



United States Department of Agriculture



OFFICE OF INSPECTOR GENERAL



Food, Nutrition, and Consumer Services' Fiscal Year 2015 Firm-Fixed-Price Contract Award Price Reasonableness Determinations

Audit Report 81099-0001-12

OBJECTIVE

Our objective was to determine whether FNCS complied with FAR requirements for determining price reasonableness when awarding FY 2015 FFP contracts. Specifically, we reviewed files to ensure the contracting officer made a fair and reasonable and adequately supported price determination.

REVIEWED

We reviewed a random sample of 50 of 247 FNCS' FFP contracts awarded in FY 2015, totaling approximately \$133.5 million.

RECOMMENDS

FNCS should formalize procedures and implement a sufficient contract file management system to track and maintain its contract files. In addition, FNCS should formalize procedures and implement an internal file review process to verify contracting staff are making a fair and reasonable price determination and maintaining adequate documentation to support the determination.

OIG reviewed whether FNCS complied with Federal Acquisition Regulation guidelines when awarding firm-fixed-price contracts.

WHAT OIG FOUND

We found the Food, Nutrition, and Consumer Services (FNCS) did not consistently comply with the Federal Acquisition Regulation (FAR) requirements in determining price reasonableness when awarding fiscal year (FY) 2015 firm-fixed-price (FFP) contracts. FNCS contract files did not consistently contain the fair and reasonable price determinations, or the support for the determinations. Additionally, FNCS did not properly maintain contract file records. We found 3 of the 50 contracts in our sample totaling \$5.4 million did not have a determination from the contracting officer stating the price was fair and reasonable prior to awarding the contract. Additionally, 25 of the 50 contract files totaling \$38.4 million included a fair and reasonable price determination statement, but did not include the supporting documentation for the statement as required by the FAR.

Finally, for 10 of the 50 contracts sampled, the fair and reasonable determination supporting documentation was not included in the contract file; however, FNCS was eventually able to provide the information to support the fair and reasonable determination. The FAR requires a central control and, if needed, a locator system for contract file maintenance to be established to ensure the ability to promptly locate any contract files. We found that documentation was not located in the contract file because FNCS had not implemented a formalized contract review process, and it did not have an effective contract filing system to track and maintain contract file documentation. As a result, FNCS could be paying for goods and services at prices that are not fair and reasonable and therefore may not represent the best value to the Government.

FNCS agreed with the three recommendations, and we were able to reach management decision upon issuance of the final report.



United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: August 30, 2017

AUDIT
NUMBER: 81099-0001-12

TO: Brandon Lipps
Acting Deputy Under Secretary, Food, Nutrition, and Consumer Services
Administrator, Food and Nutrition Service

Jackie Haven
Acting Deputy Executive Director
Center for Nutrition Policy and Promotion

ATTN: Mark Porter
Director
Office of Internal Controls, Audits and Investigations

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: Audit of Food, Nutrition, and Consumer Services' Fiscal Year 2015 Firm-Fixed-Price Contract Award Price Reasonableness Determinations

This report presents the results of the subject audit. Your written response, dated August 9, 2017, is included in its entirety at the end of the report. Excerpts from your response and the Office of Inspector General's position are incorporated in the relevant sections of the report. Based on your written response, we are accepting management decision for all audit recommendations in the report, and no further response to this office is necessary.

In accordance with Departmental Regulation 1720-1, final action needs to be taken within 1 year of management decision to prevent being listed in the Department's annual Agency Financial Report. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publicly available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.

Table of Contents

Background and Objectives	1
Section 1: Fair and Reasonable Determinations.....	3
Finding 1: FNCS Needs to Adequately Document Price Reasonableness Determinations for its Firm-Fixed-Price Contracts	3
Recommendation 1	5
Recommendation 2	5
Recommendation 3	6
Scope and Methodology.....	7
Abbreviations	8
Exhibit A: Summary of Monetary Results	9
Agency's Response	11

Background and Objectives

Background

One of USDA's five strategic goals is to ensure that all America's children have access to safe, nutritious, and balanced meals.¹ To accomplish this goal, USDA relies on the efforts of the Food, Nutrition, and Consumer Services (FNCS) mission area and its two agencies: Food and Nutrition Service (FNS) and the Center for Nutrition Policy and Promotion (CNPP). FNS' mission is to increase food security and reduce hunger by providing children and low-income people access to food, a healthful diet, and nutrition education in a way that supports American agriculture and inspires public confidence.² The mission of CNPP is to improve the health of Americans by developing and promoting dietary guidance that links the best evidence-based scientific research to the nutrition needs of Americans.

Overall, USDA agencies procure goods and services using 10 different contracting activities³ divided among the seven USDA mission areas and two offices. Specific to FNCS' mission area, there is one contracting activity located in FNS.⁴ FNCS used the Farm Service Agency and the Agricultural Marketing Service to conduct acquisitions of goods and services in addition to its own contracting activity in FY 2015. To meet the objective for the purposes of this audit, we selected contracts funded and awarded solely by FNCS' contracting activity.

To fulfill its mission, FNCS obligated approximately \$2.5 billion through 2,392 contract actions in FY 2015 for goods and services—this includes both original awards and subsequent contract modifications.⁵ Of that amount, FNCS' contracting activity issued approximately 693 contract actions valued at approximately \$488 million on behalf of FNCS. Of the 693 contract actions, 247 awards were firm-fixed-price (FFP)⁶ contracts totaling approximately \$420 million.

Federal entities are encouraged to use FFP contracts when possible because they present the lowest risk to the Government and place the majority of the risk on the contractor. Specifically, an FFP contract provides for a price not subject to any adjustment based on the contractor's costs or the contractor's experience while performing the contract. This contract type places full responsibility for all costs and the resulting profit or loss on the contractor. It also provides the most incentive for the contractor to control costs and perform effectively. An FFP contract is suitable when reasonably definite specifications are available and fair and reasonable prices can

¹ USDA Strategic Plan FY 2014-2018.

² <https://www.fns.usda.gov/about-fns> (last visited Feb. 9, 2017).

³ Contracting activity is an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. 48 C.F.R. §2.101 (Sept. 3, 2015). Head of the contracting activity (HCA) is the official who has overall responsibility for managing the contracting activity. 48 C.F.R. § 402.101 (May 5, 2016).

⁴ For the purposes of this report, when we refer to FNCS, this also includes the contracting activity within FNS.

⁵ Contract action means an action resulting in a contract, as defined in Subpart 2.1, including actions for additional supplies or services outside the existing contract scope, but not including actions within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the changes clause, or funding and other administrative changes. 48 C.F.R. § 32.001 (Sept. 3, 2015).

⁶ "An FFP contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract." 48 C.F.R. §16.202-1 (Sept. 3, 2015).

be established from the outset through adequate competition, prior purchasing history, or reasonably accurate identification of uncertainties and their probable costs.⁷ If the contracting officer (CO) does not make a price determination, or does not adequately support the determination, but still awards the contract, the Government may be committed to honoring a price that is not fair and reasonable, thus wasting Government funds.

The Federal Acquisition Regulation (FAR)⁸ prescribes that COs are responsible for ensuring the Government pays a price for goods and services that is fair and reasonable to both the Government and the contractor.⁹ Specifically, COs are to obtain certified cost or pricing data when specifically required by the FAR, or when certified data are not required, to obtain the necessary data to establish a fair and reasonable price.¹⁰ In those acquisitions that do not require certified cost or pricing data, such as all contracts included in our sample, the CO shall obtain data available from Government or other secondary sources and use that data in determining a fair and reasonable price.¹¹ Further, the FAR states that the determination be documented in the contract file, the determination identifies the data the CO relied on to reach the determination, and the contract file contains a record of the CO's decision process so that the file identifies the data the CO relied upon as well as a complete record of what transpired with the contract.

Additionally, the FAR stipulates additional requirements for orders [contracts] awarded from the General Services Administration (GSA) Federal Supply Schedules (FSS). The CO must certify the price is still reasonable (although the FAR states prices have already been determined to be fair and reasonable by GSA). For example, if an FSS order requires a statement of work, the ordering agency must review the level of effort and labor mix proposed by the vendor and make a determination that the overall price is reasonable.¹²

OMB also requires that periodic reviews be included as part of the regular assigned duties of personnel. Management should integrate periodic assessments and ingrain these in the agency's operations as part of management's continuous monitoring of internal control. If an effective continuous monitoring program is in place, management can level the resources needed to maintain effective internal controls throughout the year.¹³

Objectives

Our objective was to determine whether FNCS complied with FAR requirements for determining price reasonableness when awarding FY 2015 FFP contracts.

⁷ 48 C.F.R. § 16.202-2 (Sept. 3, 2015).

⁸ The FAR is the primary regulation for use by Federal Executive agencies in their acquisition of supplies and services with appropriated funds.

⁹ 48 C.F.R. 4.893(a)(17), 48 C.F.R. § 15.402 (Sept. 3, 2015), and 48 C.F.R. 15.406-3(a)(11).

¹⁰ *Ibid.*

¹¹ 48 C.F.R. § 15.403-3 (Sept. 3, 2015).

¹² 48 C.F.R. § 8.405-2 (Sept. 3, 2015).

¹³ OMB Circular A-123, *Management's Responsibility for Internal Control*, Dec. 2004.

Section 1: Fair and Reasonable Determinations

Finding 1: FNCS Needs to Adequately Document Price Reasonableness Determinations for its Firm-Fixed-Price Contracts

We found FNCS did not consistently comply with the FAR requirements in determining price reasonableness when awarding FY 2015 FFP contracts. Specifically, FNCS contract files did not consistently contain the fair and reasonable price determinations or the support for the determinations. Additionally, FNCS did not properly maintain contract file records. This occurred because FNCS did not have an effective process to ensure that COs adequately supported the determinations. Additionally, FNCS did not have an effective contract filing system to track and maintain contract file documentation. As a result, we do not have reasonable assurance FNCS paid a fair and reasonable price for 28 of the contracts reviewed totaling \$43.8 million. Therefore, these contracts may not provide the best value to the Government.¹⁴ Additionally, FNCS does not have a complete record of what transpired with the contracts in the event of a contract dispute or employee departure.

The FAR states that the contract files shall be sufficient to constitute a complete history of the contract action. If the contract files or file segments are decentralized, responsibility for their maintenance must be assigned. A central control and a locator system, if needed, should be established to ensure the ability to promptly locate any contract files (or file segments).¹⁵ Additionally, the FAR requires the contract file to contain enough information for an independent person to be able to understand what transpired with the contract for the life of the contract.¹⁶ This includes data and information related to the CO's determination of a fair and reasonable price. The determination consists of a statement from the CO based on the CO's analysis of supporting documentation, both of which are documented in the contract file.¹⁷ A fair and reasonable determination can be made by using certified cost and pricing data, or by using other data not considered to be certified.¹⁸ In those acquisitions that do not require certified cost or pricing data, the CO shall obtain whatever data are available from Government or other secondary sources and use that data in determining a fair and reasonable price.¹⁹

From the 247 FFP contracts awarded by FNCS in FY 2015, we randomly selected a sample of 50 contracts to review. The contracts in our sample were issued for goods and services such as support service contracts, training, research and development, IT software and maintenance, and construction services. During our review, we identified issues relating to the fair and reasonable price determination and the maintenance of the contract file in 38 of the 50 files. Specifically, we found that 3 of the 50 contracts in our sample totaling \$5.4 million did not contain a determination stating the price was fair and reasonable prior to awarding the contract. Additionally, 25 of the 50 contract files totaling \$38.4 million included a fair and reasonable

¹⁴ Best value means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement. 48 C.F.R. § 2.101 (Sept. 3, 2015).

¹⁵ 48 C.F.R. § 4.802(d)(Sept. 3, 2015).

¹⁶ 48 C.F.R. § 4.801 (Sept. 3, 2015).

¹⁷ 48 C.F.R. 4.803(a)(17), 48 C.F.R. § 15.403 (Sept. 3, 2015), and 48 CFR 15.406-3(a)(11).

¹⁸ 48 C.F.R. § 15.402 (Sept. 3, 2015).

¹⁹ 48 C.F.R. § 15.403-3 (Sept. 3, 2015).

price determination statement, but did not include supporting documentation for the statement as required by the FAR. In total, we discovered FNCS contract files did not support a fair and reasonable price for the 28 contracts. Lastly, we found that fair and reasonable price determination supporting documentation was not included in 10 of the 50 contract files reviewed. However, after subsequent requests for information, FNCS was able to provide the information to support the fair and reasonable determination. The FAR requires that a central control and, if needed, a locator system for contract file maintenance be established to ensure the ability to locate promptly any contract file. Although FNCS ultimately supported the contract decisions, we noted it took FNCS longer to provide all the documentation requested for these contracts.

FNCS did not make fair and reasonable price determinations or include adequate supporting documentation determinations in part because FNCS did not have an effective process to ensure COs' determinations were adequately supported. Additionally, FNCS did not have a sufficient contract file management system in place for maintaining the contract files. At the beginning of the audit, FNCS communicated that all of its contract file records were stored and maintained electronically. Once we received the electronic contract files, we determined some of the files were assembled and/or modified after we requested them from FNCS. After subsequent analysis and interviews with the contracting staff, we determined that prior to our audit FNCS had recently attempted to establish an electronic contract file system. FNCS conducted a presentation to implement the system and subsequently issued a guide. However, the guide only contained details describing how to upload files to the system, but not timeframes or other important parameters such as roles and responsibilities. This led to a disorganized adoption of the electronic contract file system by the FNCS contracting staff. This also contributed to the disparity of how FNCS contract files were stored and maintained. Although some files were maintained in the electronic contract file system, others were stored electronically on local computers, via paper copies at contracting officers' desks, or a combination of both. No central control point or locator system was in place to promptly locate contract files or contract file segments.

When we discussed with FNCS the issues noted above, we asked if they had procedures in place to review the contract files. They provided us informal procedures as well as internal communications concerning these processes. OMB requires that periodic reviews be included as part of the regular assigned duties of personnel. Periodic assessments should be integrated as part of management's continuous monitoring of internal control, which should be a part of the agency's operations.²⁰ However, we noted FNCS did not have formal procedures for conducting internal reviews of its contract files. If an internal review process had been in place to verify that adequately supported fair and reasonable price determinations were made, it may have mitigated the issues noted.

As a result, we do not have assurance FNCS paid a fair and reasonable price for 28 of the contracts reviewed totaling \$43.8 million—FNCS could be paying for goods and services at prices that are not fair and reasonable and therefore may not represent the best value to the Government. Although we were unable to determine if the prices for the 28 contracts were fair and reasonable, FNCS entered into the FFP contracts and is contractually bound to pay the

²⁰ OMB Circular A-123, *Management's Responsibility for Internal Control*, Dec. 2004.

agreed upon price. Therefore, we are not recommending recovery as part of our recommendations.

Additionally, due to the insufficient contract file system, FNCS does not have a complete record of what transpired with the contracts in the event of contracting staff turnover. During the course of this audit, FNCS experienced turnover in its contracting staff and contract staff management. This may have factored into the missing contract file documentation we identified. In the event of a contract dispute, the agency may find it difficult to defend its decisions since it may not have full knowledge of how the contract was awarded.

Recommendation 1

Formalize procedures and implement a sufficient contract file management system to track and maintain the Food, Nutrition, and Consumer Services (FNCS) contract files.

Agency Response

In its August 9, 2017 response, FNCS concurred with this recommendation. FNS' Contracts Management Division (CMD) will review/revise current filing requirements, to include formalizing, if required, electronic contracting file requirements. CMD will work with the Chief, Information Management Office, to meet all agency and USDA filing requirements.

Estimated Completion Date: July 31, 2018.

OIG Position

We accept management decision for this recommendation.

Recommendation 2

Train contracting staff to use the contract file management system.

Agency Response

In its August 9, 2017 response, FNCS concurred with this recommendation. CMD will review and analyze current skills gaps for all CMD staff. Once completed CMD management will identify training requirements necessary for accurate filing, and adherence to procurement regulations and requirements. CMD will create individual training plans, and complete training.

Estimated Completion Date: July 31, 2018.

OIG Position

We accept management decision for this recommendation.

Recommendation 3

Formalize procedures and implement an internal file review process to verify contracting staff are making a fair and reasonable price determination and maintaining adequate documentation to support the fair and reasonable determination.

Agency Response

In its August 9, 2017 response, FNCS concurred with this recommendation. CMD management will establish policy and procedures for internal file compliance reviews. CMD will also review our current solicitation and award review processes to ensure all aspects of contract formation and administration are being met for all contracts.

Estimated Completion Date: July 31, 2018.

OIG Position

We accept management decision for this recommendation.

Scope and Methodology

We reviewed a random sample of 50 FNCS' FFP contracts issued in FY 2015. We reviewed the contracts to ensure the files contained a fair and reasonable price determination made by the CO and that the determination was supported by additional documentation. To accomplish our audit objectives, we performed fieldwork at FNCS in Alexandria, Virginia, and Washington, D.C. We performed our audit work from March 2016 through February 2017.

To properly assess the contracts, we used the FAR as criteria. In particular, we used the September 3, 2015, version of the FAR in effect at the time the contracts were awarded.²¹

We used two Federal Government systems, the Federal Procurement Data System-Next Generation (FPDS-NG) and USASpending.gov, to identify the universe of FNCS FFP contracts originally awarded in FY 2015. In FY 2015, the total amount of FNCS contracts issued was \$2.5 billion (2,392 contract actions); of that amount, 693 contract actions were issued by FNCS totaling \$488 million, and of those, approximately \$420 million (247 FFP contracts) were issued by the FNCS contracting office. These 247 FFP contracts became our universe. From our universe, we randomly selected a sample of 50 contracts to review using ACL Analytics. We used the sample feature of ACL Analytics that outputs a specified number of records based on the desired output of the user. To produce the results, ACL Analytics takes a seed number from the user, produces a random number, and uses both to identify the random sample.

During the course of the audit, our testing included the use of data derived from USASpending.gov and FPDS-NG to identify the universe of potential FNCS FFP contracts. We did not solely rely on or verify information in these electronic information systems, and we make no representation regarding the adequacy of these computer systems or the information generated from them. We used the data to identify the location of the responsible contracting office and subsequently obtained the contract source documents for all contracts within our sample directly from the contracting office. We conducted interviews with COs responsible for the contracts in our sample and agency liaison officials as needed. We used these source documents to conduct our testing, and we used the interviews to clarify issues and draw our conclusions.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

²¹ The FAR is updated frequently; the most current version of the FAR is dated Jan. 19, 2017.

Abbreviations

CMD	Contracts Management Division
C.F.R.	Code of Federal Regulations
CNPP	Center for Nutrition Policy and Promotion
CO	Contracting Officer
FAR	Federal Acquisition Regulation
FNCS	Food, Nutrition, and Consumer Services
FFP	Firm-Fixed-Price
FNS	Food and Nutrition Service
FPDS-NG	Federal Procurement Data System - Next Generation
FSS	Federal Supply Schedules
FY	fiscal year
GSA	General Services Administration
OIG	Office of Inspector General

Exhibit A: Summary of Monetary Results

This exhibit lists findings and recommendations that had a monetary result and includes the type and amount of the monetary result.

Finding Number	Recommendation Number	Description	Amount	Category
1	2	Contracts without adequate, fair and reasonable supporting documentation	\$43,814,036	Questioned Costs, No Recovery Recommended
TOTAL MONETARY RESULTS			\$43,814,036	

**AGENCY'S
RESPONSE TO AUDIT REPORT**

United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500



DATE: August 9, 2017

AUDIT

NUMBER: 81099-0001-12

TO: Gil H. Harden
Assistant Inspector General for Audit

THROUGH: Brandon Lipps /s/
Administrator
Food and Nutrition Service

/s/ <Stephenie Fu> (for): Jackie Haven
Acting Deputy Executive Director
Center for Nutrition Policy and Promotion

FROM: Brandon Lipps /s/
Acting Deputy Under Secretary
Food, Nutrition, and Consumer Services

SUBJECT: Audit of Food, Nutrition, and Consumer Services' Fiscal Year 2015
Firm-Fixed-Price Contract Award Price Reasonableness Determinations

This letter responds to the official draft report for audit number 81099-0001-12, Audit of Food, Nutrition, and Consumer Services' Fiscal Year 2015 Firm-Fixed-Price Contract Award Price Reasonableness Determinations. Specifically, the Food, Nutrition, and Consumer Services (FNCS) is responding to the three recommendations in the report.

OIG Recommendation 1:

Formalize procedures and implement a sufficient contract file management system to track and maintain the Food, Nutrition, and Consumer Services (FNCS) contract files.

FNCS Response:

FNCS concurs with recommendation. FNS Contracts Management Division (CMD) will review/revise current filing requirements, to include formalizing, if required, electronic contracting file requirements. CMD will work with the Chief, Information Management Office, to meet all agency and USDA filing requirements.

Estimated Completion Date:

July 31, 2018

OIG Recommendation 2:

Train contracting staff to use the contract file management system.

FNCS Response:

FNCS concurs with recommendation. CMD will review and analyze current skills gaps for all CMD staff. Once completed CMD management will identify training requirements necessary for accurate filing, and adherence to procurement regulations and requirements. CMD will create individual training plans, and complete training.

Estimated Completion Date:

July 31, 2018

OIG Recommendation 3:

Formalize procedures and implement an internal file review process to verify contracting staff are making a fair and reasonable price determination and maintaining adequate documentation to support the fair and reasonable determination.

FNCS Response:

FNCS concurs with recommendation. CMD management will establish policy and procedures for internal file compliance reviews. CMD will also review our current solicitation and award review processes to ensure all aspects of contract formation and administration are being met for all contracts.

Estimated Completion Date:

July 31, 2018

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