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# THE NASH & CIBINIC REPORT

government contract analysis and advice monthly  
from professors ralph c. nash and john cibinic

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## ¶ 44 SIMPLIFICATION, REFORM, STREAMLINING, AND INNOVATION: The Government Is Immune To Those Things

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It is a longstanding belief that effective competition yields best value contract pricing and quality. And it is generally believed that clear communication between buyer and prospective sellers is essential for effective competition. If those beliefs are true, then we must question whether the Government is getting effective competition and best value in its procurements. Let's consider a simple case.

On May 31, 2024, the U.S. Army Contracting Command posted Request for Quotations (RFQ) W15QKN24Q5086 to the System for Award Management (SAM.gov) seeking one year of grounds maintenance services at a small office facility. The SAM announcement described the procurement as follows:

The purpose of this solicitation is to procure grounds maintenance services in support of the 99th Readiness Division. These services are inclusive of maintaining a healthy grass, trees, shrubs, and plants and present a clean, neat, and professional appearance and shall be performed at the PFC Harry J. Fridley USARC, 1617 South Greenlawn Ave, Covington VA 24426.

According to a map of the grounds that accompanied the RFQ, the total area of grass to be mowed was 70,084 square feet, which is less than two acres. Edging amounted to 681 linear feet. Trimming came to 3,687 square feet. So this was not what one would call a big job.

The procurement was set aside for small businesses under NAICS code 571630, Landscaping Services, size standard \$9,500,000. It was to be conducted pursuant to FAR Part 12, *Acquisition of Commercial Products And Commercial Services* and Part 13, *Simplified Acquisition Procedures*. The RFQ stated that the competition would result in the issuance of a firm-fixed-price purchase order.

### The Elements Of Solicitation Quality

It seems obvious that solicitations should communicate clearly, prompt interest and inquiry, and

entice responses. We think there are three elements of solicitation quality with respect to those goals: (1) content, (2) organization, and (3) document visual design. Content refers to solicitation instructions and prospective contract terms. They should be stated in clear and unambiguous language that is accessible to functionally literate persons, including those who many not be experienced in Government contracting. Organization refers to the organization of that content. It should facilitate investigation and inquiry. Document visual design refers to the layout of the solicitation, including font selection and size, page margins, headings, line spacing, page breaks, page numbering, charts, tables, process diagrams, *et cetera*.

Content, organization, and visual design must be coordinated to make solicitation and contract interpretation as easy and inviting as possible. They must communicate the needs and intentions of the buyer as clearly as possible, attract interest, and encourage inquiry and response. So how well did the Army's grounds maintenance RFQ meet those standards of quality? Keep in mind that this services procurement was close to being as simple as it gets.

**The Solicitation Organization And Design**

The RFQ was 90 pages long but did not include a table of contents. The text was printed in a manner reminiscent of Jack Kerouac's famous ON THE ROAD scroll, without helpful page breaks, so the existence of topical sections was not always readily apparent. But going page by page we managed to piece together a rough outline of the underlying organization, as follows:

PAGE	CONTENT
1-2	Standard Form 1449 – Solicitation/Contract/Order for Commercial Items [Block 20, Schedule of Supplies/Services, states only “See Schedule,” but there is no other “schedule.”
3-5	“Standard Form 30 [sic] - Block 14 Continuation Page, Instructions to Offerors”
5-7	“Additional Text” [A FAR clause and three clauses from an unspecified source]
7-18	“Performance Work Statement”
19-33	“SF 1449 Continuation Sheet” [a list of 30 identical contract Line Items including basic and option periods]
33-35	“Inspection and Acceptance Terms” (a list of 30 identical locations, no other text)
35-37	“Delivery Information” (a list of 30 identical locations, no other text)
37-39	“Clauses Incorporated By Reference” [a list of FAR and DFARS contract clauses and solicitation provisions, intermingled]
39-78	“Clauses Incorporated By Full Text” [the texts of FAR and DFARS contract clauses and solicitation provisions, intermingled]
78-79	Addenda to clauses or provisions that appear in previous pages. The addendum to “clause” 52.212-2, Evaluation Criteria (actually a solicitation provision), stated that the competition will result in the issuance of a purchase order, which FAR 2.101 defines as a Government offer to buy, not a contract.
79-90	Service Contract Act wage determination

**The Contract Line Items**

The RFQ included 30 base-year and option-year contract line items (see FAR Subpart 4.10). The line items were:

Item Number	Item Description
0001	Mowing
0002	Edging
0003	Trimming

0004	Spring/Fall Cleanup
0005	Weeding/Planting/Bed Maintenance
0006	Pruning/Trimming

To illustrate, Line Item 0001, Mowing, read as follows:

Item	SUPPLIES/ SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	BY – MOWING – A010 FFP Contractor shall furnish all plant, labor, materials, equipment, supervision and transportation necessary to provide ground maintenance at PFC Harry J. Findley USARC, 1617 Greenlawn Ave., Covington, VA 24426 in accordance with the performance work statement. FOB: Destination PURCHASE REQUEST NUMBER: 0012079757 PSC CD: S208	18	Each		

Except for the headings, such as “Mowing,” all 30 line item descriptions read the same. It is not clear why that text could not have been used as a preamble to the list, rather than to each and every one of the 30 items, which would have saved at least three or four pages and would not have created any confusion or posed any legal issue that comes to mind.

**The Performance Work Statement**

The RFQ's 12-page “Performance Works Statement” (PWS) included descriptions of each of the six listed work items. The item headings were as follows: “Mowing,” “Edging,” “Trimming,” “Spring/Fall Cleanup,” “Weeding/Planting Bed Maint,” or “Pruning/Trimming.”

Here is the specification for mowing:

5.4.1. MOWING. All grass cutting equipment will arrive at the site with mowing blades in a sharp condition. Mowing shall include areas identified in the site map to include but not limited to embankment, parking lots, retention ponds, drain basins, displays and isolated areas. Contractor's responsibility to maintain all areas to the commercial standards. This includes but not limited to overgrown areas that have not been maintained. To bring the area up to the commercial standard, the contractor is responsible to complete as specified on maps at no additional cost. The methodology to bring the property up to the standard is up to the contractor and not dictated by the Government. During the growing season grass shall be cut to a height no higher than three (3) inches and no less than two (2) inches. All clumps and/or clippings must be removed within four (4) hours after being cut. The Contractor shall remove and dispose off site, at no extra cost to the Government. Grass will be cut approximately every 14 days or as directed by the COR/RFOS. Routine policing of the grounds will be conducted during mowing services and all site areas, walkways, and parking areas shall be kept free of debris/trash/clippings by either sweeping or blowing and disposed. Contractor will not blow clippings, debris or trash into the retention ponds or inflow/outflow. The contractor is responsible to remove all branches or limbs (up to 2 inches in diameter) from the areas prior to mowing. The branches and limbs shall be removed off site. Government dumpster will NOT be used for disposal.

We wonder if the Contracting Officer's Representative (COR) will inspect the mower blades upon arrival. Note the phrase, “Routine policing of grounds.” “Policing” is military jargon for picking up trash. That's a COR nitpick item if ever there was one. So “mowing” involves more than mowing.

The PWS included the following “performance requirements summary”:

Performance Objective	Standard	Performance Threshold	Method of Surveillance
All mowing/grass cutting services completed in accordance with PWS paragraph 5.4.1	AR 420-1	100% with no more than one valid customer complaint every three (3) months.	Random Sampling, Periodic Surveillance and/or Validated Customer Complaint
All grass clippings removed in a timely manner in accordance with PWS paragraph 5.4.1	AR 420-1	100% with no more than one valid customer complaint every three (3) months.	Random Sampling, Periodic Surveillance and/or Validated Customer Complaint
All trimming/edging services completed in accordance with PWS paragraph 5.4.2 and 5.4.3	AR 420-1	100% with no more than one valid customer complaint every three (3) months.	Random Sampling, Periodic Surveillance and/or Validated Customer Complaint
All spring and fall cleanup and tree trimming completed in accordance with PWS paragraph 5.4.4, 5.4.4.5 and 5.4.4.6	AR 420-1	100% with no customer complaint per task.	Random Sampling, Periodic Surveillance and/or Validated Customer Complaint

It is not clear in context to what “100%” refers.

“AR 420-1” refers to Army Regulation (AR) 420-1, ARMY FACILITIES MANAGEMENT (2019), a 525-page document. Note that the performance requirements summary does not refer to specific parts of it. We are not sure how it applies. I found only two very brief references to mowing in AR 420-1. It does not mention edging. It makes seven references to trimming that briefly prescribe procedures and standards of sorts. It makes no mention of spring/fall cleanup, weeding, or bed maintenance. It makes four brief references to pruning, three of which that might be called standards, and seven references to trimming, six of which might be standards. So, what are the standards? The PWS also mentions “commercial standards” for mowing and trimming, but not for the other tasks. It does not refer to any description or specification of a commercial standard.

A glance at Google maps seems to show that the Government's facility is small, bordered by a minor road and a highway, close to private homes and adjacent to a public park, and has no fence or gates. Nevertheless, the PWS requires all contractor and subcontractor employees, the people who will perform grounds maintenance, to undergo various types of antiterrorism and operations security training. For example:

6.1. AT LEVEL 1 TRAINING. *This standard language is for contractor employees with an area of performance within an Army controlled installation, facility or area. All contractor employees, to include subcontractor employees, requiring access Army installations, facilities and controlled access areas shall complete AT Level I awareness training within 30 calendar days after contract start date or effective date of incorporation of this requirement into the contract, whichever is applicable. The contractor shall submit certificates of completion for each affected contractor employee and subcontractor employee, to the COR/RFOS or to the contracting officer, if a COR/RFOS is not assigned, within 5 calendar days after completion of training by all employees and subcontractor personnel. AT level I awareness training is available at the following website: [omitted]. [Emphasis added.]*

And:

6.4 OPSEC TRAINING. Per Army Regulation 530-1, Operations Security, new contractor employees must complete Level I OPSEC training within 30 calendar days of reporting for duty and annually thereafter.

## **Solicitation Provisions And Contract Clauses**

The RFQ listed 105 Federal Acquisition Regulation and Defense FAR Supplement solicitation provisions and contract clauses that apply to the procurement. That seems like a lot of boilerplate to apply to a commercial simplified acquisition for maintenance of less than two acres of land, but we did not have time to validate their applicability. (Neither will prospective quoters.)

The list mingles *solicitation provisions* and *contract clauses* (see the definitions in FAR 2.101), without distinction under the headings “Clauses Incorporated By Reference” and “Clauses Incorporated By Full Text,” which is worrisome because solicitation provisions generally concern matters that must be attended to before the submission of quotes or offers while clauses apply after award. Companies that are not familiar with the Government's acquisition lingo and boilerplate distinctions might be confused.

An 11-page Department of Labor Service Contract Act wage determination begins on page 79, without introduction or reference to the “Service Contract Labor Standards” clause at FAR 52.222-41, which was checked as applicable within the clause at FAR 52.212-5, “Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (FEB 2024)” back on page 64. The wage determination appears immediately below “ADDENDUM TO CLAUSE 52.212-2, *Evaluation Criteria*,” which supplements a clause listed on page 38 as FAR 52.212-2, “Evaluation—Commercial Items.” Perhaps the addendum and wage determination were meant to be part of a mysterious post-credits surprise ending. Why does the Service Contract Act of 1965, as implemented by 81 pages of rules in Title 29 of the Code of Federal Regulations, Part 4, *Labor Standards for Federal Contracts*, more than 50 years after its enactment, still apply to such procurements valued at more than \$2,500?

## **What Have Reform, Simplification, Streamlining And Innovation Accomplished?**

I live on a two-acre plot of land. I hire someone to provide grounds maintenance, landscaping, and snow removal on this and another property nearby. My contractor gets the job done on a timely basis and to my satisfaction with no written contract whatsoever. We coordinate when (rarely) necessary by telephone. But to do the same the Army needs a 90-page solicitation and a purchase order that incorporate several hundreds of pages of text. While we would like to say that this kind of thing is unusual, it is not.

Since I entered the procurement workforce in 1974, representatives of the defense industry, the general business community, politicians, senior Government officials, and ordinary bureaucrats have called for simplification of the procurement process. Since the introduction of the Federal Acquisition Regulations System in 1984—a product of the Commission on Government Procurement of 1972, which called for modernization and simplification of procurement—many have pleaded for less bureaucracy and better value from procurement. We have heard insistent calls for simplification, streamlining, and innovation. But, to borrow a phrase from T.S. Eliot, it appears that “this was all folly.”

Here is our Government in 2024, issuing a poorly designed, poorly organized, poorly written, and absurdly complex solicitations and contracts in order to get the grass cut on less than two acres of land. And you are kidding yourself if you think larger, more complex procurements are consistently better, because they are not. Best value? We don't think so. In the words of the Talking Heads, *Well, how did I get here...Same as it ever was, same as it ever was. VJE*

