has the Defense Contract Audit Agency (DCAA), Defense Contract Management Agency (DCMA), an inspector general, or the GAO audited the contract?
- Are there any inspector general or audit reports that indicate fraud, waste, or abuse?
- Did the agency send the contractor any show cause letters, cure notices, or corrective action requests?
- Has the government accurately graded contractor performance?
- Is the contract information correct in Federal Procurement Data System – Next Generation (FPDS-NG), SAM, and Contractor Performance Assessment Reporting System (CPARS)?
- Should a referral be made to the Department of Justice, the inspector general, or the suspension and debarment office?
- Are labor laws (Davis-Bacon, the Service Contract Act, and OSHA) being followed?
- 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?
- Are there indemnification or immunity clauses that will shield the contractor?

Close-Out

- Is the contracting file up to date and accurate?
- Were performance appraisals accurate?
- Has the contractor accomplished all contract requirements?
- Did the contractor receive prompt payment and pay all subcontractors?

- Was the contractor's performance evaluated properly and entered properly into the government's data systems?
- Would the government choose to contract with the contractor again?
- Was the contract completed on time and on budget?