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Acquisition Training For Project Officers:

A Guide To Pre-Award Contract Management

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U.S. ENVIRONMENTAL PROTECTION AGENCY

CONTRACT PROJECT OFFICER COURSE

TABLE OF CONTENTS

CHAPTER 1 - MEANING AND OVERVIEW OF ACQUISITION

1. Introduction 1-1
2. The Office of Acquisition Management 1-1
3. Acquisition Compared with Assistance 1-4
4. Legal and Regulatory Framework for Contracting 1-5
5. EPA Procurement Guidance 1-6
6. The Law of Agency 1-7
7. Acquisition Roles and Responsibilities within EPA 1-8
8. Unauthorized Procurements 1-12
9. Consequences of Unauthorized Procurements 1-12
10. Ratification of Unauthorized Procurements 1-13
11. Documentation Supporting Ratification 1-13
12. Standards of Conduct (Ethics) 1-15
13. Ethics Officials 1-15
14. Ethics for All Government Employees 1-16
15. Procurement Integrity 1-17

CHAPTER 2 - BUDGETING AND ACQUISITION PLANNING

1. Introduction 2-1
2. Budgeting and Planning 2-1
3. The Budget Year 2-1
4. The Operating Plan 2-3
5. The Current Year 2-4
6. The Decision to Contract Out 2-5
7. Impact of OMB Circular A-76 2-5
8. Inherently Governmental Functions 2-5
9. Sensitive/Vulnerable Services 2-7
10. Advance Acquisition Planning 2-7
11. Annual/Program Acquisition Plans 2-9
12. Cut-Off Dates 2-9
13. Individual Acquisition Plans 2-9
14. Format for Individual Acquisition Plans 2-11
15. Procedure for Procurement Scheduling 2-14

CHAPTER 3 - SOURCE CONSIDERATIONS

1. Required Sources of Supplies and Services 3-1
2. Source Considerations 3-2
3. Availability of Work Resulting from Other Sources 3-2
4. Small Business set-Asides 3-2
5. Small Disadvantaged Business Concerns 3-3
6. Labor Surplus Area Set-Asides 3-4
7. Sources-Sought Synopsis 3-4
8. Synopsis of Proposed Contracts 3-6
9. Justifications for Other Than Full and Open Competition 3-6

CHAPTER 4 - CONTRACT TYPES, FUNDING, AND OPTIONS

1. Introduction 4-1
2. Firm Fixed-Price Contract 4-1
3. Cost-Reimbursement Type Contract 4-2
4. Cost-Plus-Award-Fee Contract 4-4
5. Time and Materials Contract 4-6
6. Labor-Hour Contract 4-7
7. Indefinite Delivery Type Contract 4-8
8. Funding 4-10
9. Funding Cost-Reimbursement Term Form Contracts (Level of Effort) 4-10
10. Availability of Funds 4-12
11. Commitments 4-13
12. Funding Cost-Type Contracts 4-13
13. Options 4-14

CHAPTER 5 - STATEMENT OF WORK PREPARATION

1. Statement of Work (SOW) 5-1
2. Performance-Based SOW 5-1
3. Planning and Preparation 5-2
4. Analysis of the Work 5-3
5. Contents of the Statement of Work 5-3
6. Personal Services and Nonpersonal Services 5-4
7. Reporting Requirements 5-5
8. Writing Specifications for Commercial Products 5-7

CHAPTER 6 - PROPERTY AND DATA ISSUES

1. Government Property 6-1
2. Property to be furnished and/or Acquired Before Contract Award 6-3
3. Lease Versus Purchase Determinations 6-3
4. Acquisition of Excess Property 6-5
5. Vesting Title to Educational Institutions 6-6
6. Joint Use of Property by Contractor and EPA 6-7
7. Use of Property Purchase with Funds of Another Agency 6-7
8. Contractor Use of Government Vehicles 6-7
9. Contractor Use the Federal Supply Services 6-8
10. Acquisition of Nonserverable Facilities 6-8
11. Rights in Data and Copyrights 6-9
12. Acquisition of Data 6-10
13. Definitions (data) 6-10
14. Delineating the Government's and Contractor's Rights 6-11
15. Confidential Business Information 6-12

CHAPTER 7 - ACQUISITIONS REQUIRING SPECIAL APPROVALS

1. Procurement Request Approvals 7-1
2. Designated Office Approval 7-1
3. Management Approvals 7-6
4. Advisory and Assistance Services 7-7
5. Sensitive Contracting Areas 7-7
6. Management Approval of Advisory and Assistance or Sensitive Services 7-8
7. Unsolicited Proposals 7-10
8. Quality Assurance Program Plans 7-11
9. Foreign Research Contracts 7-15

CHAPTER 8 - DEVELOPMENT OF THE PROCUREMENT REQUEST

1. Introduction 8-1
2. The Procurement Rationale Checklist 8-2
3. The Attachments 8-3
4. Item Descriptions 8-5
5. Additional Attachments Not Listed in the 32 Point Checklist 8-20
6. Notify the CO Concerning the Following 8-22

CHAPTER 9 - PROPOSAL EVALUATION, NEGOTIATION, AND AWARD

1. Introduction 9-1
2. Applicability 9-1
3. Policy 9-1
4. Source Evaluation Board Structure 9-1
5. Preparing for the Evaluation 9-3
6. Distribution and Proposal Control 9-5
7. Disclosure of Information 9-5
8. Technical Evaluation Process 9-5
9. Technical Evaluation Criteria 9-7
10. Price or Estimated Cost Factors 9-9
11. Evaluating Proposals 9-10
12. Technical Evaluation Report 9-14
13. Preparation of Business Evaluation Panel Report 9-14
14. Determination of Competitive Range 9-15
15. Written or Oral Discussions 9-17
16. Limited Discussions vs. Full Negotiations 9-17
17. Proposal Revisions 9-18
18. Source Selection 9-18
19. Award Notifications 9-19
20. Debriefings 9-20

CHAPTER 10--PROTESTS

1. Definition 10-1
2. Procedures 10-1
3. Protests Filed with EPA 10-2
4. Protests Filed with the GAO 10-3
5. Protests of the GSBCA 10-5

APPENDICES

Glossary of Terms
Guide for Preparing Government Cost Estimates

CHAPTER 1 - MEANING AND OVERVIEW OF ACQUISITION

Table of Contents

1. Introduction 1-1

2. The Office of Acquisition Management 1-1

3. Acquisition Compared with Assistance 1-4

4. Legal and Regulatory Framework for Contracting 1-5

5. EPA Procurement Guidance 1-6

6. The Law of Agency 1-7

7. Acquisition Roles and Responsibilities within EPA 1-8

8. Unauthorized Procurements 1-12

9. Consequences of Unauthorized Procurements 1-12

10. Ratification of Unauthorized Procurements 1-13

11. Documentation Supporting Ratification 1-13

12. Standards of Conduct (Ethics) 1-15

13. Ethics Officials 1-15

14. Ethics for All Government Employees 1-16

15. Procurement Integrity 1-17

CHAPTER 1 - MEANING AND OVERVIEW OF ACQUISITION

1. Introduction. EPA obligates over $1 billion annually for supplies and services through the acquisition process. These contracts are diverse, complex and challenging to manage. They include information management systems, Superfund site clean-ups, laboratory analyses, technical support for regulatory development, and analytical studies. It is crucial that contract funds be managed effectively and contract management receive visibility and oversight at the highest levels of EPA.

2. The Office of Acquisition Management.

a. The Office of Aquisition Management (OAM) reports to the Assistant Administrator for Administration and Resources Management (OARM). OAM consists of five divisions. (See the chart on page 1-3.)

b. The Headquarters Procurement Operations Division (HPOD) is responsible for processing headquarters small purchases, performing contract close out, responding to Freedom of Information Act requests, placing and managing all Agency operations and ADP contracts.

c. The Superfund/RCRA Procurement Operations Division (SPOD) oversees and coordinates all contract services in the emergency response, remedial action, enforcement and RCRA contracting programs.

d. The Cost Advisory and Financial Analysis Division conducts contractor audits, advises contracting officers on contract cost issues, performs financial monitoring of active contracts and conducts contractor purchasing system reviews.

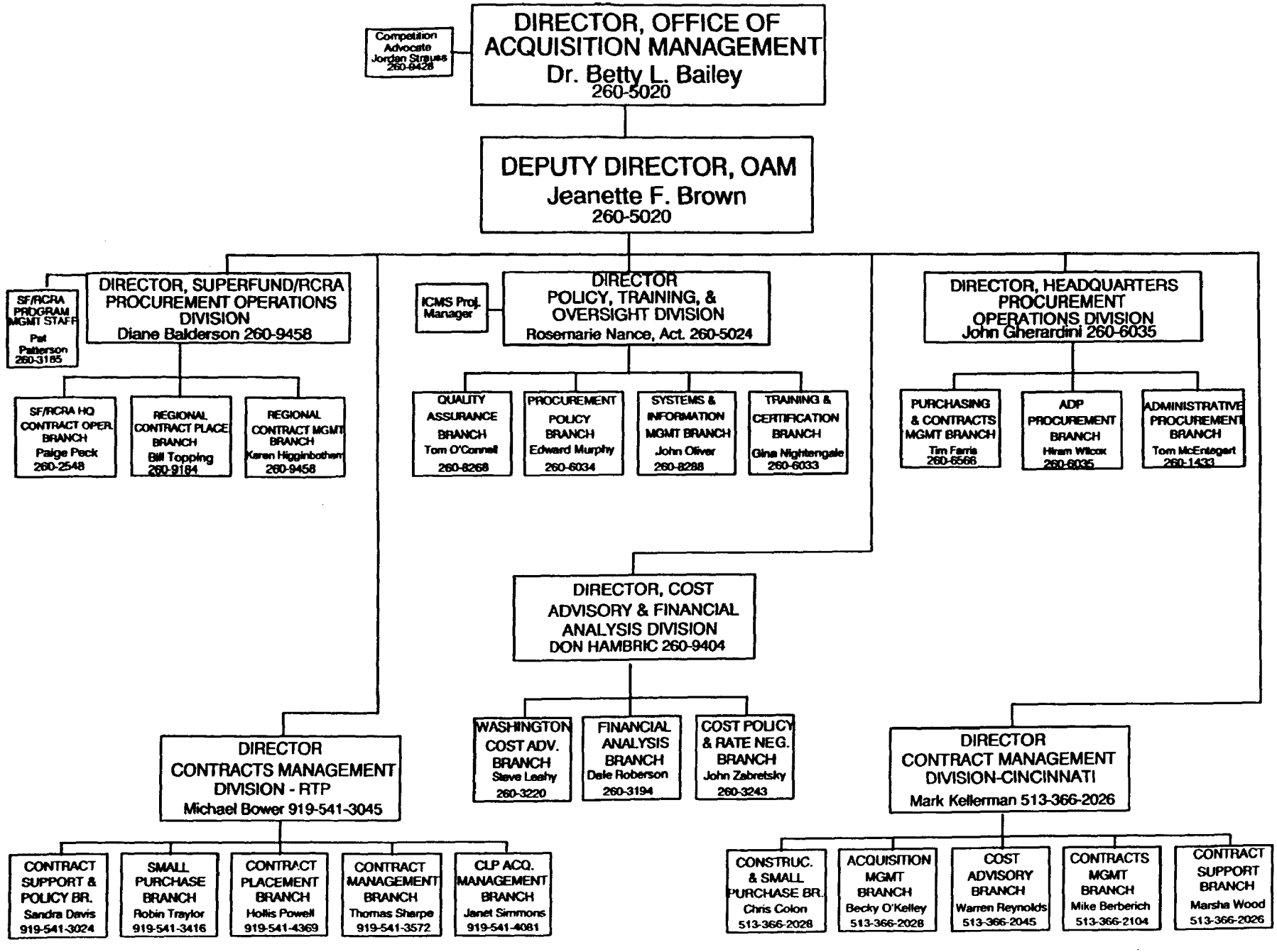
e. The Policy, Training and Oversight Division (PTOD) drafts Agency procurement regulations, conducts procurement management reviews, manages automated systems and data for procurement and develops and provides contract management training.

(1) The Training and Certification Branch in PTOD offers the following general courses for contract managers and their supervisors: the Basic Project Officer Course (3 days), the Contract Administration Course (3 days), the Contract Administration Course for Supervisors of Contract Managers (1 day), the Contract Recertification Course (1 day), and various seminars customized for specific programs.

f. The Contracts Management Division in RTP plans, organizes, and directs the procurement support function of the EPA activities located in the Research Triangle Park area and various EPA Headquarters and Regional activities. At RTP, these include: all contracts relating to the Air and Energy Engineering Research Laboratory, the Health Effects Research Laboratory, the Atmospheric Research and Environmental Assessment Laboratory; the Environmental Criteria and Assessment Office, the Office of Air Quality, Planning and Standards, and the RTP Office of Administration and Resources Management. At Headquarters, these include: the Office of Prevention, Pesticides, and Toxic Substances, the Office of Research and Development, the Office of Air and Radiation, and the Office of Federal Activities. The Division is also responsible for the contracting operations in all ten Regional offices for non-Superfund activities.

g. The Contracts Management Division in Cincinnati is responsible for contracts relating to the Office of Administration (A&E - construction), the Cincinnati Office of Administration & Resources Management, the Office of Air & Radiation-Motor Vehicle Emission Lab-Ann Arbor, the Office of Research and Development Field Labs, and the Office of Water.

OFFICE OF ACQUISITION MANAGEMENT



3. Acquisition (Contracting) Compared with Assistance. There are several ways for the Agency to meet its objectives: by hiring Government employees, or through the acquisition or assistance process. Acquisition and assistance are different processes involving various types of legal instruments and relationships between the Government and recipients.

a. Assistance agreements may not be used to fund extramural projects except where permitted by the Federal Grant and Cooperative Agreement Act of 1977 (FGCA). The FGCA was based on a congressional finding that executive agencies were not adequately differentiating between acquisition and assistance relationships. Congress was concerned that agencies were misusing assistance agreements to circumvent competition and other acquisition rules and also applying unnecessarily burdensome contract paperwork requirements to nonacquisition transactions.

b. FGCA states an agency must use a contract if the principal purpose of the agreement with an eligible entity is to acquire, by purchase, lease, or barter, property or services for the direct benefit or use of the Federal Government, or if the agency otherwise determines that use of a procurement contract is appropriate.

Some examples of activities that must be contracted for include:

- Providing technical, analytical and application review advise for the direct benefit of EPA offices; or

- Producing specific information that will be incorporated into EPA technical, policy, or regulatory decisions.

c. FGCA also states an agency may use an assistance agreement only if the principal purpose of an agreement is to transfer a thing of value (e.g., money, equipment, services) to an eligible entity to accomplish a public purpose of support or stimulation authorized by statute. Where an agency will not be substantially involved with the recipient during the performance of an assistance agreement, a grant is appropriate. If substantial Federal involvement is contemplated, the agency must select a cooperative agreement.

Some examples of activities that EPA funds through assistance agreements include:

- Conducting basic research;

- Constructing local wastewater treatment plants;

- State and local government cleanup of hazardous waste sites; and

- Environmental education programs.

d. If it is unclear in a particular instance whether an assistance agreement would be permissible under the FGCA, you should contact the Headquarters or Regional Grants Administration Office. Further guidance on grants and cooperative agreements can also be found in EPA Order 1000.19 and Chapter 1 of the Agency's Assistance Administration Manual.

e. Another way of accomplishing our mission is through the use of an Interagency (IAG) Agreement, which is a legal agreement between Federal agencies for providing goods or services. IAGs shall be prepared by the Program Office and will be reviewed by the Grants Administration Division at Headquarters; Regional Assistance Administration units (or other appropriate units designated by the Regional Administrator) will review IAG's which originate in the Region.

4. Legal and Regulatory Framework for Contracting. One reason why the acquisition world is so complicated is because of the multitude of regulations, rules, Executive Orders and Statutes which govern it. You will learn more about these legal requirements as the course progresses.

a. The Federal Acquisition Regulation. The Federal Acquisition Regulation (FAR) was established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The FAR is currently composed of 53 Parts with guidance ranging from competition and acquisition planning, to socioeconomic programs and contract management. Revisions to the FAR are called FACs (Federal Acquisition Circulars).

b. Other guidance which impacts on contracting is issued by the Office of Management and Budget (OMB). This guidance is called OMB Circulars. Some OMB Circulars of note include:

- OMB Circular A-76, Performance of Commercial Activities;

- OMB Circular A-120, Guidelines for the Use of Advisory and Assistance Services; and

- OMB Circular A-109, Major Systems Acquisitions.

The Office of Federal Procurement Policy (OFPP) is a part of OMB and is responsible for developing and issuing policy guidance on procurement. Some of OFPP's responsibilities include:

- o Prescribing Government procurement policies for implementation in the FAR;

- o Overseeing the collection, development, and dissemination of procurement data though the Federal Procurement Data System;

- o Overseeing the Federal Acquisition Institute to support the development of a competent, professional procurement workforce; and

- o Advising the President and the Congress on matters relating to procurement.

Some Policy Letters which OFPP has issued include:

- o 91-2, Service Contracting;

- o 92-1, Inherently Governmental functions; and

- o 92-3, Procurement Professionalism Program Policy.

c. Executive Orders (E.O.) establish policies to be followed by the executive agencies. An E.O. will stay in effect unless rescinded by the signing President or a successor President.

5. EPA Procurement Guidance. There are four major avenues for disseminating procurement related policy and procedures at EPA. Information is provided in the Environmental Protection Agency Acquisition Regulation (EPAAR), the Contracts Management Manual (CMM), the Acquisition Handbook (AH), and Procurement Policy Notices (PPN). The method of dissemination depends on statutory and FAR requirements for the EPAAR and the audience for which the material is intended.

a. The Chief of the Procurement Policy Branch in OAM is responsible for initiating changes to each of these four directives. Any suggestions concerning these directives or their use may be directed to the Chief of the Procurement Policy Branch. A brief synopsis of each policy directive follows.

b. EPAAR. According to the Federal Acquisition Regulation (FAR) Subpart 1.3, each agency may issue acquisition regulations which implement or supplement the FAR. Generally, any EPA procurement policy or procedure which has a significant effect beyond Agency internal operating procedures or has a significant cost or administrative impact on offerors/contractors must be published in the Federal Register for comment and included in the EPAAR. Section 22 of the Office of Federal Procurement Policy Act, as implemented in the FAR, requires this.

Any proposed change or addition to the EPAAR is initially routed through all Agency contracting activities for comments. If comments are received, the necessary revisions are made, and the proposed change is forwarded for Red Border Review by Agency offices affected by the proposed change. After all comments have been resolved, the change is then published as a proposed rule in the Federal Register with at least a thirty day period for public comments. After comments are received, revisions, if any, are made to the proposed rule. The rule is again subjected to Red Border Review, then it is published again in the Federal Register as a final rule.

c. CMM. The CMM is an Agency-wide directive. Guidance in the CMM is addressed primarily to Program Office personnel. Policy and procedures in the CMM do not directly impact contractors.

Proposed changes to the CMM are routed through all contracting activities and Agency offices for comment (Green Border Review). They are not published outside of the Agency for public comment. Once approved by the Assistant Administrator for Administration and Resources Management, changes to the CMM are part of the Agency's formal internal operating guidance.

d. AH. The AH contains guidance on OAM internal acquisition procedures. These procedures impact OAM contracting activities only; they do not directly affect Program Offices or Contractors. The AH is formally approved by the Director of OAM.

e. PPN. PPNs are generally issued to procurement personnel for policy requiring prompt issuance prior to incorporation into the AH, CMM or EPAAR. PPNs are numbered consecutively by fiscal year and are distributed within OAM.

6. The Law of Agency. Who has authority to make financial obligations on behalf of EPA? Under the law of Agency, one party, known as the principal, appoints another party, known as the agent, to enter into a business or contractual relationship with a third party. In Government contracting,

- The Government is the principal.
- The Contracting Officer (CO) is the agent.
- The third party is the contractor.

For a Government contract (including modifications and changes) to be valid, it must be entered into by a duly appointed CO acting within the scope of his/her authority.

7. Acquisition Roles and Responsibilities within EPA.

a. Contracting Officers (CO). The CO is the key operational person in the Federal acquisition process. COs have authority to enter into, administer, or terminate contracts and make related determinations and findings. At EPA there are two types of COs: 1) Placement COs who are involved in the planning, solicitation and award of a contract, and 2) Management COs who administer a contract after it has been awarded.

All COs are responsible for the following:

- o Ensuring that no contract is entered into unless all requirements of law, executive orders, and all other applicable procedures, including clearance and approvals, have been met;
- o Ensuring sufficient funds are available for obligation;
- o Ensuring contractors receive impartial, fair and equitable treatment; and
- o Requesting the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.

At EPA some COs are called "independent Contracting Officers" because they process the acquisition without the support of a contract specialist. Because the CO has many functions to perform, he/she is usually supported by a contract specialist. (In small purchases a CO may be supported by a procurement assistant.)

b. Contract Specialist. A contract specialist does much of the "leg work" in processing acquisitions. She/he may perform placement or management functions. A contract specialist's work is reviewed and approved by the CO. Contract specialists do not have CO authority.

c. The Agency Competition Advocate is responsible for challenging barriers to and promoting full and open competition in all procurement actions. Any procurement action with a value over $100,000 which restricts full and open competition must be reviewed and approved by the competition advocate. EPA's competition advocate is part of the OAM Director's immediate office.

d. A cost/price analyst or auditor has special knowledge of cost and price analysis techniques and analyzes proposals, contract changes, repricing agreements, indirect cost rates and so forth.

e. The Small Business Specialist works with the CO planning small business set-asides, small disadvantaged business, 8(a), set-asides, identifying "break-out opportunities," reviewing subcontracting plans, and otherwise supporting the attainment of small and disadvantaged business utilization goals.

f. The Office of General Counsel reviews solicitations, awards and contracts for legal sufficiency, assists COs in responding to protests and disputes, and advises COs on the interpretation and applicability of laws, regulations, cases law, and contract clauses.

g. The Project Officer (PO) as the CO's technical representative is responsible for the following pre-award functions:

1) Acquisition planning

2) Budgeting and developing the Government Independent Cost estimate

3) Preparing the procurement request and required documentation

4) Writing the contract statement of work

5) Writing source selection criteria

6) Performing technical evaluation of proposals.

In other areas the PO will assist the CO by providing documentation or attending pre-proposal conferences, negotiations, debriefings and post-award conferences. The chart on the following pages lists the major acquisition cycle activities and PO responsibilities.

Major Acquisition Cycle Activities
and
Project Officer Responsibilities

	P.O. TR*	P.O. PA*	C.O. Resp.
1. Identify the Need for a Contract	X		
- commit sufficient funds	X		
Pre-Solicitation Phase:			
2. Decision to Solicit Proposals		X	X
3. Acquisition Planning		X	X
4. Establishing the Source Selection Team		X	X
5. Preparing the Procurement Request/"32-Point Document" (See Chapter 8)	X		
Solicitation/Award Phase:			
6. Review of the Procurement Request/Order			X
7. Determination of Method of Contracting and Contract Type			X
8. Synopsis in the Commerce Business Daily			X
9. Preparation and Issuance of the Solicitation			X
10. Pre-Proposal Conference		X	X
11. Receipt of Offers			X
12. Distribution of Proposals to Evaluation Panels			X

* TR = Total Responsibility of Project Officer
PA = Participatory Activity of the Project Officer

Major Acquisition Cycle Activities
and
Project Officer Responsibilities
(Continued)

	P.O. TR*	P.O. PA*	C.O. Resp.
Solicitation/Award Phase (continued):			
13. Evaluation Reports to Contracting Office	X		
14. Determination of the Competitive Range		X	X
15. Conduct of Written or Oral Discussions		X	X
16. Request, Receipt, and Evaluation of Revised Proposals		X	X
17. Selection of Source		X	X
18. Award of Contract			X
19. Debriefing of Unsuccessful Offerors		X	X
Post-Award Administration Phase:			
20. Managing Contracts After Award		X	X
21. Monitoring Activities of the Contractor		X	X
22. Contract Termination		X	X

THE CONTRACTING OFFICER WILL PROVIDE ASSISTANCE, IF REQUESTED, WITH ANY PROJECT OFFICER ACTIVITIES.

8. Unauthorized Procurements.

a. An unauthorized procurement (or unauthorized commitment) means an agreement that is not binding solely because the Government representative who made the agreement was not a duly appointed Contracting Office acting within the scope of his/her authority. (Remember the law of Agency, paragragh 6.) Unauthorized procurements include:

- Ordering supplies or services by an individual who does not have contracting authority;
- Unauthorized direction of work through assignment of orders or tasks;
- Unauthorized addition of new work to an existing order or contract;
- Unauthorized direction of contractors to subcontract with a particular firm; or
- Any other unauthorized actions that change the terms and conditions of the purchase order or contract.

b. If you must call a vendor/contractor to obtain pricing information from a vendor/contractor in order to prepare a PR, be sure the vendor knows the query is not a formal order. You may want to say to the vendor, "I am calling for informational purposes only--I am not placing an order." In an emergency, contact the purchasing/contracting activity to arrange rush procurements. Do not order supplies or services without advance approval by a contracting officer.

9. Consequences of Unauthorized Procurements. Personal liability can result if an unauthorized procurement cannot be ratified by an authorized official. This means that the person making the commitment might be held personally liable for any costs incurred by the unauthorized procurement. Vendors may take legal action against the individual responsible for the commitment.

b. The purchaser's existing authority might be revoked, in accordance with Chapter 7, Contracts Management Manual, if the authority is exceeded. This included Project Officers, Work Assignment Managers, Delivery Order Officers, Call Ordering Officers on blanket purchase agreements, or holders of Government Bankcards. The Inspector General must be informed of any revocations.

c. Individuals might be subject to corrective action, as detailed in the Conduct and Discipline Manual, ranging from oral

reprimand or removal, based on the severity of the offense.

d. The consequences apply to all unauthorized commitments, whether oral or written, and regardless of dollar value.

10. Ratification of Unauthorized Procurements. a. Ratification is the execution by an authorized contracting officer of a document that retroactively formalizes a contract action of an individual who acted without contracting authority. It also includes action by a Contracting Officer who acted beyond his or her delegated authority.

b. Ratifications may be effected only if the unauthorized actions would have been valid had it been authorized by a contracting officer. The following conditions, as stated in the Federal Acquisition Regulation, Section 1.602-3(c), must be met:

(1) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(2) The ratifying official could have granted authority to enter or could have entered into a contractual commitment at the time it was made and still has the authority to do so;

(3) The resulting contract would have otherwise been proper if made by an appropriate contracting officer;

(4) The Contracting Officer reviewing the unauthorized commitment determines the price to be fair and reasonable;

(5) The Contracting Officer recommends payment and legal counsel concurs in the recommendation, unless Agency procedures expressly do not require such concurrence;

(6) Funds are available and were available at the time the unauthorized commitment was made; and

(7) The ratification is in accordance with any other limitations prescribed under Agency procedures.

11. Documentation Supporting Ratification.

a. The program office shall notify the cognizant contracting office by memorandum of the circumstances surrounding an authorized commitment. The notification shall include:

(1) All relevant documents and records;

(2) Documentation of the necessity for the work and

benefit derived by the Government;

(3) A statement of the delivery status of the supplies or services associated with the unauthorized commitment;

(4) A list of procurement sources solicited (if any) and the rationale for the source selected;

(5) If only one source was solicited, a justification for other than full and open competition (JOFOC) as required by FAR 6.302, FAR 6.303 and 1506.303, or for small purchases exceeding the competition threshold in FAR 13.106, a sole source justification as required by EPAAR 1513.170;

(6) A statement of steps taken or proposed to prevent reoccurrence of any unauthorized commitment.

b. The Division Director (or equivalent) of the responsible office shall approve the memorandum. If expenditure of funds is involved, the program office shall include a Procurement Request/Order, EPA Form 1900-8, with funding sufficient to cover the action. The appropriation data cited on the 1900-8 shall be valid for the period in which the unauthorized commitment was made.

c. Upon receiving the notification, the Contracting Officer shall prepare a Determination and Findings (D&F) regarding ratification of the unauthorized commitment for the ratifying official. The D&F shall include sufficient detail to support the recommended action. If ratification of the unauthorized commitment is recommended, the D&F shall include a determination that the price is fair and reasonable. To document the determination, additional information may be required from the Contractor. Concurrence by the Office of General Counsel is not mandatory, but shall be sought in difficult or unusual cases.

d. The ratifying official may inform the Inspector General (IG) of the action by memorandum through the Head of the Contracting Activity (HCA). For ratification actions exceeding the small purchase limitation, the ratifying official shall submit a memorandum to the Assistant Administrator for Administration and Resources Management through the HCA for transmittal to the Associate or Regional Administrator (or equivalent level) of the person responsible for the unauthorized commitment. This memorandum should contain a brief description of the circumstances surrounding the unauthorized commitment, recommend corrective action, and include a copy of amy memorandum sent to the IG. Submission of a memorandum to the appropriate Assistant, Associate, or Regional Administrator for unauthorized commitments at or below the small purchase limitation is optional and may be accomplished at the discretion of the ratifying official.

12. Standards of Conduct (Ethics).

a. Federal employees are responsible for the day-to-day management of the Government and its funds. As such, the taxpayers expect and are entitled to impeccable conduct on the part of Government personnel. All official decisions must be free from any consideration of personal self-interest or any type of favoritism.

b. EPA employees should read and understand the requirements of 5 CFR Part 2635, Standards of Conduct for Employees of the Executive Branch, which sets forth the standards of conduct for personal behavior. Topics covered in this regulation include gifts, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position and outside activities. It is absolutely vital that the restrictions are understood, since criminal penalties may be imposed for any serious violations.

c. In 1988, Congress passed the Federal Procurement Policy Act Amendments of 1988, Public Law 100-679. Section 6, entitled "Procurement Integrity," prohibits competing contractors and Government procurement officials from offering or accepting gratuities, soliciting or discussing post Government employment during a procurement, or soliciting or disclosing proprietary or source selection information.

13. Ethics Officials. The Designated Agency Ethics Official responsible for managing the EPA ethics program is EPA's Deputy General Counsel. He is assisted by an Alternate Agency Ethics Official and by Deputy Ethics Officials in each program area or region. These officials are responsible for advising their employees on the rules of ethics, coordinating their advice with the Designated Agency Ethics Official, reviewing requests for approval of outside employment, and reviewing and maintaining confidential statements of employment and financial interest. The Deputy Ethics Officials are:

- Assistant Administrators
- Associate Administrators
- Staff Office Directors
- Regional Administrators
- Office Directors
- Laboratory Directors and the
- Inspector General.

If questions arise, employees should consult either their Deputy Ethics Official or the Designated Agency Ethics Official.

14. Ethics for all Government Employees.

a. The following information highlights some ethics regulations of which Project Officers should be aware. This section does not cover all of the ethics regulations applicable to EPA employees. Should an ethics issue arise, refer to the regulations themselves or seek advise from an ethics official to resolve ethics issues. Please note: if you are a "procurement official," you will be subject to the Procurement Integrity Act and additional, stricter standards will apply.

b. General Ethical Standards. The following principle of ethical conduct apply to all EPA employees:

- Employees shall not use public office for private gain.
- Employees shall act impartially and not give preferential treatment to any private organization or individual.
- Employees shall disclose waste, fraud, and corruption to appropriate authorities.
- Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.
- Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
- Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the Stands of Ethical Conduct.

c. Gifts. Employees may not solicit or accept a gift given because of his/her official position or from a prohibited source. Employees are permitted to accept unsolicited gifts with a market value of $20 or less per occasion, aggregating no more than $50 in a calendar year from any one sources. If you are a "procurement official" you must not accept anything with a market value over $10.

(1) An employee shall not accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain. Employees must use judgment and discretion. If the acceptance of a nominal gift or gratuity would create even the appearance of an impropriety or if the contractor would expect to be rewarded through an employee's official EPA

capacity, it must be declined.

e. Financial Interest. Under the criminal conflict of interest statute, 18 U.S.C.208, and 5 CFR Part 2635.402 an employee is prohibited from participating in an official capacity in any particular matter in which, to his/her knowledge, he/she or any person whose interests are imputed to him/her has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

This restriction applies to rulemaking, policy matters, adjudications, grants and contracts. An employee must recuse himself/herself from all such matters even if it would create only the appearance of a conflict of interest. Certain types of financial interest are exempted from the statute, and others may be waived by the Designated Agency Ethics Official if it is deemed that the financial interest is not so substantial as to affect the integrity of the employee's services.

c. Disclosure Statement. All EPA employees serving as contract managers must file Standard Form 450, Confidential Financial Disclosure Report, with their Deputy Ethics Official.

d. Impartiality in Performing Official Duties. An employee should not participate in an official capacity in certain matters without obtaining specific authorization if in his/her judgement, persons with knowledge of the relevant facts would question his/her impartiality in those matters. For example, an employee of the Polluted Water Division is assigned to a technical evaluation panel which reviewing a proposal from the chemical plant where she was recently employed. A reasonable person may question the integrity of the evaluation.

15. The Procurement Integrity Act.

a. Background. The Federal Procurement Policy Act (41 U.S.C. 423) and implementing regulations in FAR 3.104 prohibit certain Government employees (procurement officials) involved in a particular procurement of property or services from soliciting or accepting, directly or indirectly, any promise of future employment or business opportunity from, or engaging, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of any competing contractor. The regulations also prohibit the disclosure of certain procurement sensitive information to persons who are not authorized to receive the information.

b. Prohibited conduct by competing contractors. During the conduct of any Federal procurement, no competing contractor

shall:

1) Make an offer of future employment or business opportunity with a procurement official;

2) Offer money, a gratuity or anything of value to a procurement official;

3) Solicit or obtain, prior to contract award, any proprietary or source selection information.

c. Prohibited conduct by procurement officials. During the conduct of a procurement, no procurement official shall:

1) Solicit or accept employment, money, a gratuity or anything of value from a competing contractor;

2) Solicit, discuss or accept future employment or a business opportunity from a competing contractor;

3) Disclose proprietary or source selection information to persons who are not authorized to receive the information;

Former Government employees are prohibited from assisting in negotiations on behalf of a competing contractor leading to award or modification of a procurement which the former employee had worked on while employed by the Government. Also, former employees shall not assist in contract performance for a period of two years from the former employee's last participation in the procurement.

d. Definitions.

(1) A "competing contractor" is an entity legally capable of entering into a contract or subcontract. This includes individuals, partnerships, educational institutions and any person acting on behalf of such an entity. In the case of a contract modification, an incumbant is a competing contractor.

(2) "During the conduct of a procurement" means the period beginning on the earliest date upon which an identifiable, specific action is taken for the particular procurement, such as drafting or reviewing a statement of work or development of procurement request. The conduct of a procurement concludes upon the award or modification (the addition of new work or extension only) of a particular contract.

(3) A "procurement official" is a Government employee who has participated personally and substantially in any of the

following activities for a particular procurement--

(a) Drafting the statement of work;

(b) Review and approval of the statement of work;

(c) Preparation or development of the procurement request;

(d) Preparation or issuance of a solicitation;

(e) Evaluation of bids or proposals, including source selection;

(f) Negotiation of a contract or contract modification; or

(g) Review and approval of the contract award or modification.

(4) "Participating personally and substantially" in a procurement means active and significant involvement of the individual in activities directly related to the procurement. (If at any time you question whether you were personally and substantially in a procurement contact the responsible contracting officer.

e. Applicability. For procurement requests submitted to the contracting activity to initiate contracts and modifications, Project Officer must submit, along with the procurement rationale checklist, copies of certifications for themselves and any other procurement officials who will participate in pre-award activities.

Outside consultants or contract employees who participate in the proposal evaluation process in accordance with the EPA Acquisition Regulation at 48 CFR 1515.413 are subject to the same certification requirements as Agency employees. Consultants under expert appointment are also subject to the same certification requirements.

f. General Information on Certifications. There are three basic certifications which are required when the contract or modification is over $100,000.

(1) A competing contractor must certify to certain things which are contained in the provision at 52.203-8 for sealed bid or negotiated solicitations, at 52.203-9 for modifications to be considered for award. Contractor employees and representatives are required to certify only once that they have complied with the requirements of procurement integrity.

(2) The Contracting Officer must maintain in the contract file all the basic certifications, along with any additional certifications required for that particular procurement and a record of persons authorized to have access to proprietary or source selection information regarding the procurement.

(3) As a condition for serving as a procurement official, each individual must certify that he/she is familiar with certain subsections of the Act, and will report any possible violations of certain subsections of the Act or implementing regulations.

g. Disclosure of Proprietary Information. All information before award of any contract or contract modification is considered to be highly confidential. Any unauthorized disclosure of such information could lead to one or more offerors' having a competitive advantage over others, which could result in a bid protest and a ruling against the Agency, as well as criminal and/or disciplinary action against the employee involved. The integrity of the competitive process is entirely dependent on the premise that all firms are on an equal footing. In the case of a contract modification, the validity of a cost proposal is only assured if the contractor prepares it independently without benefit of Government estimates, knowledge of the amount of funding available, or any pre-negotiation positions being considered by EPA.

POs and any other program personnel privy to such information must ensure that they do not inadvertently let slip any advance or otherwise confidential procurement information to current contractors or other firms who contact them, either before, during or after contract award or a modification to a contract. Penalties associated with disclosure can be severe. Individual employees can be fined up to $100,000, whether EPA or Contractor. In addition, an Agency employee who knowingly and willfully discloses or promises to disclose any proprietary or source selection information can be subject to criminal penalties up to five years of imprisonment.

If any questions arise, or there are areas of which program personnel are not sure, direct all inquiries to your Contracting Officer. It is important to have such information come directly from the Contracting Officer rather than the PO anyway, as this ensures that there is a control on who receives what information.

CHAPTER 2 - BUDGETING AND ACQUISITION PLANNING

Table of Contents

1. Introduction 2-1

2. Budgeting and Planning 2-1

3. The Budget Year 2-1

4. The Operating Plan 2-3

5. The Current Year 2-4

6. The Decision to Contract Out 2-5

7. Impact of OMB Circular A-76 2-5

8. Inherently Governmental Functions 2-5

9. Sensitive/Vulnerable Services 2-7

10. Advance Acquisition Planning 2-7

11. Annual/Program Acquisition Plans 2-9

12. Cut-Off Dates 2-9

13. Individual Acquisition Plans 2-9

14. Format for Individual Acquisition Plans 2-11

15. Procedure for Procurement Scheduling 2-14

ATTACHMENTS:

Aquisition Cycle Flowchart

Office of Federal Procurement Policy Letter 92-1

EPA Order 1900.2, Contracting at EPA

CHAPTER 2 - BUDGETING AND ACQUISITION PLANNING

1. Introduction. It may appear that EPA's programmatic needs are determined within the year that they are met. This is far from an accurate perception. Whether it be funds for salaries or an appropriation to contract for programmatic needs, the budget evolves through a long process of planning and analysis.

2. Budgeting and Planning.

a. Within the course of one year, EPA, along with all other Federal agencies, is working on its budget for three fiscal years: the current year, one year into the future (budget year), and two years into the future (planning year).

b. The Agency starts planning each year's budget almost two years prior to the beginning of the fiscal year for which it will be in effect. The following outline describes one complete budget cycle from initial conceptualization to final execution. The FY 1986 budget will be used as an example so that chronology can be followed easily.

3. The Budget Year (Outyear Budget).

a. During the spring of FY 1984, the Administrator issues the "FY 1986 Budget Guidance" which outlines in broad terms for National Program Managers (primarily Assistant and Associate Administrators), the priorities, strategies, and direction in which the Administrator intends EPA's programs to progress, two fiscal years hence.

b. Simultaneously or shortly thereafter, the Office of the Comptroller issues resource targets and technical guidance to the National Program Managers for the creation of their "FY 1986 Budget Requests." Within the parameters of the guidance and resource target limitations, these Budget Requests are a more detailed assessment on the part of the National Program Managers of what programs will be achieving in two years and what funding levels they require. Deputy Regional Administrators are consulted in their area of expertise.

c. In addition to the narrative justifications, the Budget Requests include funding levels for "intramural" costs (the costs of supporting staff such as salaries and travel) and "extramural" costs (contracts and grants).

d. During the summer of FY 1984, the Administrator holds budget hearings with each of the National Program Managers, querying them on issues raised in their budget requests. In

attendance are the lead Deputy Regional Administrators, representing the coordinated regional view. As a result of the hearings and reviews of manager's requests, the Administrator makes final decisions on the shape and funding levels of the FY 1986 budget.

e. The Office of the Comptroller coordinates the preparation of the final FY 1986 Budget Request with the National Program Managers and transmits it to OMB by October 1. This budget request includes a justification of resources for various levels of programs, and an "object class" distribution of the intramural and extramural costs in each program element (i.e., specific amounts for contracts and grants for each program element are now identifiable).

f. During October/November of FY 1985, OMB marks the budget request with comments and gives EPA their "passback." The Agency is usually permitted 3-5 days to appeal OMB's decisions. The passback and appeal process may occur once or several times, until both agencies are satisfied with the results.

g. During December/January of FY 1985, the Office of the Comptroller, in conjunction with the National Program Managers, prepares EPA's "FY 1986 President's Budget." It is the same OMB-approved budget, rewritten for presentation to Congress with additional schedules and special analyses required by Congressional Appropriation Committees.

h. The Administrator reveals the EPA portion of the President's Budget in a press conference in February, at the same time the President sends the entire FY 1986 budget request to Congress.

i. During March/April of FY 1985, the Congressional Appropriation and Authorization Subcommittees hold their budget hearings. The Administrator testifies before these committees to justify the programs in the budget request.

j. During the summer of FY 1985, the regional portion of the President's Budget, which has been created in aggregate, is distributed throughout the ten Regions through a process known as "Workload Analysis." The Office of the Comptroller coordinates this process with the National Program Managers who define and price out the activities which should occur in each program in each region. After distribution of workyear and contract resources are negotiated and finally approved by all regions, the Office of the Comptroller distributes the "intramural" resources available to the regions in the President's Budget.

4. The Operating Year.

a. While Congress continues to deliberate on the President's Budget, the Office of the Comptroller coordinates the preparation of the Agency's FY 1986 Operating Plan. Using the President's Budget for Headquarters Offices and the Workload Analysis distribution of the President's Budget for the Regions, the Office of the Comptroller issues resource targets and directions for preparation of the Operating Plans by regional and headquarters budget offices in three stages:

(1) Phase I provides for the distribution of the headquarters budgets to an "allowance holder" level of detail. "Allowance holders" are usually Office Directors within an Assistant Administrator's Office, who have the authority to obligate funds. In the Regions, each Regional Administrator is an Allowance Holder.

(2) Phase II provides all offices the opportunity to propose "reprogrammings" of resources between programs and object classes as defined in the President's Budget. Since the Operating Plan is created almost one full year after initial conceptualization of the President's Budget, some priorities and resource needs may have changed. This is the stage during which those adjustments can first be proposed.

(3) Phase III provides for the distribution of operating plan resources through the four quarters of the fiscal year; offices develop contract plans by informing the Contracts Management Division with whom and when they plan to obligate their contract resources; and, offices develop plans indicating how they plan to use their ADP resources.

b. The Office of the Comptroller analyzes the Operation Plans for pricing accuracy and reprogrammings which may violate the intent of the Administrator's priorities or Congressional intent.

c. During the late summer of FY 1985, the President's Budget is "marked up" by the Appropriations Committees of both Houses of Congress; after further negotiation, the Committees issue a "Conference Report"--the result of their compromise on EPA's budget.

d. By October 1 of each fiscal year, either an Appropriations Bill is approved by both Houses of Congress and signed by the President, or a "continuing resolution" is passed which allows EPA to operate and obligate funds after the first of the fiscal year at a level determined by Congress and OMB.

5. The Current Year.

a. On October 1 of the new fiscal year, the Office of the Comptroller downloads the operating plan to the Integrated Financial Management System (IFMS) and contacts the Senior Budget Officers and Regional Comptrollers to let them know funds are available.

b. Funds may now be committed and then obligated against the amounts included in the operating plan and the contract plans.

c. EPA currently has several appropriations against which contracts may be charged:

(1) Funds appropriated under the Abatement, Control and Compliance (AC&C) Appropriation are available for two years; funds not obligated the first year are "carried over" into the second year. The Office of the Comptroller issues "carryover" allowances the second year. Carryover funds may also be reprogrammed, subject to the same restrictions as new authority. Contracts funded under this appropriation are both administrative and program-related, including contracts to perform laboratory analyses of water or hazardous waste materials, or contracts to perform environmental impact studies, janitorial services, landscaping services, and economic consultants.

(2) Research and Development Appropriation funds are also available for two years. The Office of Research and Development manages most of this appropriation and issues a variety of research grants and contracts under its aegis.

(3) The following Appropriations are available until expended:

- Superfund
- LUST
- Building & Facilities
- Construction Grants
- Oil Spill
- Clean Water Fund
- Drinking Water Fund

These are "no-year" appropriations--the funds are available until obligated and do not lapse back to Treasury. The majority of the Superfund appropriation is managed by the Office of Solid Waste and Emergency Response. Contracts are issued for a variety of purposes, including laboratory analyses, cleanup of hazardous waste, and construction of containment facilities.

d. Allowance Holders may change their Operating Plans only by submitting change requests to the Office of the Comptroller. When reviewed and if approved, the Office of the Comptroller

issues a revised Advice of Allowance reflecting the revised Operating Plan.

6. The Decision to Contract Out. It is clear that EPA's programmatic needs are set forth considerably in advance. Whether a need is met through in-house resources or through contracting is in part dependent upon legislative mandate, availability of in-house resources, time, and other considerations. One major determining factor is whether the function is inherently governmental or a commercial activity.

7. Impact of OMB Circular A-76.

a. Policy. OMB Circular A-76, "Performance of Commercial Activities," states that it is not the Government's business or intent to be in competition with private business. Further, it states that if a commercial or industrial activity can be obtained from the private sector for less than it would cost the Government to perform the same activity, it should be obtained from the private source. If the Government can perform the service for less money than industry can, then the service will be performed "in-house." The policy statements contained in Circular A-76 do not impact what are considered to be inherently Governmental functions.

b. Commercial Activity. A commercial activity is one which can be obtained from a private commercial source. OMB Circular A-76 also defines a commercial activity as one which is operated by a Federal executive agency and which provides a product or service which could be obtained from a commercial source. Some examples of commercial and industrial type activities are: transportation, health services, manufacturing, data processing, agriculture and food, janitorial and security services. A commercial activity is not considered a Government function. Commercial activities must be separable from other functions so as to be suitable for performance by contract and be a type of employment that is regularly needed, not a one-time activity of short duration associated with support of a particular project. Except as noted in OMB Circular A-76, commercial activities are generally contracted.

8. Inherently Governmental Functions.

a. Definition. The Office of Federal Procurement Policy (OFPP) policy letter 92-1, which was effective October 30, 1992, defines an "inherently governmental function" as a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgements in making decisions for the Government.

b. Determining whether a function is inherently governmental is based on the totality of the circumstances involving consideration of a number of factors. No one factor is determinative. Factors to be considered are listed in paragraph 7(b) of the policy letter. **Every contract, delivery order, and work assignment statement of work should be carefully reviewed to ensure that the functions listed in Appendix A of the Policy Letter are not contracted.**

c. List of prohibited contracting activities. Based on the EPA Order, "Contracting at EPA," the Agency will not allow any of the following to be performed under its contracts:

(1) The actual preparation of Congressional testimony.

(2) The interviewing or hiring of individuals for employment at EPA.

(3) Developing and/or writing of Position Descriptions and Performance Standards.

(4) The actual determination of Agency policy.

(5) Participating as a voting member on a Performance Evaluation Board; participating in and/or attending Award Fee meetings.

(6) Preparing Award Fee Letters, even under typing services contracts.

(7) The actual preparation of Award Fee Plans.

(8) The preparation of documents on EPA letterhead other than routine administrative correspondence.

(9) Reviewing vouchers and invoices for the purposes of determining whether costs, hours, and work performed are reasonable.

(10) The preparation of Statements of Work, Work Assignments, Technical Direction Documents, Delivery Orders, or any other work issuance document under a contract that the contractor is performing or may perform.

(11) On behalf of EPA, actually preparing responses to audit reports from the Inspector General, General Accounting Office, or other auditing entities

(12) On behalf of EPA, preparing responses to Congressional correspondence.

(13) The actual preparation of responses to Freedom of Information Act requests, other than routine, non-judgmental correspondence -- in all cases, EPA must sign it.

(14) Any contract which authorizes a contractor to represent itself as EPA to outside parties.

(15) Conducting administrative hearings.

(16) Reviewing findings concerning the eligibility of EPA employees for security clearances.

(17) The actual preparation of an office's official budget request.

The OFPP Letter is attached to this chapter. Please note EPA Order 1900.2, Contracting at EPA, also defines inherently governmental functions. A copy of this directive is also attached to this chapter.

9. Sensitive/Vulnerable Services. Policy Letter 92-1 defines (a) functions which are inherently governmental and must be performed only by Government employees and (b) functions which may be contracted but so closely support Government employees in their performance of inherently governmental functions that the contract terms and performance require close scrutiny from Federal officials. The services listed in Appendix B of the letter require additional management controls to ensure functions which are sensitive or vulnerable to becoming inherently governmental functions are adequately controlled. Functions listed in Appendix B are similar to functions which are listed in the EPA Order 1900.2 and CMM Chapter 2 as "sensitive contracting areas" and "contracting areas requiring special control measures."

10. Advance Acquisition Planning.

a. Forecasting Requirements. Each Program Office is responsible for forecasting its needs for supplies and services. Forecasting needs helps to ensure that the resulting procurements will support the mission of the Program Office in a timely manner, coincide with the preparation of budgets and availability of budgeted funds, be accomplished in accordance with applicable laws and regulations.

b. Advance acquisition planning is the formal function of establishing a plan that schedules certain types of anticipated contractual expenditures during a fiscal year. It is an activity that involves allowance holders, the Office of the Comptroller, and the Office of Acquisition Management (OAM). The PO is not expected to do this alone. In some offices, the PO may not be

involved until the requirement is determined. Check with your supervisor to see how this is handled in your office.

c. Individual acquisition planning and scheduling is a two-step function. The first step, individual acquisition planning, takes place prior to the development of the Procurement Request (PR) and is an activity that involves the initiator of the requirement (usually later appointed as the Project Officer) and the Contracting Officer.

d. The second step of this function is individual procurement scheduling. Again, both the initiator and Contracting Officer are involved. In this step the parties agree to specific milestone dates for activities that take place after receipt of the procurement request package in the procurement office.

11. Annual/Program Acquisition Plans.

a. Some Agency POs may be involved in submitting annual acquisition plans as required by Chapter One of the CMM. These plans are submitted to the cognizant contracting activity every year no later than June 30. With the exception of small purchases, or orders under GSA or other agencies' contracts, acquisition planning must be performed for each contract procurement transaction (new contract, renewal, or modification) over $25,000 to be obligated during a fiscal year.

(b) In addition to a. above, FAR Subpart 7.1 requires agencies to establish criteria and thresholds at which increasingly greater detail and more formal planning are required as acquisitions become more complex and costly. Within EPA, written individual acquisition plans shall be developed to meet the requirements of FAR Subpart 7.1 and the EPA Acquisition Planning System for acquisitions of $5,000,000 or more ($25,000,000 or more for Superfund or ADP). Chapter 1 of the Contracts Management Manual covers the EPA Acquisition Planning System.

12. Cut-Off Dates. OAM establishes deadline dates for submission of specific classes of actions that must be awarded before year end. These dates take into account the leadtime OAM will need to award actions by September 30. Cut-off dates apply to all actions and all program offices. All Agency Senior Budget Officers receive a copy of this memorandum several months before the end of the fiscal year.

13. Individual Acquisition plans.

a. For a PO, acquisition planning starts as soon as the requirement is known. Based on historical data, talking with other POs, or your own experiences, you will have a rough idea of

how long it will take you to put an acceptable procurement package together. By "acceptable procurement package" we mean a package that contains all the necessary documentation to proceed with the acquisition.

b. In planning an individual acquisition, the Project Officer should take into account Government policy that acquisition planners specify needs, develop specifications and solicit offers in such a manner to promote and provide for full and open competition with due regard to the nature of the supplies and services to be acquired and to ensure that no contract is entered into without full and open competition on the basis of lack of acquisition planning.

c. How long it takes to award a contract after the procurement package is accepted depends on the complexity and dollar value of the requirement. For planning purposes, allow a one year leadtime from the time you submit an acceptable procurement request (PR) to the CO until the contract is awarded. This means if you have a contract in place that runs for three years, you should submit your PR for the follow-on contract before the second year of the current contract is completed.

d. The Project Officer's knowledge of his/her responsibilities in the pre-solicitation phase of the acquisition cycle and the level of expertise with which duties are performed impact heavily on the acquisition. It is at this stage that the quality and timeliness of the acquisition is determined. A poor Statement of Work, inadequate reporting requirements, or missing approvals will individually cause the Contracting Officer to reject the Purchase Request, thus extending the acquisition lead time.

e. Involve your cognizant contracting office in acquisition planning. By being aware of the current and future needs of various organizations, the contracting office staff can (1) help your office develop realistic program plans, schedules, and budgets, and (2) recommend long-range strategies for reducing the resources and time required for mission accomplishment. Specifically, the contracting office can advise your office on such matters as:

- Consolidating needs to attain economic ordering quantities;
- The availability of sources and strategies for enhancing competition;
- Market prices, conditions, and trends; and
- Procurement leadtimes, problems, lessons learned from previous acquisitions for comparable requirements.

14. Format for Individual Acquisition Plans.

a. FAR defines acquisition planning as the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

b. In accordance with Chapter One of the Contracts Management Manual, a formal acquisition plan is required for all acquisitions whose estimated value is over $5,000,000. For Superfund and ADP acquisitions, the threshold is $25,000,000. At EPA the CO drafts the written acquisition plan; however, much of the information contained in the plan is provided by the PO. It is essential that the PO provide the appropriate information to the CO in order to complete the acquisition plan. In addition to the CO, EPA acquisition plans must be reviewed and approved by the Chief of the Contracting Office and the Agency Competition Advocate.

c. FAR 7.105, which defines the content of written acquisition plans, is reproduced below for your information. Parenthetical references to Parts and Subpart refer to the FAR.

(a) Acquisition background and objectives. (1) Statement of need. Introduce the plan by a brief statement od need. Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives and any related in-house effort.

(2) Applicable conditions. State all significant conditions affecting the acquisition, such as (i) requirements for compatibility with existing or future systems or programs and (ii) any known cost, schedule, and capability or performance constraints.

(3) Cost. Set forth the established cost goals for the acquisition and the rationale supporting them, and discuss related cost concepts to be employed, including, as appropriate, the following items:

(i) Life-cycle cost. Discuss how life-cycle cost will be considered. If it is not used, explain why. If appropriate, discuss the cost model used to develop life-cycle-cost estimates.

(ii) Design-to-cost. Describe the design-to-cost objective(s) and underlying assumptions, including the rationale for quantity, learning curve, and economic adjustment factors. Describe how objectives are to be applied, tracked, and enforced. Indicate specific related solicitation and contractual

requirements to be imposed.

(iii) Application of should-cost. Describe the application of should-cost analysis to the acquisition (see 15.810).

(4) Capability or performance. Specify the required capabilities or performance characteristics of the supplies or services being acquired and state how they are related to the need.

(5) Delivery or performance-period requirements. Describe the basis for establishing delivery or performance-period requirements (see Subpart 12.1). Explain and provide reason for any urgency if it results in concurrence of development and production or constitutes justification for not providing for full and open competition.

(6) Trade-offs. Discuss the expected consequences of trade-offs among various cost, capability or performance, and schedule goals.

(7) Risks. Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrence of development and production is planned, discuss its effects on cost and schedule risks.

(8) Acquisition streamlining. If specifically designated by the requiring agency as a program subject to acquisition streamling, discuss plans and procedures to (i) encourage industry participation by using draft solicitations, presolicitation conferences, and other means of stimulating industry involvement during design and development in recommending the most appropriate application and tailoring of contract requirements; (ii) select and tailor only the necessary and cost-effective requirements; and (iii) state the timeframe for identifying which of those specifications and standards, originally provided for guidance only, shall become mandatory (see 10.002(c)).

(b) Plan of action. (1) Sources. Indicate the prospective sources of supplies and/or services that can meet the need. Consider required sources of supplies and services (see Part 8). Include consideration of small business, small disadvantaged business, and labor surplus area concerns (see Parts 19 and 20). If the acquisition or a part of it is for commercial or commercial-type products (see Part 11), address the results of market research and analysis and indicate their impact on the various elements of the plan. If the acquisition or part of it is for other than commercial or commercial-type products, address the extent and results of the market survey conducted or the reasons one was not or will not be conducted.

(2) Competition. (i) Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. If full and open competition is not contemplated, cite the authority in 6.302, discuss the basis for the application of that authority, identify the source(s), and discuss why full and open competition cannot be obtained.

(ii) Identify the major components or subsystems. Discuss component breakout plans relative to these major components or subsystems. Describe how competition will be sought, promoted, and sustained for these components or subsystems.

(iii) Describe how competition will be sought, promoted, and sustained for spares and repair parts. Identify the key logistic milestones, such as technical data delivery schedules and acquisition method coding conferences, that affect competition.

(iv) When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the acquisition. Identify any known barriers to increasing subcontract competition and address how to overcome them.

(3) Source-selection procedures. Discuss the source-selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives (see Subpart 15.6).

(4) Contracting Considerations. For each contract contemplated, discuss contract type selection (see Part 16); use of multiyear contracting, options, or other special contracting methods (see Part 17); any special clauses, special solicitation provisions, or FAR deviations required (see Subpart 1.4); whether equipment will be acquired by lease or purchase (see Subpart 7.4) and why; and any other contracting considerations.

(5) Budgeting and funding. Describe how budget estimates were derived and discuss the schedule for obtaining adequate funds at the time when they are required (see Subpart 32.7).

(6) Product descriptions. In accordance with Part 10, explain the choice of product description types to be used in the acquisition.

(7) Priorities, allocations, and allotments. When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities may apply. If so, specify the method for obtaining and using priorities, allocation and allotments, and the reasons for them (see Subpart 12.3).

(8) Contractor versus Government performance. Address the consideration given to OMB Circular No. A-76 (see Subpart 7.3).

(9) Management information requirements. Discuss, as appropriate, what management system will be used by the Government to monitor the contractor's effort.

(10) Make or buy. Discuss any consideration given to make-or-buy programs (See Subpart 15.7).

(11) Test and evaluation. To the extent applicable, describe the test program of the contractor and the Government. Describe the test program for each major phase of a major system acquisition. In concurrence is planned, discuss the extent of testing to be accomplished before production release.

(12) Logistics considerations. Describe--

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see Subpart 7.3) and distribution of commercial products (see Part 11);

(ii) The reliability, maintainablitiy, and quality assurance requirements, including any planned use of warranties (see Part 46); and

(iii) The requirements for contractor data (including repurchase data) and data rights, their estimated cost, and the use to be made of the data (see Part 27).

(iv) Standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as "standard" so that future purchases of the equipment can be made from the same manufacturing source.

(13) Government-furnished property. Indicate any property to be furnished to contractors, including material and facilities, and discuss any associated considerations, such as its availability or the schedule for its acquisition (see Part 45).

(14) Government-furnished information. Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors.

(15) Environmental considerations. Discuss environmental issues associated with the acquisition, the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environment-related requirements to be included in solicitations and contracts.

(16) Security considerations. For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see Subpart 4.4).

(17) Other considerations. Discuss, as applicable, energy conservation measures, standardization concepts, the industrial readiness program, the Defense Production Act, the Occupational Safety and Health Act, foreign sales implications, and any other matters germane to the plan not covered elsewhere.

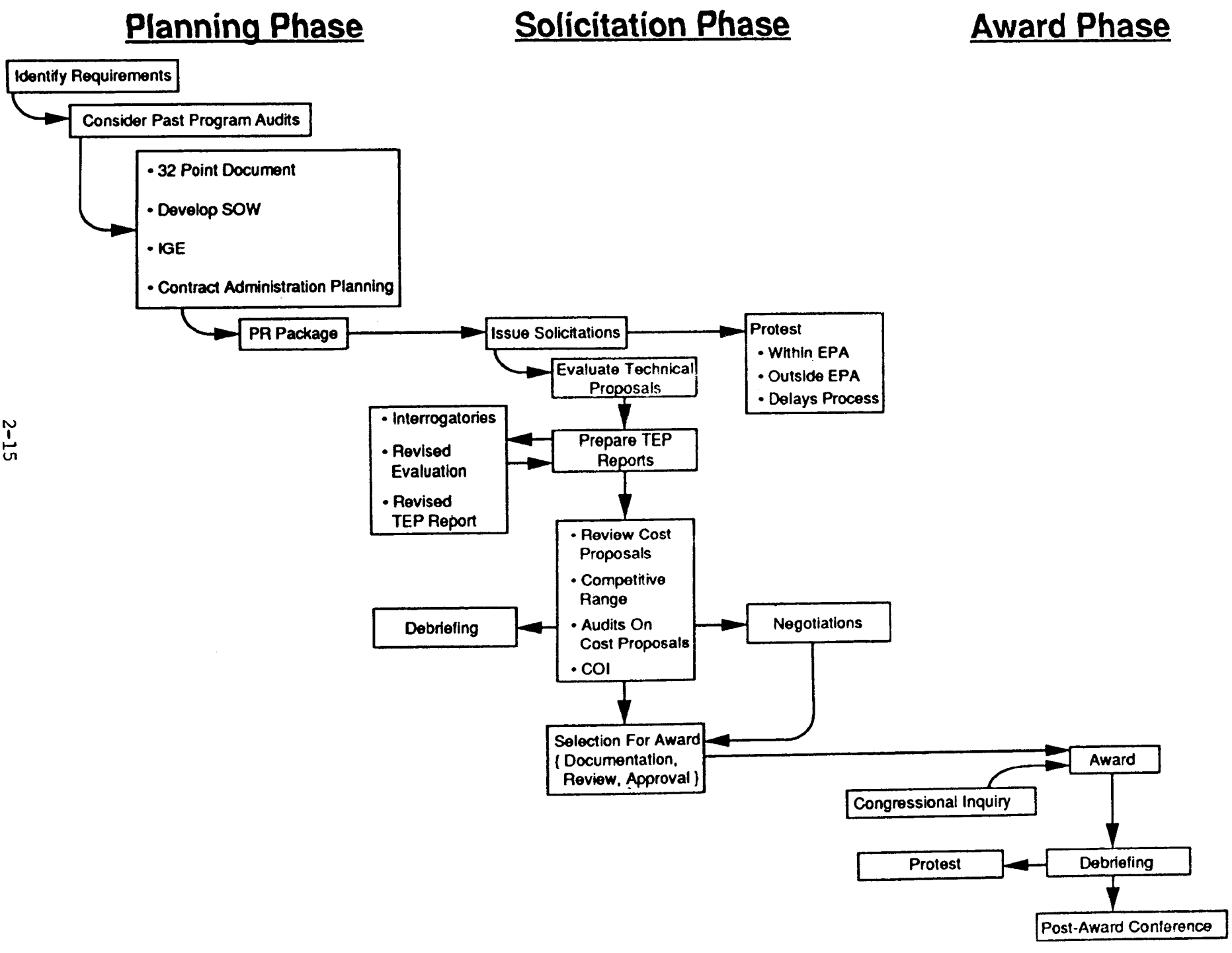
(18) Milestones for the acquisition cycle. Address the following steps and any others appropriate:

Acquisition plan approved.
Statement of work.
Specifications.
Data Requirements.
Compilation of acquisition-package preparation.
Purchase request.
Justification and approval for other than full and open competition were applicable and/or any required D&F approval.
Issuance of synopsis.
Issuance of solicitation.
Evaluating proposals, audits, and field reports.
Beginning and completion of negotiations.
Contract preparation, review and clearance.
Contract award.

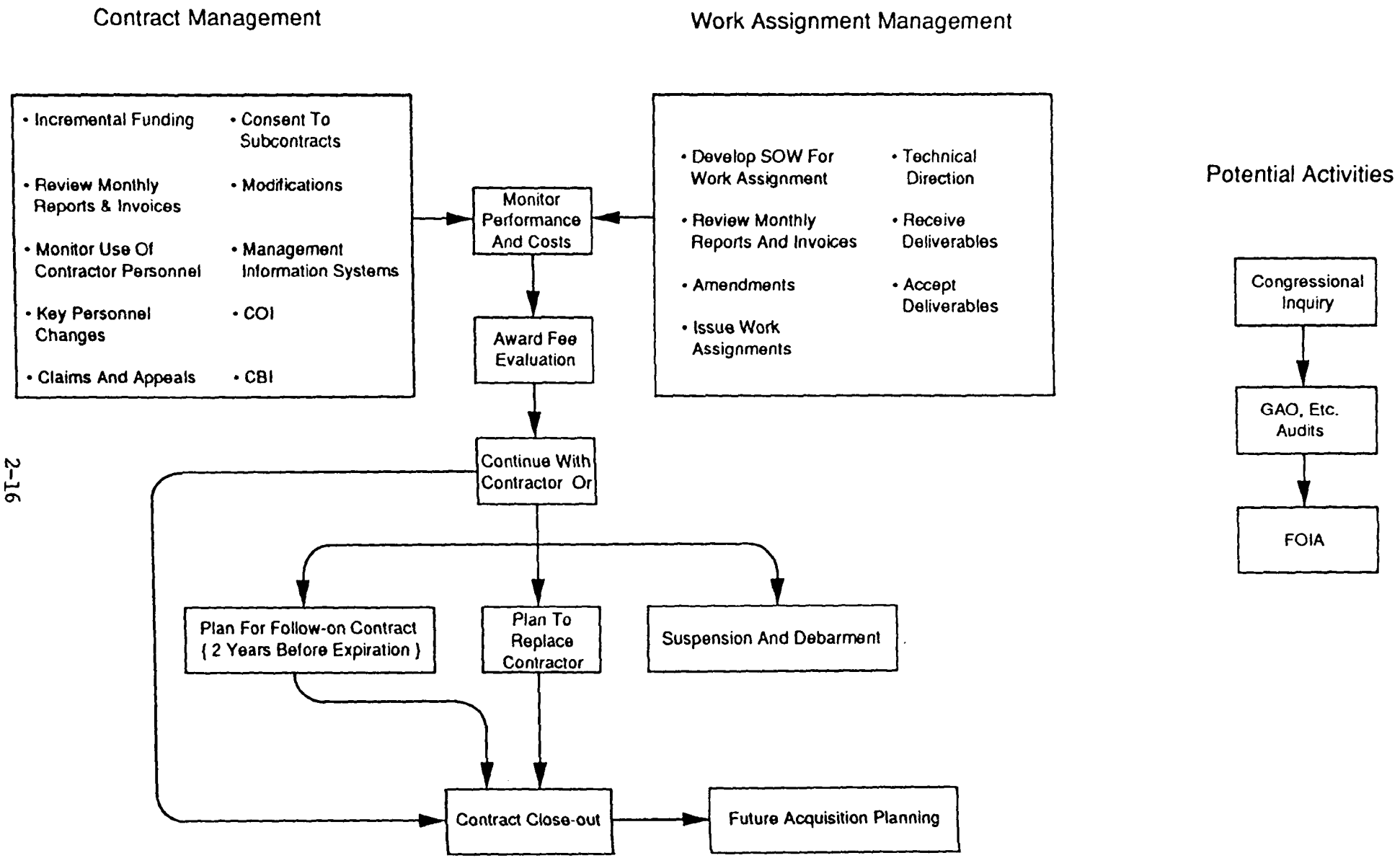
(19) Identification of participants in acquisition plan process. List individuals who participated in preparing the acquisition plan, giving contact information for each.

15. Procedure for Procurement Scheduling

a. Introduction. Once the Procurement package is complete, the Project Officer meets with the Contracting Officer (or contract specialist) to prepare a procurement schedule. The flowchart on page 2-15 shows some of the major events leading the award of a contract. (The FAR requires this only for procurements of $5 million or more.) She/he will coordinate with the Project Officer to obtain program office and Office of Acquisition Management approval of the projected contract award date. The specialist maintains the plans so that occurrences are recorded and subsequently reviewed by management.


Planning Phase
Solicitation Phase
Award Phase
Identify Requirements
Consider Past Program Audits
• 32 Point Document
• Develop SOW
• IGE
• Contract Administration Planning
PR Package
Issue Solicitations
Protest
• Within EPA
• Outside EPA
• Delays Process
Evaluate Technical Proposals
• Interrogatories
• Revised Evaluation
• Revised TEP Report
Prepare TEP Reports
• Review Cost Proposals
• Competitive Range
• Audits On Cost Proposals
• COI
Debriefing
Negotiations
Selection For Award (Documentation, Review, Approval)
Award
Congressional Inquiry
Protest
Debriefing
Post-Award Conference

Contract Management Phase



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

September 23, 1992

Policy Letter 92-1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Inherently Governmental Functions.

1. Purpose. This policy letter establishes Executive Branch policy relating to service contracting and inherently governmental functions. Its purpose is to assist Executive Branch officers and employees in avoiding an unacceptable transfer of official responsibility to Government contractors.

2. Authority. This policy letter is issued pursuant to subsection 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, codified at 41 U.S.C. § 405(a).

3. Exclusions. Services obtained by personnel appointments and advisory committees are not covered by this policy letter.

4. Background. Contractors, when properly used, provide a wide variety of useful services that play an important part in helping agencies to accomplish their missions. Agencies use service contracts to acquire special knowledge and skills not available in the Government, obtain cost effective services, or obtain temporary or intermittent services, among other reasons.

Not all functions may be performed by contractors, however. Just as it is clear that certain functions, such as the command of combat troops, may not be contracted, it is also clear that other functions, such as building maintenance and food services, may be contracted. The difficulty is in determining which of these services that fall between these extremes may be acquired by contract. Agencies have occasionally relied on contractors to perform certain functions in such a way as to raise questions about whether Government policy is being created by private persons. Also, from time to time questions have arisen regarding the extent to which de facto control over contract performance has been transferred to contractors. This policy letter provides an illustrative list of functions, that are, as a matter of policy, inherently governmental (see Appendix A), and articulates the practical and policy considerations that underlie such determinations (see § 7).

As stated in § 9, however, this policy letter does not purport to specify which functions are, as a legal matter, inherently governmental, or to define the factors used in making such legal determination. Thus, the fact that a function is listed in Appendix A, or a factor is set forth in § 7(b), does not necessarily mean that the function is inherently governmental as a legal matter or that the factor would be relevant in making the legal determination.

5. Definition. As a matter of policy, an "inherently governmental function" is a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgements in making decisions for the Government. Governmental functions normally fall into two categories: (1) the act of governing, i.e., the discretionary exercise of Government authority, and (2) monetary transactions and entitlements.

An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to:

(a) bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(b) determine, protect, and advance its economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(c) significantly affect the life, liberty, or property of private persons;

(d) commission, appoint, direct, or control officers or employees of the United States; or

(e) exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security; mail operations; operation of cafeterias; housekeeping; facilities operations and maintenance, warehouse operations, motor vehicle fleet management and operations, or other routine electrical or mechanical services.

The detailed list of examples of commercial activities found as an attachment to Office of Management and Budget (OMB) Cir. No. A-76 is an authoritative, nonexclusive list of functions that are not inherently governmental functions. These functions therefore may be contracted.

6. Policy.

(a) Accountability. It is the policy of the Executive Branch to ensure that Government action is taken as a result of informed, independent judgments made by Government officials who are ultimately accountable to the President. When the Government uses service contracts, such informed, independent judgment is ensured by:

(1) prohibiting the use of service contracts for the performance of inherently governmental functions (See Appendix A);

(2) providing greater scrutiny and an appropriate enhanced degree of management oversight (see subsection 7(f)) when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions (see Appendix B);

(3) ensuring, in using the products of those contracts, that any final agency action complies with the laws and policies of the United States and reflects the independent conclusions of agency officials and not those of contractors who may have interests that are not in concert with the public interest, and who may be beyond the reach of management controls otherwise applicable to public employees; and

(4) ensuring that reasonable identification of contractors and contractor work products is made whenever there is a risk that the public, Congress, or other persons outside of the Government might confuse them with Government officials or with Government work products, respectively.

(b) OMB Circular No. A-76. This policy letter does not purport to supersede or otherwise effect any change in OMB Circular No. A-76, Performance of Commercial Activities.

(c) Drafting of Congressional testimony, responses to Congressional correspondence, and agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity. While the approval of a Government document is an inherently governmental function, its drafting is not necessarily such a function. Accordingly, in most situations the drafting of a document, or portions thereof, may be contracted, and the agency should review and revise the draft document, to the extent necessary, to ensure that the final

document expresses the agency's views and advances the public interest. However, even though the drafting function is not necessarily an inherently governmental function, it may be inappropriate, for various reasons, for a private party to draft a document in particular circumstances. Because of the appearance of private influence with respect to documents that are prepared for Congress or for law enforcement or oversight agencies and that may be particularly sensitive, contractors are not to be used for the drafting of Congressional testimony; responses to Congressional correspondence; or agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity.

7. Guidelines. If a function proposed for contract performance is not found in Appendix A, the following guidelines will assist agencies in understanding the application of this policy letter, determining whether the function is, as a matter of policy, inherently governmental and forestalling potential problems.

(a) The exercise of discretion. While inherently governmental functions necessarily involve the exercise of substantial discretion, not every exercise of discretion is evidence that such a function is involved. Rather, the use of discretion must have the effect of committing the Federal Government to a course of action when two or more alternative courses of action exist (e.g., purchasing a minicomputer rather than a mainframe computer, hiring a statistician rather than an economist, supporting proposed legislation rather than opposing it, devoting more resources to prosecuting one type of criminal case than another, awarding a contract to one firm rather than another, adopting one policy rather than another, and so forth).

A contract may thus properly be awarded where the contractor does not have the authority to decide on the course of action to be pursued but is rather tasked to develop options to inform an agency decision maker, or to develop or expand decisions already made by Federal officials. Moreover, the mere fact that decisions are made by the contractor in performing his or her duties (e.g., how to allocate the contractor's own or subcontract resources, what techniques and procedures to employ, whether and whom to consult, what research alternatives to explore given the scope of the contract, what conclusions to emphasize, how frequently to test) is not determinative of whether he or she is performing an inherently governmental function.

(b) Totality of the circumstances. Determining whether a function is an inherently governmental function often is difficult and depends upon an analysis of the facts of the case. Such analysis involves consideration of a number of factors, and the presence or absence of any one is not in itself determinative of the issue. Nor will the same emphasis necessarily be placed on any one factor at different times, due to the changing nature of the Government's requirements.

The following factors should be considered when deciding whether award of a contract might effect, or the performance of a contract has effected, a transfer of official responsibility:

(1) Congressional legislative restrictions or authorizations.

(2) The degree to which official discretion is or would be limited, i.e., whether the contractor's involvement in agency functions is or would be so extensive or his or her work product is so far advanced toward completion that the agency's ability to develop and consider options other than those provided by the contractor is restricted.

(3) In claims adjudication and related services,

(i) the finality of any contractor's action affecting individual claimants or applicants, and whether or not review of the contractor's action is de novo (i.e., to be effected without the appellate body's being bound by prior legal rulings or factual determinations) on appeal of his or her decision to an agency official;

(ii) the degree to which contractor activities may involve wide-ranging interpretations of complex, ambiguous case law and other legal authorities, as opposed to being circumscribed by detailed laws, regulations, and procedures;

(iii) the degree to which matters for decision by the contractor involve recurring fact patterns or unique fact patterns; and

(iv) The contractor's discretion to determine an appropriate award or penalty.

(4) The contractor's ability to take action that will significantly and directly affect the life, liberty, or property of individual members of the public, including the likelihood of the contractor's need to resort to force in support of a police or judicial function; whether force, especially deadly force, is more likely to be initiated by the contractor or by some other person; and the degree to which force may have to be exercised in public or relatively uncontrolled areas. (Note that contracting for guard, convoy security, and plant protection services, armed or unarmed, is not proscribed by these policies.)

(5) The availability of special agency authorities and the appropriateness of their application to the situation at

hand, such as the power to deputize private persons.

(6) Whether the function in question is already being performed by private persons, and the circumstances under which it is being performed by them.

(c) Finality of agency determinations. Whether or not a function is an inherently governmental function, for purposes of this policy letter, is a matter for agency determination. However, agency decisions that a function is or is not an inherently governmental function may be reviewed, and, if necessary, modified by appropriate OMB officials.

(d) Preaward responsibilities. Whether a function being considered for performance by contract is an inherently governmental function is an issue to be addressed prior to issuance of the solicitation.

(e) Post-award responsibilities. After award, even when a contract does not involve performance of an inherently governmental function, agencies must take steps to protect the public interest by playing an active, informed role in contract administration. This ensures that contractors comply with the terms of the contract and that Government policies, rather than private ones, are implemented. Such participation should be appropriate to the nature of the contract, and should leave no doubt that the contract is under the control of Government officials. This does not relieve contractors of their performance responsibilities under the contract. Nor does this responsibility to administer the contract require Government officials to exercise such control over contractor activities as to convert the contract, or portion thereof, to a personal service contract.

In deciding whether Government officials have lost or might lose control of the administration of a contract, the following are relevant considerations: the degree to which agencies have effective management procedures and policies that enable meaningful oversight of contractor performance, the resources available for such oversight, the actual practice of the agency regarding oversight, the duration of the contract, and the complexity of the tasks to be performed.

(f) Management controls. When functions described in Appendix B are involved, additional management attention to the terms of the contract and the manner of performance is necessary. How close the scrutiny or how extensive or stringent the management controls need to be is for agencies to determine. Examples of additional control measures that might be employed are:

(1) developing carefully crafted statements of work and quality assurance plans, as described in OFPP Policy Letter 91-2, Service Contracting, that focus on the issue of Government oversight and measurement of contractor performance;

(2) establishing audit plans for periodic review of contracts by Government auditors;

(3) conducting preaward conflict of interest reviews to ensure contract performance in accordance with objective standards and contract specifications;

(4) physically separating contractor personnel from Government personnel at the worksite; and

(5) requiring contractors to (a) submit reports that contain recommendations and that explain and rank policy or action alternatives, if any, (b) describe what procedures they used to arrive at their recommendations, (c) summarize the substance of their deliberations, (d) report any dissenting views, (e) list sources relied upon, and/or (f) otherwise make clear the methods and considerations upon which their recommendations are based.

(g) Identification of contractor personnel and acknowledgement of contractor participation. Contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties must be required to identify themselves as such to avoid creating an impression in the minds of members of the public or the Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. All documents or reports produced by contractors are to be suitably marked as contractor products.

(h) Degree of reliance. The extent of reliance on service contractors is not by itself a cause for concern. Agencies must, however, have a sufficient number of trained and experienced staff to manage Government programs properly. The greater the degree of reliance on contractors the greater the need for oversight by agencies. What number of Government officials is needed to oversee a particular contract is a management decision to be made after analysis of a number of factors. These include, among others, the scope of the activity in question; the technical complexity of the project or its components; the technical capability, numbers, and workloads of Federal oversight officials; the inspection techniques available; and the importance of the activity. Current contract administration resources shall not be determinative. The most efficient and cost effective approach shall be utilized.

(i) Exercise of approving or signature authority. Official responsibility to approve the work of contractors is a power reserved to Government officials. It should be exercised with a thorough knowledge and understanding of the contents of documents submitted by contractors and a recognition of the need to apply independent judgment in the use of these work products.

8. Responsibilities.

(a) Heads of agencies. Heads of departments and agencies are responsible for implementing this policy letter. While these policies must be implemented in the Federal Acquisition Regulation (FAR), it is expected that agencies will take all appropriate actions in the interim to develop implementation strategies and initiate staff training to ensure effective implementation of these policies.

(b) Federal Acquisition Regulatory Council. Pursuant to subsections 6(a) and 25(f) of the OFPP Act, as amended, 41 U.S.C. §§ 405(a) and 421(f), the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this policy letter is published in the Federal Register. Issuance of final regulations within this 210-day period shall be considered issuance "in a timely manner" as prescribed in 41 U.S.C. § 405(b).

(c) Contracting officers. When requirements are developed, when solicitations are drafted, and when contracts are being performed, contracting officers are to ensure:

(1) that functions to be contracted are not among those listed in Appendix A of this letter and do not closely resemble any functions listed there;

(2) that functions to be contracted that are not listed in Appendix A, and that do not closely resemble them, are not inherently governmental functions according to the totality of the circumstances test in subsection 7(b), above;

(3) that the terms and the manner of performance of any contract involving functions listed in Appendix B of this letter are subject to adequate scrutiny and oversight in accordance with subsection 7(f), above; and

(4) that all other contractible functions are properly managed in accordance with subsection 7(e), above.

(d) All officials. When they are aware that contractor advice, opinions, recommendations, ideas, reports, analyses, and other work products are to be considered in the course of their official duties, all Federal Government officials are to ensure

that they exercise independent judgment and critically examine these products.

9. Judicial review. This policy letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this policy letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this policy letter.

10. Information contact. For information regarding this policy letter contact Richard A. Ong, Deputy Associate Administrator, the Office of Federal Procurement Policy, 725 17th Street, N.W., Washington, DC 20503. Telephone (202)395-7209.

11. Effective date. This policy letter is effective 30 days after the date of publication.

Allan V. Burman

ALLAN V. BURMAN
Administrator

APPENDIX A

The following is an illustrative list of functions considered to be inherently governmental functions:[1]

1. The direct conduct of criminal investigations.

2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).

3. The command of military forces, especially the leadership of military personnel who are members of the combat, combat support or combat service support role.

4. The conduct of foreign relations and the determination of foreign policy.

5. The determination of agency policy, such as determining the content and application of regulations, among other things.

6. The determination of Federal program priorities or budget requests.

7. The direction and control of Federal employees.

8. The direction and control of intelligence and counter-intelligence operations.

9. The selection or nonselection of individuals for Federal Government employment.

10. The approval of position descriptions and performance standards for Federal employees.

11. The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

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[1] With respect to the actual drafting of Congressional testimony, of responses to Congressional correspondence, and of agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity, see special provisions in subsection 6(c) of the text of the policy letter.

12. In Federal procurement activities with respect to prime contracts,

(a) determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(b) participating as a voting member on any source selection boards;

(c) approval of any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(d) awarding contracts;

(e) administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);

(f) terminating contracts; and

(g) determining whether contract costs are reasonable, allocable, and allowable.

13. The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

14. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

15. The approval of Federal licensing actions and inspections.

16. The determination of budget policy, guidance, and strategy.

17. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as title 31 U.S.C. § 952 (relating to private collection contractors) and title 31 U.S.C. § 3718 (relating to private attorney collection services), but not including:

(a) collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base

exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard cash management techniques, and

(b) routine voucher and invoice examination.

18. The control of the treasury accounts.

19. The administration of public trusts.

APPENDIX B

The following list is of services and actions that are not considered to be inherently governmental functions. However, they may approach being in that category because of the way in which the contractor performs the contract or the manner in which the Government administers contractor performance. When contracting for such services and actions, agencies should be fully aware of the terms of the contract, contractor performance, and contract administration to ensure that appropriate agency control is preserved.

This is an illustrative listing, and is not intended to promote or discourage the use of the following types of contractor services:

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

2. Services that involve or relate to reorganization and planning activities.

3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.

4. Services that involve or relate to the development of regulations.

5. Services that involve or relate to the evaluation of another contractor's performance.

6. Services in support of acquisition planning.

7. Contractors' providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

8. Contractors' providing technical evaluation of contract proposals.

9. Contractors' providing assistance in the development of statements of work.

10. Contractors' providing support in preparing responses to Freedom of Information Act requests.

11. Contractors' working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in

FAR 4.402(b)).

12. Contractors' providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

13. Contractors' participating in any situation where it might be assumed that they are agency employees or representatives.

14. Contractors' participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

15. Contractors' serving as arbitrators or providing alternative methods of dispute resolution.

16. Contractors' constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

17. Contractors' providing inspection services.

18. Contractors' providing legal advice and interpretations of regulations and statutes to Government officials.

19. Contractors' providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

OFFICE OF MANAGEMENT AND BUDGET
Office of Federal Procurement Policy

AGENCY: Office of Management and Budget, Executive Office of the President, Office of Federal Procurement Policy.

ACTION: Policy Letter on Inherently Governmental Functions.

SUMMARY: The Office of Federal Procurement Policy (OFPP) publishes today the final version of a policy letter providing guidance to Executive Departments and agencies on (1) what functions are inherently governmental functions that must only be performed by Government officers and employees and (2) what contractible functions so closely support Government officers and employees in their performance of inherently governmental functions that the terms and performance of those contracts require closer scrutiny from Federal officials. This policy letter has been developed because executive agencies, members of Congress, the General Accounting Office, and the public have from time to time either requested guidance regarding, or inquired about, the propriety of awarding contracts for certain types of functions or administering contracts in certain ways. Previous guidance on this issue has also not been as detailed as that which we now provide.

FOR FURTHER INFORMATION CONTACT: Richard A. Ong, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW -- Suite 9001, Washington, DC 20503 (202)395-7209. To obtain a copy of this policy letter, please call OMB's Publications Office at (202)395-7332.

SUPPLEMENTARY INFORMATION:

Comments received. We received 34 comments in response to our proposed policy letter published in the Federal Register on December 16, 1991 (56 Fed. Reg. 65279): eight from industry or trade groups, four from private individuals, two from employee organizations, one from a Federally funded research and development center, and 19 from Government agencies.

1. Purpose of the policy letter. This policy letter on inherently governmental functions is being published to provide guidance on what kinds of functions, as a matter of policy, must be performed by officials of the Executive Branch of the United States and what kinds of functions may be performed by private persons under contract with the Federal Government.

Previous guidance on these matters that has been available to the Executive Branch has not been detailed and sometimes Federal agencies have permitted contractors to perform functions that should be performed by Government personnel. We now provide more detailed guidance.

2. Relationship of policy letter to other OFPP publications on service contracting. This policy letter is also one of several that the Office of Federal Procurement Policy (OFPP) has published recently that have focused on some aspect of service contracting in the Federal Government. At this time, OFPP has determined it is best to deal with individual aspects of service contracting rather than trying to publish comprehensive guidance in one document. We will consider collecting all of the guidance on service contracts in one document in the future.

Thus, we do not cover in detail in this policy letter such matters as cost effectiveness of contracting for services, conflicts of interest of service contractors, and management of service contracts. These issues are dealt with in OMB Circular No. A-76, Performance of Commercial Activities, August 4, 1983 (under revision); OFPP Policy Letter 89-1, Conflict of interest Policies Applicable to Consultants, 54 Fed. Reg. 51,805 (December 18, 1989); OFPP Memorandum for Agency Senior Procurement Executives, Government-Wide Guidance on Contract Administration (March 15, 1991); OFPP Policy Letter 91-2, Service Contracting, 56 Fed. Reg. 15110 (April 15, 1991); proposed OFPP Policy Letter 91-___, Past Performance Information, 56 Fed. Reg. 63988 (December 6, 1991); and proposed OFPP Policy Letter 92-___, Management of Service Contracting, 56 Fed. Reg. 66091 (December 20, 1991).

3. Relationship to OMB Circular No. A-76. One commenter asked that we make clear our apparent intent to clarify rather than alter the guidance originally found in OMB Circular No. A-76 on inherently governmental functions. That is our intent. No fundamental change is intended.

We have altered the form of the original Circular A-76 definition of an inherently governmental function in the interest of clarity. Specific examples cited in the original A-76 definition have been incorporated into Appendix A and a list of the general principles underlying the selection of the functions listed in that appendix has been added in their stead.

The terms "function" and "activity" as used in this policy letter and Circular A-76, respectively, are interchangeable.

The same commenter above suggested that we add a new Appendix C, containing a nonexclusive list of functions that are commercial activities that should be contracted. We have not adopted this suggestion because the scheme proposed is the same one we have implicitly adopted. The proposed Appendix C is nothing more than the list of examples of commercial activities found as an Attachment to Circular A-76. We do not believe it is necessary to incorporate that A-76 attachment in this policy letter. The fact that we have not provided this Appendix C thus should not be construed as narrowing the scope of functions that

have been contracted in the past. Nonetheless, we have added language to § 5 to clarify the relationship between Circular A-76 and this policy letter on this point.

Another commenter stated that the relationship between this policy letter and Circular A-76 is unclear. This policy letter is to be the exclusive source of guidance on what constitutes, as a matter of policy, an inherently governmental function.

4. Libraries. Several persons questioned the inclusion of library operations as a ministerial function that should be contracted out in subsection 7(a) of the December version of the policy letter. The fact that employees render professional services in performing a function does not mean that the function in question is necessarily inherently governmental. In fact, the Government frequently seeks out contract services precisely because of the level of sophistication required to perform a particular function. On the other hand, agencies may determine that aspects of their library operations, such as handling certain types of information in certain circumstances, involve performance of an inherently governmental function. Therefore, we have removed the reference to libraries.

5. Contract audits for inspectors general. One commenter suggested that Federal inspector general (IG) work should be done by using Government resources, with exceptions justified on a case-by-case basis, unless specific technical expertise is needed temporarily and is not available within the Government. This suggestion was not adopted because (1) Congress has specifically authorized the use of contract auditors in ¶ 6(a)(9) of the Inspector General Act codified at 5 U.S.C. App. 3, and (2) financial and compliance audit activities are not considered inherently governmental functions.

Another commenter questioned whether subsection 12(g) of Appendix A pertaining to the determination of whether contract costs are reasonable, allocable, and allowable proscribes the use of contract audit services. It does not. The decision on what costs are reasonable, allocable, and allowable is ultimately a Government decision, but that decision may be based on recommendations made by contract auditors. Certified public accountants, for example, only render "opinions" and contracts sometimes provide that audit reports are advisory only. Moreover, the use of contract auditors has been authorized by Congress, as noted above.

6. Agency determinations. One commenter interpreted the policy letter as authorizing Federal managers to make a final determination on whether a function is an inherently governmental function, under this policy letter, without such determination's being subject to being overturned by the Office of Management and Budget (OMB) or being subject to a cost comparison study under

Circular A-76. In general, agencies are expected to make their own determinations, subject to oversight by OMB. Language has been added to subsection 7(c) to clarify this point.

7. Agency discretion. One commenter questioned the need for the language in former subsection 7(e) regarding agency discretion to award nonpersonal service contracts. We agree it is unnecessary. It is already clear that awarding a contract is an agency responsibility.

8. Incorporation in OMB Circular No. A-76, other documents. Several commenters suggested that the policy letter be incorporated in Circular A-76, "Commercial Activities," currently being revised. We did not incorporate this suggestion because A-76 is already a lengthy document. Also, contracting for inherently governmental functions is indeed a consideration in contracting out, but it is not unique to the A-76 program. All Federal officials who contract for nonpersonal services must consider the problem of inherently governmental functions, and we thus believe separate guidance applicable to all such contracting, not just to nonpersonal service contracting in the A-76 context, is the better alternative. Other commenters urged that the policy letter be combined with one or more other OFPP policy letters, such as those on conflict of interest, service contracting, and past performance and published in a form other than a policy letter. This suggestion has merit but we believe it best to try to deal with discrete portions of service contracting rather than to try to deal with all facets of a complex problem at once, as discussed in point 2, above.

9. Agency discretion regarding resource allocation. One commenter suggested we should address the issues of the future balance between official and contractor workforce in the performance of "basic governmental work," the specific expertise needed to manage the contractor workforce now or in the future, where this expertise should be located, and the way in which it can be maintained. We believe this is a matter for agencies themselves to determine, given their knowledge of their mission, their resources, the kinds of services they wish to contract, and the size of their service contracting effort. We merely highlight the problem of lack of oversight as a loss of Government control and require agencies to be aware of their existing oversight responsibilities. They are, however, to use their own discretion to figure out how to manage their contracts.

10. Evaluation of proposals. One commenter believes there is an apparent conflict between former subsection 14(b) in Appendix A and § 8 of Appendix B. There is no conflict as new subsection 12(b) refers to participation as a voting member on source selection boards only.

11. Appendix B controls. The same commenter also suggested that Appendix B should contain a discussion of possible controls that the Government should employ to prevent the functions listed there from being perceived as inherently governmental function. We do not believe this is necessary, as any function that is in Appendix B is by definition not an inherently governmental function.

12. Applicability to nonpersonal services. Three commenters questioned why the policy letter applies only to nonpersonal service contracts. Upon consideration, we have accordingly deleted the definition of "service contract" in § 5. No useful purpose is served by defining "personal services" differently from the FAR and no harm arises from having the policy letter apply to the minimal number of true personal service contracts. Personal service contracts that are really personnel appointments are excluded from the coverage of the policy letter. Thus, FAR 37.102(b) need not be amended as a result of this policy letter.

13. Subcontractors. Commenters questioned whether subsection 12(d) of Appendix A should apply to subcontractors. It does not and clarifying language has been added.

14. Supplies or services purchased by prime contractors. Some commenters questioned the apparent effect of subsection 12 in Appendix A of preventing contractors from buying supplies and services for their own account. It is not the intent of this policy letter to prevent contractor mess halls from buying food to be prepared for military personnel. Nor does it affect what or how contractors buy to be incorporated into supplies or services to be delivered to the Government. Similarly, contractors may purchase supplies or services for the Government while acting within reasonable Government guidelines. Section 12 is only meant to address the Government's direct acquisition of supplies or services.

15. Independent judgement. The emphasis placed on independent judgement by this policy letter does not preclude the wholesale adoption of contractor advice, opinions, recommendations, ideas, or conclusions. They merely may not be adopted, in whole or in part, without officials' first exercising independent judgement.

16. Duties of contracting officers. We have added language to § 8 to spell out the analytical steps to be followed by contracting officers seeking to comply with this policy letter.

17. Risk of injury to the public. One commenter stated that the definition of an inherently governmental function does not clearly address the danger to the public interest when a function is contracted out and the public is at risk if contractors, such as fire fighters or military support contractors, fail or refuse to act in time of crisis. The risk of injury to the public is an

important consideration. We believe, however, that ¶ 7(b)(5) appropriately identifies this point as a consideration in determining whether a function is, as a matter of policy, an inherently governmental function. The decision to include several of the functions listed in Appendix A reflects an underlying concern for this risk.

18. Binding nature of decisions. This same commenter noted that it is an overstatement to say that the use of discretion (referred to in what is now subsection 7(a) of the policy letter) must have the effect of committing the Government to a course of action. This is because a scientific consulting firm, for example, could submit a study that would have a tremendous impact on regulations or other agency actions but would not necessary lead to a commitment to a course of action.

We have addressed the element of discretion in subsection 7(a) to convey the idea that the mere existence of the element of discretion is not determinative of whether, as a matter of policy, an inherently governmental function is involved. Moreover, it is useful to observe that a study that has a tremendous impact is not per se a bad thing. A study may have that effect because of its great merit. We should be concerned, however, when a study is allowed to proceed to the point where alternative views, solutions, research, or conclusions, and so forth, cannot realistically be included or taken into account. In this case, the contractor has in effect made all important decisions. Section 7(b)(3) addresses this issue.

19. Federally funded research and development centers (FFRDCs). One commenter stated that while profit-making contractors can perform functions listed in Appendix B, the policy letter should cross-reference FAR 35.017 pertaining to FFRDCs and "recognize that FFRDCs are an equally viable source of expertise requiring less rigorous oversight." We have not adopted this suggestion. We do not agree that FFRDCs necessarily require less oversight. We do recognize, however, that they are dealt with in detail in FAR Part 35 and that its provisions may suffice to enable satisfactory agency oversight of FFRDCs. Whether fewer or additional control measures are necessary to ensure agency control over FFRDCs is a matter for agencies to decide in the circumstances of each case.

20. Architect-engineer evaluation boards. This same commenter questioned whether § 3, which states that services obtained by personnel appointments and advisory committees are not covered by this policy letter, could be construed to prohibit private individuals appointed to architect-engineer source evaluation boards in accordance with FAR 36.602 from voting. To the extent such boards are advisory committees, the policy letter is not applicable to them. If they are not, the commenter makes an excellent point. FAR 36.602-4 makes clear that the agency is to

make the final selection and FAR 36.602-3(d) provides for the evaluation board to set out in its report the considerations upon which its recommendations were based. This is an acceptable mechanism and we have accordingly revised subsection 12(b) of Appendix A and § 14 of Appendix B to make clear that it is selection of sources that is the most sensitive function. Contractor activities that result in recommendations and that explain how those recommendations were arrived at adequately preserve agency options. A related change has been made in subsection 7(f) stating that requiring contractors to explain how they arrived at their recommendations is another available control measure.

21. Factors to consider in totality of the circumstances.

(a) Complexity and oversight. One commenter questioned the inclusion of ¶ 7(d)(2) of the proposed policy letter relating to the complexity of the task to be performed. Upon consideration, we conclude that complexity is better considered in conjunction with the provision that was at 7(d)(12) relating to oversight procedures, resources, and practices. We have amended paragraph 12 accordingly and moved it, as well as the provision in former ¶ 7(d)(4) relating to the duration of the contract, to new subsection 7(e), Post-award responsibilities. This was done to remove questions relating to contract oversight from the "totality of the circumstances" test. It is important to understand that, if an agency has inadequate oversight procedures or poor oversight practices, the underlying function of any agency contract affected by these deficiencies is not thereby transformed into an inherently governmental function. As the totality test focuses on the nature of the function in question and as there can be a transfer of oversight responsibility even if the underlying function is contractible, the issue of de facto transfer of control should therefore be dealt with elsewhere. (Note that a transfer of contract management responsibility to the contractor is explicitly not permitted by Appendix A, subsection 12(e).)

(b) Ultimate user of contractor work product. Several commenters questioned the inclusion of this factor at ¶ 7(d)(3) of the proposed policy letter. We agree it should be taken out. Who will use the contractor's work product is important and this has bearing on how much management attention to give to the contract, but it doesn't say anything about the nature of the underlying function or the adequacy of agency contract administration.

(c) Review of contractor action. The same commenter questions the advisability of including a factor (new ¶ 7(b)(5)) that relates to the finality of any contractor's adjudication of any claim and the type of agency review of contractor adjudications. We see no problem with agencies' providing for

contractor adjudication of claims so long as citizens know that they have a right of recourse to agency decisionmakers if they are dissatisfied with the decision of the contractor. (Note, however, that certain kinds of hearings may still not be conducted by contractors, e.g., hearings to determine the eligibility of any person for a security clearance, or hearings involving actions that affect matters of personal reputation or eligibility to participate in Government programs. See Appendix A, § 14.)

Thus, we distinguish between, on the one hand, holding hearings and making recommendations and, on the other, retaining the authority to issue the final adjudicatory decision. Contractors may perform the former functions so long as there is adequate oversight, agencies retain the authority to issue the final decision, and the public has a right to insist that the agency make the final decision, if it so desires. This is easier to understand if one views the contractor's action as more of an advisory action than one that binds the claimant with only limited opportunities to change the result before the agency. Note that in the absence of an appeal by a claimant, the agency need not rule on each contractor decision or ruling. It should, of course, inspect or sample contractor decisions or rulings from time to time to ensure that contractors comply with agency guidelines and procedures.

(d) Limiting or extinguishing discretion. The same commenter noted that our speaking in terms of contractor limiting or extinguishing discretion in former ¶ 7(d)(5) could mistakenly create the impression that some of the Government's authority can be exercised by a contractor. The policy letter attempts to clarify this issue at subsection 7(a).

(e) Public perception. Several commenters questioned the inclusion of this factor at ¶ 7(d)(11) of the proposed policy letter, believing that public perception is too ambiguous a concept. We agree. A function can probably be analyzed in the light of other factors listed without the need to resort to the concept of perceptions. Appendix A of the policy letter is itself an up-to-date listing that already takes into account the factor of public perceptions. The paragraph has been deleted.

(f) Laws applicable to the Civil Service. Several commenters questioned the inclusion of this factor at ¶ 7(d)(13) of the proposed policy letter. We agree and have deleted this factor. The considerations listed may be relevant to what good contract management should require by way of contract conditions, but they don't say anything about the nature of the function or the adequacy of agency contract administration practices.

(g) Record keeping requirement. One commenter found the meaning of paragraph 7(d)(15) of the proposed policy letter

unclear. This factor was included to cover situations such as a contractor's providing aircraft-related training. If the contractor proves to be incompetent or negligent, the fact that the contractor did maintain or was required to maintain records of who was trained permits corrective action to be taken, such as locating improperly trained students and requiring retraining. If records are not maintained, the Government cannot exercise ultimate control because it cannot correct any errors. Nonetheless, the provision appears to have only limited application and has been deleted.

22. Collection of fees. Two commenters questioned the provisions of § 20 of Appendix A of the proposed policy letter prohibiting collection of fees or other public moneys, pointing out that contractors in mess halls for military personnel currently collect charges for meals and Department of Housing and Urban Development (HUD) contractors collect fees from purchasers of HUD properties. We have modified the policy letter to enable routine collection of fees where good cash management practices and other controls are in effect, where there is little danger of miscalculating the amount of money ultimately due the Government, and where there is little difficulty in obtaining payment. For example, a contractor could have discretion to determine that a family seeking entrance to a park consists of four people rather than three, and that one of the four is a child under 12, but the contractor would not have the discretion to determine the amount of the fee to be paid by each person in a particular category. HUD contractors may also collect fees from purchasers of HUD properties in accordance with subsection 17(a) of Appendix A. We also make clear that routine voucher and invoice examination by contractors is an acceptable practice.

23. Contract for one function or several. One commenter questioned whether the policy letter reflects our belief that only contracts with multiple functions are susceptible to confusion with respect to inherently governmental functions. This is not our belief. The policy letter is intended to provide guidance with respect to discrete functions regardless of whether there is a mixture of several functions in a contract or there is only one function that is being contracted.

24. Post-award responsibilities. Section 7(e) has been amended to make clear that agency contract oversight is to ensure contractor performance in accordance with the terms of the contract, but that oversight must not be exercised so as to create a personal service contract. Language from subsection 7(d) of the proposed policy letter has been moved to subsection 7(e), as explained in § 21, above.

25. Drafting of Congressional testimony, responses to Congressional correspondence, and agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity. Two commenters questioned whether contractors should be able to draft Congressional testimony, subject to ultimate agency approval. Approval is a key power reserved to any official and we by no means agree that officials do or will approve contractor work in a perfunctory manner. We have nonetheless reexamined this issue and, because of the importance of Congressional testimony and correspondence and of agency responses to audit reports , we are now deciding, as a matter of policy, that these documents should not be drafted by contractors. We have thus added a new subsection (c) to the body of the policy letter to this effect. We deleted the relative portions of Appendix A because we do not believe that drafting documents per se is an inherently governmental function and failing to exercise sufficient oversight with respect to drafting of such documents does not transform the underlying function into an inherently governmental function, as noted in subsection § 21(a), above. Contractor reports, conclusions, summaries, analyses, and other work products may, of course, still be quoted or otherwise referenced in Congressional testimony, correspondence, and responses to audit reports, or set out in such things as attachments, appendices, or enclosures thereto.

26. Reliance on contractor support. One commenter called attention to our statement in § 4 of the policy letter that agencies "award service contracts for various reasons, such as to acquire special skills not available in the Government or to meet the need for intermittent services." The commenter pointed out that "'support service' contractors have come to serve as the permanent workforce for many programs" seemingly implying that our statement does not take this into account. In fact, our statement is an accurate one, citing only two of the reasons why agencies award service contracts as examples. Contracting actions under Circular A-76 are also a reason why agencies award service contracts.

Whatever the reason for using service contracts to accomplish agency missions, it is important to understand that agency use of service contracts is limited by our policy letter in two ways: the function must not be an inherently governmental function, and if it is not, the agency must be able to exercise effective oversight of any contract awarded. We make clear that management of a contract is just as important as deciding whether the contract may properly be awarded in the first place.

Our policy letter is limited in scope and does not focus on why agencies use service contracts. Rather we are concerned that service contracts, when used, are used only when contractors may perform the functions in question and when agencies have the resources to manage the contracts. It is true that agencies have

sometimes contracted functions that we have listed in the policy letter as inherently governmental functions, and it is true that they have sometimes failed to recognize that they were not exercising effective oversight over nongovernmental functions that had been contracted. Nonetheless, effective corrective action has been taken by the agencies in the past when oversight problems were identified.

Additional problems in this area will probably arise in the future. Even the General Accounting Office recognized the difficulty in defining inherently governmental functions and providing guidance to agencies on the subject. Are Service Contractors Performing Inherently Governmental Functions?, GAO/GGD-92-11, November 1991, p. 3. We have every reason to expect, however, that because our guidance is much more detailed than anything that was available to agencies in the past there will be fewer instances of problems in this area. We thus disagree strongly with the commenter that the policy letter is a mere exhortation to better management.

27. Other issues. One commenter also suggested that we should address whether "contractors who perform work historically performed by civil servants should be subjected to comparable limitations on pay and rules of conduct;" measurement of the short-term and long-term costs of reliance on contractors versus officials; whether Superfund and the savings and loan bailout programs "provide models for public management of the next bailout or cleanup program;" and the "practical meaning that we will give to the concept of 'public service' as the Federal Government heads into the 21st century."

The concept of work "historically performed" by civil servants is not useful because a function may have been performed by civil servants in the past for reasons other than the belief that the function was inherently governmental. In fact, the premise of Circular No. A-76 is that many functions historically performed by Government employees can more appropriately be performed by the private sector.

We believe that competition is the most powerful force available to keep costs down, even though there may be instances where this will not be so. In such instances, determinations shall be made in accordance with Circular No. A-76.

Measurement of the short-term and long-term costs of reliance on contractors versus officials is an aspect of cost effectiveness of service contracts and need not be dealt with here. Similarly, the efficacy of the Superfund and savings and loan programs is a matter beyond the scope of this policy letter.

So far as the practical meaning of the concept of public service is concerned, this policy letter attempts to identify

those functions that, as a matter of policy, should only be performed by Government officials and those that may be performed by service contractors. If our taxonomy and analytical methods are sound, our policy letter should define what public service entails in terms of the functions that officials must perform for the foreseeable future.

28. Acknowledgement. Finally, we wish to acknowledge our reliance on the excellent work of the Environmental Protection Agency in our drafting of the appendices to this policy letter. Also, the comments we received were all exceptionally well thought out. We are most grateful for the time, effort and imagination that went into the preparation of those comments.

Allan V. Burman

ALLAN V. BURMAN
Administrator

Date:

EPA ORDER

Classification No : 1900.2

Approval Date: October 22, 1990

CONTRACTING AT EPA

1. PURPOSE. This Order establishes Agency policy that (1) prohibits contracting for certain activities at EPA and (2) implements special management and control measures when contracting for certain sensitive services.

2. BACKGROUND. EPA relies heavily on contractor support. Nearly every EPA employee is involved with the contracting community in one way or another. Thus, in a very real sense, most EPA employees, including senior management, can be considered contract managers.

Agency responsibility and accountability begin when a decision is made to use contract support. And, having accepted a final product from a contractor, EPA becomes responsible for its content and for how it may be used in reaching Agency decisions.

The extent of the Agency's contracting, coupled with its regulatory nature, create a strong potential for conflict of interest with members of the contracting community. This problem is magnified when a limited number of contractors provide support in a variety of potentially sensitive areas. EPA must consider these facts when developing its contract requirements. It must be judicious in deciding the most effective ways to use its contractors and look for ways of reducing the potential for conflicts of interest. And, if contract support has been used, EPA must play a proactive role in ensuring a final Agency product that is unbiased and represents Agency thinking. The final product provided under a contract may assist EPA in reaching a decision; however, a contractor should not make the decision for the Agency.

OMB Circular A-76 defines inherently governmental activities as those "being so intimately related to the public interest as to mandate performance only by Federal employees." Agency employees must ensure that inherently governmental activities are performed only by EPA employees.

NOTE: For purposes of this Order, "active contract managers" are defined as Project Officers, Deputy Project Officers, Work Assignment Managers, Remedial Project Officers, On-Scene Coordinators, Delivery Order Officers, and Delivery Order Project Officers. "EPA managers" consist of senior management not directly involved in contract management.

3. POLICY.

a. EPA will not allow any of the following to be performed under its contracts:

(1) The actual preparation of Congressional testimony.

Although it is permissible for a contractor to perform basic research and retrieve factual data for the Agency in its development of Congressional testimony, it is the ultimate responsibility of EPA to develop and issue it. The Agency spokesperson must present testimony that is free from any contractor bias and any real or potential conflicts of interest. Therefore, even if preliminary research is performed by a contractor, it must be carefully examined by Agency personnel for any contractor partiality, favoritism, and conflicts of interest, prior to its incorporation into the testimony. The final document must be prepared by Agency personnel to ensure that it fully represents the Agency's position. The same rationale should be used when providing briefing materials to congressional staffers. Finally, if work is issued to a contractor for testimony support, it is important that the statement of work for the assignment reflect that these Agency limitations have been established.

(2) The interviewing or hiring of individuals for employment at EPA.

Both of these activities are inherently governmental duties involving judgment and discretion and a legal commitment on the part of the Government. They must remain under the sole authority of EPA.

(3) Developing and/or writing of Position Descriptions and Performance Standards.

These activities are key to the effective staffing and operation of EPA and are supervisory/management responsibilities. Outside technical expertise specific to a certain profession may sometimes be necessary but contractors should not write our position descriptions. Similarly, contractors should not be used to determine how the performance of EPA employees should be evaluated.

(4) The actual determination of Agency policy.

This prohibition does not preclude contractors from providing support in the policy development process. However, it does preclude contractors from participating in the final phases of policy development, i.e., being involved in the actual decision-making of what Agency policy will be. Contractors may appropriately be used in the stages of policy development which involve doing background research or performing options analyses. If such support is provided by a contractor, it must be carefully examined by Agency personnel for partiality, favoritism, and any contractor conflict of interest. In all cases, there should be a clear record that the contractor's work was reviewed and that final decisions were made by Agency personnel. Such a record could be demonstrated through notes from reviews of draft and final documents by EPA personnel, minutes from progress meetings with contractors, reports from EPA peer and board reviews, etc.

(5) Participating as a voting member on a Performance Evaluation Board; participating in and/or attending Award Fee meetings.

The assignment of an evaluation score and the making of recommendations of profit/fee payments by one contractor for another are clearly conflicts of interest. All functions relating to the decisions of award fees are inherently governmental and should be performed exclusively by Agency staff. However, contractors may provide specialized technical expertise as input to the Board prior to the actual evaluation meeting discussions. The key determining factor is the nature of the support; in all cases, it should be non-judgmental, i.e., free from opinions regarding the quality of a contractor's performance. For confidentiality reasons, no contractor may be present during the Board meeting. Any opinions expressed as the result of a Performance Evaluation Board should be those of the Government. Additionally, due to the subjective and confidential nature of the Board reports, their typing should remain an in-house function.

(6) Preparing Award Fee Letters, even under typing services contracts.

Because Award Fee Letters contain significantly sensitive and confidential information that could possibly have a detrimental effect on a firm's reputation, it is inappropriate to allow outside entities, even those contractors performing typing services, access to such information.

(7) The actual preparation of Award Fee Plans.

This is an inherently governmental function that details the discretionary and judgmental decisions behind the process the Government will be using in its evaluation of a contractor's performance. It would be inappropriate for any contractor to advise the Agency on what should be important to it. Provided that all confidential business information has been removed, a contractor may type award fee plans since there is no judgment associated with the performance of that task.

(8) The preparation of documents on EPA letterhead other than routine administrative correspondence.

In this instance, "routine" is synonymous with "non-judgmental" or "non-decisional." This prohibition is designed to prevent the following situation from occurring. A contractor is asked by EPA to perform certain policy analysis tasks. The contractor then performs the research and develops a position on the policy which it prepares on EPA letterhead. EPA then signs it, thereby making it EPA policy. Even though EPA may have made the final decision, there is no indication of EPA involvement up until that time. The development of inherently governmental decision documents mandates significant Agency involvement and this restriction ensures the Agency's participation in the decision process. Records should be kept demonstrating EPA's involvement. This prohibition does not apply to contracts which are providing typing services, on condition that the contractor providing such typing services was not involved in any other capacity in the development of the decisional or judgmental document.

(9) Reviewing vouchers and invoices for the purposes of determining whether costs, hours, and work performed are reasonable.

This prohibition is directed specifically at the Project Officer's monthly review and approval of a contractor's invoice submitted to EPA for payment purposes. Contractors may perform non-judgmental duties, such as checking mathematics or reviewing invoices for administrative accuracy, but should not render opinions in lieu of EPA on the reasonableness of professional staffing levels and hours used to perform work. That is an inherently governmental function generally delegated by the Contracting Officer to the Project Officer. This item in no way prohibits the Office of Inspector General from contracting for financial auditing and services, and compliance auditing.

(10) The preparation of Statements of Work, Work Assignments, Technical Direction Documents, Delivery Orders, or any other work issuance document under a contract that the contractor is performing or may perform.

Authorizing a contractor to do any of these activities creates a clear conflict of interest situation since they essentially allow the contractor to assign itself its own work. Similarly, it is inappropriate for contractors to complete their work issuance forms. This prohibition does not restrict contractors from preparing work plans which are, in fact, their own responsibility. Additionally, EPA prime contractors should be responsible for preparing the statements of work for their own subcontracts.

(11) On behalf of EPA, actually preparing responses to audit reports from the Inspector General, General Accounting Office, or other auditing entities

and

(12) On behalf of EPA, preparing responses to Congressional correspondence.

Both of these items are analogous to the situation discussed under Item (1), above. Although it is permissible for contractors to perform in a research or fact-finding capacity, the final document should be produced by EPA personnel to ensure that it is free from outside bias and that it truly represents Agency thinking.

(13) The actual preparation of responses to Freedom of Information Act requests, other than routine, non-judgmental correspondence -- in all cases, EPA must sign it.

The key word here is "non-judgmental," being synonymous with "non-decisional." We do not want contractors to decide what is releasable under FOIA since that is an inherently governmental function involving the interpretation of statutes and Agency regulations. Recognizing that some FOIA work is non-judgmental or non-decisional, it is permissible for contractors to be used in those areas. For example, provided all conflict of interest, confidential business information (CBI), and Privacy Act regulations have been followed, contractors may be used to collect data for the Agency as long as they are not deciding what data is releasable. Similarly, if conflict of interest, CBI, and Privacy Act regulations have been addressed, contractors may be used to redact documents provided that decisions on what to

redact are made exclusively by Agency personnel. Questions concerning interpretation of CBI and Privacy Act regulations should be referred to the Office of General Counsel. Questions concerning conflicts of interest should be referred to the Procurement and Contracts Management Division.

(14) Any contract which authorizes a contractor to represent itself as EPA to outside parties.

No contract may contain such an authorization. There may be times when contractors are assumed to be EPA personnel, but, in those situations, firms must explain that they are Agency contractors.

(15) Conducting administrative hearings.

Administrative hearings are primarily conducted by Administrative Law Judges (ALJs) who, in accordance with 40 CFR, Part 22, hear cases involving disputes between EPA and other parties regarding regulations, permitting, etc. The ALJs are EPA employees performing quasi-judicial and, therefore, inherently governmental functions such as assessing penalties. This is distinguishable from contracting for professional arbiters when the Agency requires outside, independent judgment.

(16) Reviewing findings concerning the eligibility of EPA employees for security clearances.

This has been included as a prohibition because it is inherently governmental and may also involve the disclosure of very sensitive and personal information regarding EPA employees.

(17) The actual preparation of an office's official budget request.

The prohibition here is very similar to Items (1), (11), and (12). Whereas research and fact-finding of a purely technical nature are permissible assignments under a contract as preliminary steps to budget development, the responsibilities of establishing Agency priorities or determining how Agency money should be spent may not be delegated to Agency contractors. These are inherently governmental duti- involving judgment and discretion and must be perfor- d by Agency staff. Prior to its use, any support work provided by a contractor must be very carefully reviewed by EPA staff to remove any contractor bias and to substantiate the reliability of the data, analyses, etc.

b. Certain other activities when performed under contracts may place EPA in a vulnerable or sensitive position if adequate controls are not implemented. In those cases, a justification must be prepared by the requesting program office which describes the type of work to be performed under the contract, why the work cannot be performed internally, and what will be done to ensure a final Agency product that is unbiased and represents Agency thinking.

If a new contract award valued at $25,000 or greater is contemplated, the justification must be signed by the cognizant Assistant Administrator, Associate Administrator, or Regional Administrator. For new contracts valued at less than $25,000, the justification must be signed by a program official at least one organizational level above the initiating office but no lower than the Branch level, e.g., a document generated at the Section level or lower must be approved at the Branch level, a document generated at the Branch level must be approved at the Division level, etc.

The following are contract work areas necessitating this justification:

(1) Budget preparation support including, but not limited to, workload modeling, fact-finding, efficiency studies, and should-cost analyses,

(2) Reorganization and planning support,

(3) Support services such as analyses, feasibility studies, etc., to be used by EPA personnel in developing policy,

(4) Regulation development support,

(5) Any support in the in-house evaluation of another contractor's performance,

(6) Involvement in strategic acquisition planning,

(7) Support on improving contract management,

(8) Providing specialized expertise in the contractor selection process,

(9) Providing specialized expertise in the development of Statements of Work, Work Assignments, and other contract-ordered tasks,

(10) Any support involving EPA policy or regulatory interpretation, such as staffing hotlines, attending conferences on behalf of EPA, community relations efforts, conducting EPA training courses, etc., and

(11) Independently providing technical guidance concerning EPA policies or regulations on EPA's behalf to outside parties.

NOTE: In no event shall any contract requiring the performance of any legal services be entered into without the approval of the Office of General Counsel.

c. Certain other activities if contracted for, although not sufficiently sensitive to require justifications, do necessitate the establishment of special EPA control measures. If a new procurement is contemplated involving any of the activities or situations listed below, a special discussion detailing control procedures to be enforced must be included within the pre-award procurement request rationale document. This would be required in the following instances:

(1) Situations where contractors share office space with EPA employees.

Control measures must be established to prevent the performance of personal services, to ensure that contractors do not have inappropriate access to privileged or sensitive information, etc.

(2) Support in preparing responses to Freedom of Information Act requests.

Control measures must be established to ensure that contractors are in compliance with all regulations involving FOIA, the Privacy Act, and confidential business information.

(3) Any situation where a contractor has access to confidential business information and/or any other sensitive information.

Control measures must be established to ensure that contractors do not have inappropriate access to privileged and sensitive information, to ensure that security systems are in place preventing the release of sensitive information to non-designated contractor employees, etc.

(4) Any situation where it can be assumed that the contractor is EPA, without specifically identifying itself as a contractor.

Control measures must be established to ensure that contractor employees are clearly identified through the use of badges, posted signs, etc.

d. In determining how best to contract for these sensitive services, organizations must consider ways to reduce the potential for conflict of interest. Procurement strategies should be considered that break the requirements into smaller components, thereby broadening contractor resources available to a particular office. If possible, small and minority business participation should be considered, provided these firms do not have conflicts of interest. The procurement request rationale document must address how the particular procurement request fits into the requesting office's overall procurement strategy.

e. In order to assure contract accountability at all levels of the Agency, all EPA managers must have written into their performance standards language emphasizing strong contract management and controls.

f. Contract management training classes will be revised to include discussions of the essential elements of this EPA Order. Additionally, all active contract managers will be required to take a one-day refresher course in contract management every three years in order to maintain certification.

4. RESPONSIBILITIES.

a. The Procurement and Contracts Management Division (PCMD) is responsible for the following:

(1) Including language within all future contracts to prohibit contractor performance of the activities listed in Paragraph 3.a., above.

(2) Notifying all current contract holders of those prohibitions listed in Paragraph 3.a., above.

(3) Revising the Contracts Management Manual (CMM) to incorporate the provisions of this Order, specifically highlighting:

(a) The prohibited activities listed in Paragraph 3.a., above,

(b) The requirement for justifications for the purchase of any of the services listed in Paragraph 3.b., above,

(c) The requirement for a control element discussion in the procurement request rationale document if any of the activities listed in Paragraph 3.c., above, are contemplated,

(d) The requirement for a procurement strategy discussion element in the procurement request rationale document, and

(e) The requirement to include in all EPA managers' performance standards language emphasizing strong contract management and control.

(4) Reviewing the justifications for the purchases of any of the services listed in Paragraph 3.b., above, and making a determination that adequate control measures will be employed.

(5) Revising the current contract management training classes to include discussions of this Order.

(6) Instituting a one-day contract management refresher course to be taken every three years by active contract managers in order to maintain their certification.

b. EPA offices employing contract support are responsible for the following:

(1) Preparing the justification for the purchase of any of the services listed in Paragraph 3.b., above, and obtaining the signature of the appropriate approving official on the justification.

(2) Including a control element discussion within the procurement rationale document if any of the activities listed in Paragraph 3.c., above, are contemplated.

(3) Considering ways to break up requirements for the procurement of sensitive services into smaller components, thereby reducing the potential for conflicts of interest.

(4) Along with the performance standard requirements for active contract managers discussed within the CMM, including in all other EPA managers' performance standards language, as included within the CMM, emphasizing strong contract management and control.

(5) In accordance with guidance established in the CMM, requiring active contract managers to attend the contract management refresher course once every three years, in order to maintain their certified status.

c. All Agency employees are responsible for the following:

(1) Being aware of the content of this Order and bringing any suspected violations to the attention of the cognizant Contracting Officer.

(2) Ensuring that the "prohibited" activities listed in Paragraph 3.a. and the "sensitive" activities listed in Paragraphs 3.b. and 3.c. are handled in accordance with the guidance outlined in this Order and the CMM.

Charles L. Grizzle

CHAPTER 3 - SOURCE CONSIDERATIONS

Table of Contents

1. Required Sources of Supplies and Services 3-1

2. Source Considerations 3-2

3. Availability of Work Resulting from Other Sources 3-2

4. Small Business set-Asides 3-2

5. Small Disadvantaged Business Concerns 3-3

6. Labor Surplus Area Set-Asides 3-4

7. Sources-Sought Synopsis 3-4

8. Synopsis of Proposed Contracts 3-6

9. Justifications for Other Than Full and Open Competition 3-6

CHAPTER 3 - SOURCE CONSIDERATIONS

1. Required Sources of Supplies and Services. Federal agencies must satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority unless specified otherwise. Contractors holding cost-reimbursement contracts may use the Federal sources of supply and services when authorized to do so by the terms of the contract.

a. For Supplies:

(1) Agency inventories

(2) Excess from other agencies

(3) Federal Prison Industries, Inc.

(4) Procurement lists available from the Committee for Purchase from the Blind and Other Severely Handicapped

(5) Wholesale supply sources, such as stock programs of the General Services Administration, the Defense Logistics Agency, the Veterans Administration and military inventory control points

(6) Mandatory Federal Supply Schedules

(7) Optional Use Federal Supply Schedules

(8) Commercial sources, including educational and nonprofit institutions.

b. For Services:

(1) Procurement lists of services available from the Committee for Purchase from the Blind and Other Severely Handicapped

(2) Mandatory Federal Supply Schedules and mandatory GSA term contracts for personal property rehabilitation

(3) Optional Use Federal Supply Schedules and optional GSA term contracts for personal property rehabilitation

(4) Federal Prison Industries or other commercial sources, including educational and nonprofit institutions.

2. Source Considerations.

a. In developing your PR, you may list those sources that you consider qualified to perform the effort described in the Statement of Work. Sources may be obtained from lists of qualified sources, personal experience, recommendations of other Project Officers, the Contracting Officer, directories, Small and Disadvantaged Business Specialist, etc. If a number of the sources listed are small businesses, a recommendation for a small business set-aside is encouraged. It must be recognized that other sources may be added by the Contracting Officer as a result of publicizing in the Commerce Business Daily, or from the Procurement Automated Source System (PASS) maintained by the Small Business Administration. If a noncompetitive procurement is recommended, it will be necessary to prepare a Justification for Noncompetitive Procurement and submit it as a separate attachment to the procurement request. If the requirement is less than $10,000, the justification shall be in the form of a brief statement attached to the EPA Form 1900-8, Procurement Request/Order.

b. It is important to have a meaningful participatory role by the Program Offices in supporting EPA's efforts to increase acquisitions through its socioeconomic utilization programs. Each program has the responsibility for establishing its own goals for socioeconomic business utilization in collaboration with appropriate procurement operations and the Office of Small and Disadvantaged Business Utilization (OSDBU).

3. Availability of Work Resulting From Other Sources. The Project Officer should consider whether, after adequate research, the results of the work being procured are or are not available from any current source. This type of information can be obtained from other Project Officers, the Contracting Officer, and clearinghouses such as the National Technical Information Service (Department of Commerce), Springfield, Virginia.

4. Small Business Set-Asides.

a. Introduction. To enhance the opportunity for small business concerns to receive a fair proportion of Government contracting dollars, Congress established , through the Small Business Act, the Small Business Set-Aside Program. The rationale for this preferential treatment is that a healthy small business community is essential for the preservation of the nation's free enterprise system.

b. All procurements up to $25,000, which are subject to small purchase procedures, are set-aside exclusively for small business firms. Any procurement, including purchases over $25,000, shall be small business set-asides whenever the Contracting Officer has a reasonable expectation of receiving at least two offers from responsible small businesses and being able to make award at a fair market price.

c. Set-Asides Procedures. A set-aside for small business is the act of reserving the entire amount (total set-aside) or a portion (partial set-aside) of a procurement for the exclusive participation of small business concerns. The Project Officer may recommend that a requirement be met through a set-aside. Determinations to set aside EPA acquisition actions may be initiated unilaterally by the Contracting Officer, or they may be made jointly by a representative of the Small Business Administration and the Contracting Officer. Where a set-aside is contemplated, the Project Officer will be requested to advise and assist procurement personnel in identifying small business sources and evaluating the technical capabilities of small business in connection with acquisition of property and services, including research and development.

5. Small Disadvantaged Business Concerns-- The 8(a) Program.

a. Policy. It is EPA's policy to enter into contracts with the SBA so as to assist in the growth of small disadvantaged business concerns as designated by the SBA. The Office of Small and Disadvantaged Business Utilization is responsible for implementing this policy and stands ready to assist all Agency personnel in furtherance of the small and disadvantaged business utilization program. Every requirement should be viewed as a potential for 8(a) award unless one or more of the following circumstances exist:

(1) The procurement has been publicly synopsized as a small business set-aside.

(2) The requirement was most recently performed by a small business and the Small Business Administration has determined that to remove it from competition will cause major hardship on the small business firm.

(3) The potential contract could be reasonably expected to be won by a small disadvantaged business concern under normal competitive procedures.

(4) The procurement should not require excessive subcontracting by the prospective 8(a) contractor.

b. Identifying procurements. Proposed procurements suitable for 8(a) firms can be identified in a number of ways:

(1) The program office can identify requirements for 8(a) firms in advance procurement plans or during individual acquisition planning.

(2) The Contracting Officer can recommend an 8(a) award during the regular procurement process.

(3) The Office of Small and Disadvantaged Business Utilization (OSDBU) can recommend a particular contract for award under 8(a) procedures.

c. Informal Technical Presentation. Contracting Officers in consultation with OSDBU may invite several 8(a) firms to give presentations on their capability to perform a specific requirement. For specific procedures governing these presentations, contact your Contracting Officer.

d. Competition Requirements. If there is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and that award can be made at a fair market price, acquisitions with an anticipated award price which will exceed $5,000,000 (manufacturing) and $3,000,000 (services) shall be awarded on the basis of competition limited to 8(a) firms. Acquisitions below these thresholds may be awarded to 8(a) firms on a sole source basis.

6. Labor Surplus Area Set-Asides. It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for contracts and to encourage placement of contracts with concerns which will perform such contracts substantially in labor surplus areas. The Department of Labor determines and publishes a listing of the geographical areas which are considered to contain a surplus of labor. The Contracting Officer has knowledge of these areas. In the acquisition planning process, consideration must be given to determining whether capable firms reside within labor surplus areas and thus a set-aside would be appropriate.

7. Sources-Sought Synopsis.

a. Used as an Advance Notice.

(1) To support the future contracting needs of research and development programs, the Commerce Business Daily is used to publish an "advance notice" of the Government's interest in specific fields. These notices are not a synopsis of a Request for Proposals--rather, are notices of future requirements. Through this mechanism, potential sources learn of the Government's requirements and are given an opportunity to submit

information demonstrating their capabilities in a specific field.

(2) In using the sources-sought synopsis as an advance notice, it is necessary to develop general criteria for potential sources--criteria that will set forth the capabilities needed. Such qualification criteria consists of special experience, capability, facilities, or other factors that are critical to the program performance aspects of the procurement. However, care must be exercised to restrict qualification criteria to those that are absolutely essential to the successful completion of the contract work.

(3) The Project Officer should develop an outline of the major tasks to be accomplished under the contemplated acquisition and the qualification criteria to be utilized in evaluating prospective source capabilities. The Contracting Officer will forward the synopsis to the Commerce Business Daily. Information received in response to the advance notice will be transmitted to the Project Officer for written evaluation and rating of each respondent's technical capabilities. The Project Officer will also be requested to prepare an evaluation memorandum which recommends technically qualified sources for subsequent solicitation by the Contracting Officer. When additional sources are known to program personnel, they should also be furnished to the Contracting Officer along with those responding to the synopsis. All sources deemed fully qualified will be invited to submit proposals when Requests for Proposals are issued.

b. Used to Perform Market Surveys.

(1) The Federal Acquisition Regulation (FAR) and the EPAAR require that market surveys be conducted in justifying sole source acquisitions and acquisitions using other than full and open competition that exceed $25,000. The publication of either a synopsis of a proposed noncompetitive procurement, or a sources-sought synopsis as described above, that is detailed enough to permit submission of meaningful responses and subsequent evaluation by the EPA, constitutes an acceptable market survey. The synopsis must contain the following:

(a) A clear description of the supplies or services being procured;

(b) Required Contractor capabilities, experience, and any other factors salient to the requirement; and

(c) Criteria and weighting of the criteria to indicate relative order of importance to be used in the evaluation of responses.

(2) It should be noted for planning purposes that the market survey should be conducted as soon as practicable after the requirement is known. Synopsis for making market surveys are not required for acquisitions resulting from unsolicited research proposals if to do so would disclose the originality of thought or innovativeness of the proposal.

8. Synopsis of Proposed Contracts.

a. Agencies are required to furnish for publication in the Commerce Business Daily (CBD) notices of proposed contract actions of $10,000 and above. Exceptions are set forth in paragraph c. below.

b. The synopsis of a proposed contract must be published in the CBD at least 15 days in advance of issuance of the solicitation. A minimum of thirty (30) days response time is to be allowed for receipt of bids or proposals from the date of issuance of the solicitation.

c. A proposed contract need not be synopsized if the Contracting Officer determines that (1) the contract action is of a classified nature, (2) the requirement is urgent and the Government would be seriously injured if the Agency complied with the publication and response times set forth in FAR 5.203, (3) the requirement is for utility services available from only one source, (4) the contract action is an order under a requirements contract, (5) the action results from an unsolicited proposal and publication of any notice would improperly disclose the originality of thought or innovativeness of the proposal, (6) purchases of perishable subsistence, (7) purchase of brand name commercial items for resale, (8) the contract is for a foreign government and that government directs the source and funds the requirement, (9) the contract is authorized or required by statute to be made through another Government agency such as 8(a) acquisitions from SBA under the Small Business Act, or (10) the contract action results from acceptance of a proposal under the Small Business Innovation Development Act.

9. Justifications for Other Than Full and Open Competition (JOFOC). This section covers the procedure for justifying a noncompetitive or a limited competition acquisition.

a. Policy. In the fulfillment of national policy, acquisitions by EPA shall be conducted utilizing full and open competition with all responsible sources. However, it is recognized that one or more of the circumstances which permit other than full and open competition may apply where it is in the interest of the Government and EPA to solicit limited sources or only one source. In such instances, the initiating program office may recommend that the supplies or services be obtained from a limited number of sources or only from one source. This

recommendation is subject to review and approval as provided in (5) below.

b. A written justification for other than full and open competition that documents the facts and circumstances substantiating the infeasibility of full and open competition must be prepared by the initiating office for each limited source or sole source acquisition except for those few types of acquisitions specifically excepted by regulation. (See the Contracting Officer to ascertain the applicability of these exceptions to your particular requirement.)

c. The justification for sole source acquisition of any small purchase ($2,500 to $25,000) must be submitted by the Program Office submitting the procurement request in the form of a brief written statement attached to the EPA Form 1900-8, Procurement Request/Order. The statement must cite one or more of the circumstances which permit sole source acquisition and the necessary facts to support each circumstance. Although Program Offices may not cite the authority in FAR 6.302-7, the public interest may be used as a basis to support a sole source acquisition. If the acquisition has been synopsized, the statement must include the results of the evaluation of responses to the synopsis. Justifications are not required for: (1) acquisitions under mandatory Federal Supply Schedules or mandatory ADP or TSP schedules; or (2) acquisitions required by statute to be obtained from a specific source, such as the National Industries for the Blind or Other Severely Handicapped or Federal Prison Industries. The Contracting Officer is the approving official for all sole source acquisitions using small purchase procedures.

d. For acquisitions over $25,000, the recommendation for limited or sole source acquisition must be entitled "Justification for Other Than Full and Open Competition" and must be signed by the programmatic Division Director or comparable office level prior to submission with the Procurement Request/Order (EPA Form 1900-8). The JOFOC must contain a full and complete justification in the following format:

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

PART I - BACKGROUND

The Justification for Other Than Full and Open Competition (JOFOC) shall include the following background information:

1. Date;
2. Program Office;
3. Project Officer (Include Name, Title, Phone, E-mail and Mail Code;
4. Project Identification (Title, Contract Number);
5. Description of supplies or services required;
6. Period of Performance (Base year and Options) or Date of Delivery;
7. Estimated Contract Amount (List cost for base year and each option separately);
8. Proposed Contractor (Name, Address and Phone);

PART II - JUSTIFICATION

The Justification shall address the elements in FAR 6.303-2(a)(2) through (5), (9) and (11) and EPAAR 1506.3. Identify the authority listed in FAR 6.302 which permits other than full and open competition. The narration shall provide specific support for the authority used.

PART III - PROGRAM OFFICE DIVISION DIRECTOR'S CERTIFICATION

The JOFOC shall include a statement, signed and dated by the Program Office Division Director, that certifies that any supporting data which forms the basis for the JOFOC is complete and accurate.

PART IV - CONTRACTING OFFICER'S DETERMINATION

The Contracting Officer's determination shall address the elements set forth in FAR 6.303-2(a)(6), (7), (8) and (10). Each JOFOC shall contain a certification, signed and dated by the CO, which states the justification is accurate and complete to the best of his/her knowledge and belief.

PART V - APPROVAL

JOFOCs for procurements estimated at less than $100,000 shall be approved by a level higher than the CO; JOFOCs over $100,000, but not exceeding $1,000,000, shall be approved by the Competition Advocate; JOFOCs exceeding $1,000,000 shall be approved by the Director, Office of Acquisition Management.

e. Conduct of Market Surveys To Determine Availability of Capable Sources.

(1) The Project Officer should notify the Contracting Officer as soon as requirements become known to maximize the time available to conduct the market survey. The Contracting Officer determines the extent of the market survey. In making this decision, the Contracting Officer may consider such factors as the type and size of the acquisition, the results of recent competitive acquisitions for similar supplies or services, or other recent market surveys.

(2) The Contracting Officer, with input from the Project Officer, will determine the market survey strategy and decide who is responsible for accomplishing various aspects of the survey. For example, the Contracting Officer may choose to have discussions with offerors who had proposed on previous similar requirements. For market surveys involving discussions with, or inquiries from, commercial firms, the Contracting Officer must conduct or participate in such discussions or inquiries.

(3) Commerce Business Daily (CBD) synopses of proposed sole source acquisitions or acquisitions using other than full and open competition or sources-sought synopses that are detailed enough to permit submission of meaningful responses and subsequent evaluation of the responses by EPA constitute an acceptable market survey. If the FAR requires a synopsis, other methods of conducting market surveys may not be substituted.

(4) Under those circumstances when market surveys are conducted to assist in determining the existence of competition for purchases over $25,000, the Contracting Officer, with the assistance of the Project Officer, must evaluate responses to such surveys in accordance with the general criteria included in the synopses. If the evaluation indicates that full and open competition can be provided for, the Contracting Officer must issue a new synopsis and a competitive solicitation. If the Contracting Officer determines, after evaluation of responses, that a sole source acquisition or limited competition should be conducted, the evaluation document must be incorporated into the

JOFOC. This documentation must include:

(a) A copy of the CBD synopsis;

(b) A listing of respondees to the synopsis;

(c) A written evaluation of the responses; and

(d) The basis for the Contracting Officer's conclusion that competitive procurement is impractical.

f. Preparation of the Justification for Other Than Full and Open Competition (JOFOC). The Project Officer will prepare a draft of the JOFOC for the Contracting Officer's review and comment prior to finalization using the format shown in paragraph (c) which follows below. The JOFOC shall fully explain the circumstances which make full and open competition infeasible. The JOFOC shall:

(1) Identify the project and describe the supplies or services required to meet EPA's needs;

(2) Identify the statutory authority permitting other than full and open competition, such as:

FAR Reference	Circumstance
6.302-1	Only one responsible source
6.302-2	Unusual and compelling urgency
6.302-3	Industrial mobilization
6.302-4	International agreement
6.302-5	Authorized or required by statute
6.302-6	National security
6.302-7	Public interest

(3) Provide the facts supporting the citation of the statutory authority that permits other than full and open competition. Demonstrate that the proposed contractor's unique qualifications or the nature of the acquisition require use of the authority cited. Provide specific support for each statutory authority used. Provide other facts which support the justification;

(4) Describe the efforts made to ensure that offers were solicited from as many potential sources as practicable.

(5) Describe the market survey that was conducted, including whether a sources-sought synopsis was published in the Commerce Business Daily, and the results of the survey.

(6) If applicable, describe the reasons why a market survey was not conducted.

(7) Any other facts supporting the use of other than full and open competition, e.g.:

(a) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.

(b) If follow-on acquisitions are cited as the basis of the JOFOC, give an estimate of the costs that would be duplicated if the award were to be made to other than the original source, and give the basis for your estimate.

(c) If unusual and compelling urgency is cited as the basis for the JOFOC, explain the circumstances that led to the need for an urgent contractual action and explain why the requirement could not have been processed in sufficient time to permit full and open competition. The existence of legislation, court-order, or Presidential mandate is not, of itself, a sufficient basis for a JOFOC. However, the circumstances necessitating legislation, court order, or Presidential mandate may justify contractual action on an other than full and open competition basis.

(8) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

(9) A statement of the actions, if any, EPA may take to remove or overcome any barriers to competition before any subsequent acquisition.

(10) Each JOFOC must reflect the degree of consideration that has been given to other sources in the particular field and the reasons they lack the capability evidenced by the proposed contractor. The following questions represent factors that should be considered, and when appropriate, discussed in the JOFOC:

(a) What unique capability applicable to the specific effort does the proposed contractor have which is essential to satisfaction of the Government's minimum requirements?

(b) Is the effort a continuation of a previous effort performed by the proposed contractor; and to what degree is such previous effort critical to the current acquisition? Such questions as the following should be considered and addressed if pertinent:

1 Is the added effort a minor supplement to a completed project requirement? Of what significance is this fact?

2 Is the added effort a major supplement to completed project requirement? Of what significance is this fact?

3 Is the added effort essential to the continuing project requirement? Of what significance is this fact?

(c) Does the proposed contractor have exclusive access to personnel who are considered preeminent experts in the particular fields necessary to perform the work? If so, identify the expert(s) and the basis for the person's or persons' expertise.

(d) What facilities, equipment, or data does the proposed contractor have which are specialized, vital to the effort, and which no other company can provide? Explain fully. Can the Government furnish such resources as Government-furnished equipment or data?

(e) Is urgency the basis for the JOFOC? Urgency means that the need is so compelling that the Government would be injured financially or otherwise if the property or services to be acquired were not furnished by a certain time. There may be valid reasons for obtaining required goods or services on an urgent basis, and although there may be other firms capable of delivering the required goods or services, no other firm could deliver within the required performance period, even if expedited competitive procedures were employed. Explain the circumstances that led to the need for an urgent contractual action. (Remember poor planning or other forms of procrastination are unacceptable.)

(f) If the basis for the JOFOC is an unsolicited proposal, this Chapter 3 of the CMM provides guidance for justification of noncompetitive procurement.

f. The following factors, according to decisions of the Comptroller General, cannot be used to justify noncompetitive procurements:

(1) The proposed organization is either a nonprofit organization, a tax exempt entity, or a volunteer citizens group; or

(2) The proposed organization has a large price advantage and it is believed that there is little or no willingness in the market to supply competitive offers (Comptroller General Decision B-187369, 2/28/77).

g. JOFOC Certification Requirements.

(1) The Contracting Officer is required to certify that the justification is accurate and complete to the best of the Contracting Officer's knowledge and belief.

(2) The justification must include evidence that any supporting data that is the responsibility of technical or requirements personnel such as verifying EPA's minimum needs, schedule requirements, or other rationale for other than full and open competition have been certified as complete and accurate by the technical or requirements personnel.

h. Review and Approval of the JOFOC. The review and approval of JOFOCs is conducted by various senior contracting officials depending on the dollar value of the acquisition. The review must assess the quality of consideration given those factors discussed above and the approval must be based upon the validity of the justification offered in support of the proposal to contract on an other than full and open competition basis.

CHAPTER 4 - CONTRACT TYPES, FUNDING, AND OPTIONS

Table of Contents

1. Introduction 4-1

2. Firm Fixed-Price Contract 4-1

3. Cost-Reimbursement Type Contract 4-2

4. Cost-Plus-Award-Fee Contract 4-4

5. Time and Materials Contract 4-6

6. Labor-Hour Contract 4-7

7. Indefinite Delivery Type Contract 4-8

8. Funding 4-10

9. Funding Cost-Reimbursement Term Form Contracts (Level of Effort) 4-10

10. Availability of Funds 4-12

11. Commitments 4-13

12. Funding Cost-Type Contracts 4-13

13. Options 4-14

CHAPTER 4 - CONTRACT TYPES, FUNDING, AND OPTIONS

1. Introduction.

a. EPA uses a variety of different types of contracts. Each type has its advantages and disadvantages, both for the government and the contractor. Some types are definitely preferable over others, but may need to be used because of some characteristic of the work to be performed. The contract type selected should be well-matched to the work to be performed. EPA uses five basic contract types:

- The fixed price contract
- The cost-reimbursement contract
- Time and materials or Labor hour contract and
- Indefinite delivery/indefinite quantity contract.

b. The Contracting Officer determines the proper type of contract for an acquisition. However, it is important that the Project Officer understand the basic difference between contract types and their relationship to the Statement of Work. A summary of the various contract types and their characteristics follows.

2. Firm Fixed Price Contracts.

a. The firm fixed price contract provides for a price which is not subject to any adjustment, regardless of the contractor's cost experience during performance. In a firm fixed price contract, the specified price is paid to the contractor when the items called for by the contract have been delivered and accepted or when the services have been completed and accepted. The statement of work or contract specifications define the products to be provided or services to be performed.

b. When Used. Because the contractor assumes full cost responsibility in a fixed-price arrangement, and because this type of contract imposes a minimum administrative burden on both parties, it is always the preferable type to use if conditions permit. This type of contract is used only when a definitive design or performance specification or statement of work exists, and a fair and reasonable price can be established prior to award. If major cost uncertainties are present, or definite specifications are not available, a fixed price contract is usually not awarded.

IF...	AND...	THEN...
The fixed price is $20,000	It actually only costs the contractor $15,000 to perform	The contractor nets a 25% profit.
	If it costs the contractor $22,000 to produce the product or service	The contractor loses money.

c. Small purchases are generally fixed price contracts.

3. Cost-Reimbursement Contracts.

a. Cost-reimbursement contracts are exactly what they state: the Government agrees to reimburse the contractor's cost of performance. The following three (3) contracts described in the table are generally used at EPA:

Contract	Fee (Profit) Structure
Cost Contract	The contractor receives no fee at all. Generally, such contracts are awarded primarily to educational institutions and other nonprofit organizations. They may also be appropriate for research and development work or for facilities contracts.
Cost-Plus-Fixed-Fee (CPFF)	This is the most prevalent type of cost-reimbursement contract awarded in this Agency. Under this arrangement, the contractor is paid a negotiated fee that is fixed at the inception of the contract. The amount of fee does not vary with actual cost, but stays fixed unless adjusted as a result of changes in the work to be performed.

Contract	Fee (Profit) Structure
Cost-Plus-Award-Fee (CPAF)	A CPAF contract provides for a fee consisting of: • A fixed base amount and • An award pool, the amount of which awarded is based upon a subjective, judgmental evaluation by the Government of the contractor's performance. Areas such as quality, timeliness, ingenuity, and cost effectiveness are evaluated by EPA in accordance with established criteria. The amount of award fee to be paid is decided at stated intervals (usually every quarter or trimester) during contract performance. The overall objective is to motivate the contractor in a positive way to improve poor performance or to continue good performance. This type of contract is considered for use when the expected effort is anticipated to exceed $5 million and a cost-reimbursement contract has been selected. However, it may be used for contracts of any dollar value. Most Superfund cleanup contracts are CPAF contracts.

b. Forms of Cost-Reimbursement Contracts. Cost-reimbursement contracts of any of the types listed above can be structured in one of two basic forms:

(1) The completion form. This describes the scope of work to be done as a clearly defined task or job with a definite goal or target expressed and with a specific end-product required. This contract form normally requires the contractor to complete and deliver the specified end-product (such as, a final report of an analysis) as a condition for payment of the entire fixed fee established for completing the work. The contractor is expected to complete the work within the negotiated estimated cost. However, in the event the work cannot be completed within the estimated cost, the Government may elect to continue the work provided it increases the estimated cost. The contractor then must complete the work at no additional fee.

(2) The term form (level of effort) contract. This describes the scope of work to be done in general terms and which obligates the contractor to devote a specified level of effort for a stated period of time. Under this form, the fixed fee is payable at the end of the agreed-upon period of time provided the contractor has exerted the level of effort specified in the contract in performing the work called for, and such performance is considered satisfactory by the Government. Extensions in periods of performance or requirements for additional levels of effort are new acquisitions and involve new fee and cost arrangements as well as adequate justification for other than full and open competition or sole source awards. It is important to be aware that fee, in a level of effort contract, is tied to hours, not tasks. If the contractor needs more hours than expected to finish an assignment, extra fee is paid on those hours.

(3) The completion form of contract, because of differences in obligation assumed by the contractor, is generally preferred over the term form. Under a completion form contract, prospective contractors are reasonably expected to complete all of the work called for by the Statement of Work within the estimated cost.

c. When Used. The Contracting Officer will award a cost-reimbursement type contract when the estimate of total costs negotiated is believed to be reasonable under the circumstances, but because of the degree of uncertainties involved, a fixed-price arrangement is not feasible. In this situation, the Government assumes the cost risk, and pays the contractor the actual, reasonable, allocable, and allowable costs incurred in the performance of the contract, up to the estimate of total costs established at the time of negotiation. Beyond this amount, the contractor will not be reimbursed and is required to stop work unless additional funds are provided and continued work is authorized by the Contracting Officer. The contractor must have, or establish, an accounting system that is acceptable to the Agency before being awarded a cost-reimbursement contract.

d. Cost-reimbursement contracts are appropriate for research and development activities (such as development of computer systems) where it is difficult if not impossible to know in advance exactly what will need to be done, or how much it will cost to do it.

4. Cost-Plus-Award-Fee Contract (CPAF).

a. The CPAF contract is a cost-reimbursement type of contract with special fee provisions. It provides a means of applying incentives in contracts which are not susceptible to finite measurements of performance necessary for structuring incentive contracts. The fee established in a CPAF contract

consists of two parts: (1) a fixed amount which does not vary with performance, and (2) an award amount, in addition to the fixed amount, sufficient to provide motivation for excellence in contract performance in areas such as quality, timeliness, ingenuity, and cost effectiveness. Award fee may be earned by the contractor in whole or in part. The amount of award fee to be paid is based upon a subjective evaluation by EPA of the quality of the contractor's performance, judged in the light of the established criteria. The number of criteria used and the requirements which are represented will differ widely from one contract to another. Therefore, when establishing criteria and rating plans, you should be flexible and select a plan which will motivate the contractor in a positive way to improve performance. A copy of the proposed award fee plan is required to be included in each solicitation.

b. The contract provides for evaluation at stated intervals during contract performance, so that the contractor will periodically be made aware of the quality of its performance and will know in which areas improvement is expected. EPA currently encourages the use of four-month evaluation periods in lieu of the three-month period commonly used in the past. Partial payment of fee will generally correspond to the evaluation periods. This makes the incentive which the award fee creates effective by inducing the contractor to improve poor performance or to continue good performance.

c. Evaluations are furnished to the contractor to afford it an opportunity to comment on the evaluation findings. The decision that award fee has been earned is based on the reports of performance made by an EPA evaluation team whose members are knowledgeable with respect to the contract requirements. This decision is a unilateral determination made by the Government not subject to the Disputes clause of the contract.

d. The award fee decision referred to above is made by the Award Fee Determination Official, i.e., the Chief of the Contracting Office at the contracting activity. The EPA evaluation team is known as the Performance Evaluation Board and is chaired by the Laboratory or Division Director of the program initiating the requirement. All appointments of participants in the award fee process are to be approved by the Head of the Contracting Activity (HCA) (Director, OAM).

e. The CPAF contract is suitable for:

(1) level-of-effort contracts for performance of services where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement;

(2) work which would have been placed under another type of contract if the performance objectives could be expressed in advance by definite milestones, targets or goals susceptible of measuring actual performance; and

f. The CPAF contract will not be used:

(1) as an administrative technique to avoid CPFF contracts when the criteria for CPFF contracts apply, nor will a CPAF contract be used to avoid the effort of establishing objective targets so as to make feasible the use of a Cost-Plus-Incentive-Fee (CPIF) type contract.

(2) where the contract amount, period of performance, or the benefits expected are insufficient to warrant the additional administrative effort or cost.

5. Time-and-Materials Contracts.

a. The time-and-materials (T&M) type of contract provides for the procurement of supplies or services on the basis of:

- Direct labor hours at specified fixed hourly rates (rates include wages, overhead, general and administrative expense, and profit) and

- Material at cost, and, where appropriate, material handling costs as a part of material costs.

Material handling costs may include indirect costs not included in the labor rates, including general and administrative expense. A variation on the time-and-materials contract is one where fixed rates for equipment are used as well as fixed rates for labor.

b. When Used. This type of contract is usually used in the procurement of:

- Engineering and design services

- Repair, maintenance, or overhaul work and

- Work to be performed in emergency situations (e.g., Superfund cleanups).

Time and materials contracts should be used only where it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of accuracy. Particular care should be

exercised in the use of this type of contract since there is no incentive for the contractor to control costs or to manage the labor force efficiently. Thus, it is essential that a T&M contract be used only where provision is made for adequate controls, including appropriate surveillance by the Agency contract manager during performance to give reasonable assurance that inefficient or wasteful methods are not being used.

6. Labor-Hour Contracts.

(1) The labor-hour type of contract is very similar to the time-and-materials type of contract, except that materials will not be supplied. The contractor is reimbursed strictly on the basis of hours worked at the fixed labor rates specified in the contract.

(2) The example below illustrates the problems potentially associated with labor-hour (or time and materials) contracts. Since the contractor is reimbursed at a fixed rate for labor falling within a particular labor category, (or "P Level") the contractor has a high incentive to use lower-paid and thus less experienced employees on a particular job, since the contractor's profit margin on the lower-paid employee may be substantially higher. This can work to the government's disadvantage.

Example

Basic Hourly Rate:Ranges from $14 - $16
Category Average: $15

Fixed Loaded Rate = $32.40

Labor	Category Average	Joe	Sue
Labor	$15.00	$14.00	$16.00
INDIRECT COSTS (@ 100%)	$15.00	$14.00	$16.00
Profit	$ 2.40	$ 4.40	$ .40
Total	$32.40	$32.40	$32.40

- With The Category Average, The Contractor Earns 8% Profit.
- With Joe, The Contractor Earns 15.7% Profit.
- With Sue, The Contractor Earns Only 1.25% Profit.

7. Indefinite Delivery/Indefinite Quantity Contracts. One of the following indefinite delivery type contracts may be used for procurement where the exact time or place of delivery, or quantity to be delivered, is not known at time of contracting.

a. Definite Quantity Contracts. This provides for a definite quantity of specified supplies or for the performance of specified services for a fixed period. Deliveries or performance occur at designated locations upon order by EPA. This type of contract is particularly suitable for use where it is known in advance that a definite quantity of supplies or services will be required during a specified period and is regularly available or will be available after a short lead time.

b. Requirements Contracts.

(1) This provides for filling all actual purchase requirements of specific supplies or services during a contract period with deliveries to be scheduled by the placement of orders to the contractor. All Agency requirements for the supplies or services covered by this type of contract must be ordered from that contractor, and cannot be procured through any other contracts. (This restriction does not apply to the other two types of indefinite delivery contracts.)

(2) A realistic estimate of total quantity to be ordered throughout the contract period is stated for the information of prospective contractors. However, the Government is not bound by the estimate set forth. The estimate may be obtained from the records of previous requirements and consumption, or by other means. The contract states the maximum limit of the contractor's obligation to deliver and appropriate provisions limiting the Government's obligation to order. It may also specify the maximum quantities which may be ordered under each individual order during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered. Funds are obligated by each order and not by the contract itself.

(3) A requirements contract may be used for procurement when it is impossible to determine in advance the precise quantities of the supplies or services that will be needed by EPA during a definite period of time. Advantages to the government of this type of contract are:

- Flexibility with respect to both quantities and delivery scheduling

- Supplies or services need be ordered only after actual need has materialized.

Generally, the requirements contract is appropriate for use when

the item or service is commercially available and when a recurring need is anticipated.

e. Indefinite Quantity Contracts.

(1) The indefinite quantity type of contract provides for the furnishing of an indefinite quantity of specified supplies or services, with deliveries to be scheduled by the placement of orders to the contractor. The contract provides that the Government will order a stated minimum quantity of the supplies or services and that the contractor will furnish the minimum and any additional quantities not exceeding a stated maximum.

(2) The maximum quantity (or amount expressed in dollars) should represent the Government's best estimate of potential usage. In appropriate cases the maximum may be raised during the contract period, if justification for using other than full and open competition exists. The minimum must be more than a nominal quantity; yet it should not exceed the amount which is fairly certain to be ordered. The common practice is for the first order to be for the minimum quantity, and placed simultaneously with contract award. EPA Form 1900-8 (found within chapter 3), Optional Form 347 or another form approved by EPA may be used in placing orders. Some contracts of this type also stipulate minimum and maximum quantities applicable to each order.

f. When Used.

(1) An indefinite quantity contract may be used where it is impossible to determine in advance the precise quantities of the supplies or services that will be needed by EPA during a definite period of time and it is not advisable for the Agency to commit itself for more than a minimum quantity.

(2) Traditionally, fixed-price or fixed-rate arrangements have been used in indefinite quantity contracts. In such cases the solicitation provides for fixed amounts per item specified, and evaluation of proposals for award is based on respective offerors' bid prices per item times the maximum quantity. Other forms of pricing arrangements may be used. These methods include:

- Fixed loaded labor rates in the time-and-material or labor-hour mode and
- Cost-reimbursement.

8. Funding.

a. Basic Concept. (1) The basic rule on availability of appropriations made for a specific fiscal year is that they lapse at the end of the year unless otherwise provided by law. The obligation of funds against such appropriations is valid only if it relates to an actual need existing within such fiscal year. This criterion is commonly referred to as the bona fide need principle.

(2) With respect to the proper obligation and expenditure (payments to contractors) of fiscal year funds, each requirement must be viewed from the standpoint of when the need arose or when the requirement is needed. In some situations, such as requirements for supplies or "job type" (completion form) services, a need may arise and be contracted for in one fiscal year, but deliveries made the following fiscal year because of lead time. The bona fide need principle may be violated here, however, if, for example, too long a period exists between contract award and delivery, especially for items which are available on the market at the time needed for use.

(3) The question of meeting the bona fide need principle becomes more acute in the purchase of services. Services of a continuing nature which are severable can only be contractually obligated and funds expended against the appropriation in effect at the time the service was performed.

9. Funding Cost-Reimbursement Term Form Contracts (Level of Effort).

a. Where cost-reimbursement term form contracts are used in EPA, the following policies apply with respect to funding:

(1) All hours within a given contract period of performance must be completed within that period. Work assignments which task specific directions and/or order hours of effort must be ordered and completed within the same contract period to be valid charges to the appropriation of that period.

(2) Work assignments which contemplate or actually extend beyond the contract period in which the order is placed must be ended concurrently with the expiration of the contract period in which the order is placed. A new work assignment to conclude such efforts must be issued so that funds and hours available in the new period are charged for the work accomplished during that subsequent period.

(3) Performance beyond the contract base period may be accomplished by the use of options or extended by appropriate noncompetitive procedures. The exercise of options originally

priced in solicitations is not new procurement. As such, follow-on work assignments for work begun in the previous contract period may begin with the issuance of a new work assignment concurrent with the effective date of the option period. Cost-reimbursement term contracts may include a provision stating that, when an option to extend the contract term is exercised, work assignments initiated in a previous period are extended into the option period. The provision must clearly state that hours performed and associated costs incurred during the option period are charged to that option period. Work assignments must have a specific completion date and if this date extends into the option period, the work assignment must refer to the provision discussed above. An administrative modification may be issued to existing contracts to incorporate the provision.

(4) Any extensions to the term of the contract, i.e., to the base or any of the option periods of performance, is by regulation defined as new procurement. As such, extensions can only be accomplished competitively or justified through current, appropriate noncompetitive procedures. Each period of performance (base and each option) is separate and distinct and these procedures apply separately for extensions to each period. Work assignments for follow-on or new work may only be issued upon approval and execution of the term extension. These work assignments may be issued concurrent with the effective date of any such contract modification.

(5) To ensure that obligations in each contract period of performance (base and each option) are proper, such periods of performance shall be established consistent with the known period of the appropriation(s) to be encumbered. For example, the base period of the contract could extend from the date of award to the expiration date of a two-year appropriation. For a contract awarded October 1, 1983, or thereafter against a two-year appropriation, the base period could be until September 30, 1985. Option periods beyond this base period may also be established consistent with anticipated periods of future appropriations. However, considering pricing uncertainties beyond three years in the future, good contract management would strongly suggest that option periods beyond the base period be written for one year at a time.

(6) The contract base and each option period of performance are separate and distinct. Hours not ordered and unexpended funds from expiring appropriations remaining at the end of each period are not available for use in the subsequent contract period. Funds from expiring appropriations should be deobligated to the extent they exceed the Government's liability. To definitively ascertain all actual allowable, allocable, and reasonable costs requires a final audit. Contracting Officers could order audits and close each year separately. It is generally more efficient to only order final audits after the

conclusion of the last option period. Normally, funds should be deobligated only after settlement of the final contract audit.

(7) Funds properly obligated by a Contracting Officer generally can only be deobligated by a Contracting Officer. Deobligation occurs when all actual costs, determined to be allowable, allocable, and reasonable, are known and then only to the extent beyond these valid Government liabilities. In appropriate situations, excesses in any contract period may be deobligated by a Contracting Officer in other ways prior to final contract audit:

(a)Mutual agreement between the Government and the contractor to reduce the obvious funding in excess of anticipated approved final costs executed by bilateral contract modifications.

(b) Settlement of an interim final audit on a particular contract period. Settlements of these and any final audit are executed by a bilateral (mutual agreement) contract modification. However, should a mutual agreement not be obtainable, settlement may be effected by a final decision of the Contracting Officer.

(c) Termination for convenience (total or partial) where the remaining hours are no longer needed. However, settlement procedures require a final audit to determine the Government's actual liability. Settlements are executed by a bilateral contract modification or Contracting Officer's final decision.

(d) Contract performance periods involving appropriations with indefinite obligation terms, commonly referred to as no-year funds or x-year appropriations, should be consistent with sound program and contract management needs. Contract periods (base and options) may be established for terms as long as these needs dictate. Generally contract periods of up to two years approach the limit of sound contract management. Periods for more than two years must be approved by the Chief of the Contracting Office prior to issuance of the solicitation.

10. Availability of Funds.

a. Fiscal Year Contracts. To effect procurements promptly upon the beginning of a new fiscal year, it may at times be necessary to initiate a procurement properly chargeable to funds of the new fiscal year prior to the availability of such funds. In such cases an Availability of Funds clause is included in the solicitation and/or contract. This procedure generally is used only for operation and maintenance and continuing services (such as rentals, utilities, etc.) which are necessary for normal operation and for which the Congress consistently appropriates

funds.

b. Contracts Crossing Fiscal Years. A one-year requirement or indefinite-quantity contract for services funded by annual appropriations may extend beyond the end of the fiscal year in which it was awarded provided, a minimum amount is established for the indefinite quantity portion of the contract. The minimum must be ordered during the period in which the appropriation is available. However, if severable delivery orders are issued against the minimum, the minimum must be consumed during the period of the appropriation's availability. Also, a contract for expert or consultant services calling for an end product which cannot feasibly be subdivided for separate performance in each fiscal year may cross fiscal years.

c. When the Agency enters into a contract subject to the availability of funds, the supplies or services will not be ordered or accepted by the Agency until funds are available to the Contracting Officer for the procurement and until the Contracting Officer has given notice to the contractor of such availability.

11. Commitments. Commitment of funds will be made by the Commitment Clerk. Commitments will be made on the Procurement Request/Order, EPA Form 1900-8, unless a moratorium has been placed on the allowance holder. If such a moratorium has been established, the PR will be returned to the initiator without a commitment.

12. Funding Cost-Type Contracts. When a cost-reimbursement term contract is funded by more than one appropriation, the following procedures apply:

a. The Project Officer must document the rationale for use of multiple appropriations and include in the rationale an estimate of the costs to be charged each appropriation. All program offices contributing funds to the procurement must indicate on the rationale their concurrence with this estimate. The Director, Headquarters Financial Management Division, or designee, must approve the rationale. The Project Officer must include a copy of the approved rationale with the procurement request submitted to the Contracting Officer.

b. In general, a work assignment should benefit a single appropriation. The Project Officer shall indicate on the cover of each work assignment the account number against which payments are to be made and the basis for the finance office to charge vouchered costs to each account number if more than one account number appears on the work assignment.

c. The Project Officer must assure that:

(1) The account number(s) on the work assignment is the same as that cited on the contract, and

(2) The aggregate of funds on work assignments does not exceed amounts obligated on the contract for a particular account number.

d. It may be possible that a contract includes sufficient funding for the total contract value, yet inadequate funds to cover costs billed against work assignments associated with a particular account number. In these cases, the Project Officer should inform the finance office in writing which account number to charge the excessive billed costs. The Project Officer should assure that the program office funding the excess agrees that its account number will be used. The finance office will make the adjustment internally so there is no need for the Contracting Officer to issue an administrative contract modification. The Project Officer should notify the Contracting Officer in writing of the adjusted amounts per account number.

e. The Project Officer should notify the Contracting Officer when increases in the total contract value are expected. Prior to the end of each fiscal year covered by the contract, the Project Officer should review the contract's funding to determine whether the ratio of obligated funds, including any previous adjustments, coincides with the value of the work benefiting each appropriation. The Project Officer should inform the finance office in writing of any adjustments that should be made to the established ratios. The procedures in subparagraph (d) above apply when making these adjustments, as well as when, at any time during performance, the Project Officer anticipates the need for an adjustment. These adjustments must be made no later than the end of the fiscal year in accordance with the actual or best estimate of the benefit to each appropriation.

13. Options.

a. The acquisition regulations allow the Contracting Officer to use two types of options: extension of period and increase in quantity. EPA's general policy is to make use of contract options only when their use is advantageous to the acquisition.

b. The use of options for increased quantities of supplies or services which exceed 50 percent of the base quantity specified in the contract for a particular period require advance approval by the Head of the Contracting Activity (HCA). For supply contracts, the 50 percent limit applies only to contracts with a base quantity of more than one.

c. The use of option periods which, when combined with the base contract period, results in a total contract period of performance exceeding thirty-six (36) months require advance

approval by the Chief of the Contracting Office. In no event, can the total of the base and option periods exceed sixty (60) months in duration.

d. Exercise of options.

(1) Unless otherwise approved by the Chief of the Contracting Office, all service contracts employing option periods require that a preliminary written notice of the Government's intention to exercise the option be furnished to the Contractor a minimum of sixty (60) calendar days prior to the date for the exercise of the option. Failure to provide such preliminary notice within the timeframe established in the contract waives the Government's right to unilaterally exercise the option and requires the negotiation of a bilateral contract modification in order to extend the period of performance, where such an extension is authorized.

(2) When the term of the service contract coincides with the fiscal year and delays in receipt of authority to obligate funds for the new fiscal year are anticipated, the Contracting Officer, if the contract so provides, may, within 60 days after the end of the fiscal year, unilaterally exercise an option to extend the term of the contract. The option may be exercised only if funds become available within the 60-day period. In the event that sufficient funding is not available within the 60-day period, the Government waives the right to unilaterally exercise the option, thereby rendering any additional requirements subject to normal competitive procurement procedures.

(3) The Contracting Officer, if the contract so provides, may, subject to the conditions in FAR 17.204(d), 32.703-2, and 32.705-1(a), exercise an option contingent upon the availability of funds. To exercise such an option, the contract must contain the clause in FAR 52.232-18, Availability of Funds. Under no circumstances shall any action be taken which could be construed as creating a legal liability on the part of the Government until a formal notice of availability of funds in the form of a contract modification has been issued by the Contracting Officer.

CHAPTER 5 - STATEMENT OF WORK PREPARATION

Table of Contents

1. Statement of Work (SOW) 5-1
2. Performance-Based SOW 5-1
3. Planning and Preparation 5-2
4. Analysis of the Work 5-3
5. Contents of the Statement of Work 5-3
6. Personal Services and Nonpersonal Services 5-4
7. Reporting Requirements 5-5
8. Writing Specifications for Commercial Products 5-7

CHAPTER 5 - STATEMENT OF WORK PREPARATION

1. Statement of Work (SOW).

a. The SOW is the basis of the Government requirement. It describes the work to be performed or the services to be delivered. The SOW delineates the tasks, describes the essential and technical needs or requirements, and sets forth the standards that will be used to determine that the requirements have been met.

b. The SOW is the basis for determining the type of contract. The degree of specificity used in the SOW will be the primary criterion used by the Contracting Officer in choosing the contract type. A very definitive SOW, completely describing the required performance or item and leaving little judgement or initiative to the prospective contractor, will lead more toward a fixed price type of contract. A broadly defined SOW, permitting a lot of contractor discretion and setting forth only performance goals, will lead to a cost reimbursement type of contract.

c. The SOW is the basis for the independent, in-house government estimate (IGE). The IGE is a FAR requirement for any procurement over $25,000. A good SOW will provide sufficient information on the work required for preparation of the cost estimate.

d. The SOW is the basis for judging acceptability or responsiveness of prospective contractors' proposals and for selecting the best contractor. A prospective contractor's approach to a research and development task is measured against the research goals set forth in the SOW. A prospective contractor's personnel skills are measured against the skill requirements reflected either implicitly or explicitly in the SOW.

e. The SOW is the basis for measuring contractor performance. How do we know if the contractor accomplished what we asked her/him to do? Each SOW must have measurable (i.e., in terms of quality, timeliness, quantity, etc.) performance standards or acceptance criteria.

2. Performance-Based SOWs. To the maximum extent practicable, all SOWs shall describe the work in terms of "what" is to be the required output rather than "how" the work is to be accomplished. As stated before, SOWs must specify acceptance criteria.

3. Planning and Preparation.

a. Background Research. The SOW is the heart of the procurement. It must clearly define the requirement and provide to the contractor the background and related information necessary to understand the requirement. The SOW should communicate its relationship to the agency mission and the agency goals, objectives, needs and desires to be fulfilled through the procurement. In order to accomplish this through the SOW, the writer must do some preparatory research.

b. Review the documents which authorize the project involved. This may include the authorizing legislation, the scope of the contract SOW, organizational mission statements and even EPA promulgated pollution standards or regulations. Review available literature related to the field or to the project. Review available information regarding work done in the field by other agencies. Review any prior research or preliminary procurement action such as site reviews or feasibility studies. Review any similar procurement actions.

c. The SOW will be influenced by any number of restraining forces and factors. Similarly, the preparation of the SOW will be influenced by restraining factors. Another area of background research, therefore, must identify these forces and factors. The writer should review the available funding; research any applicable regulatory restraints such as mandated milestones or accomplishments dates or technical performance considerations.

d. The writer should refresh her or his knowledge of the various caveats and prohibitions in place regarding such items as personal services, procurement of inherently governmental functions, and directed subcontractors. An inquiry to the contracts office will reveal any latest changes or restrictions with which the writer must comply.

e. The writer must also do some research to identify those documents, procedures and rules that will be made a part of the SOW itself and with which the contractor must comply. As important as the identification of each of these is the determination as to the extent of compliance expected. Will the entire document be made a part of the contract or only specific paragraphs? Is the procedure an internal agency procedure? If so, will changes be needed to permit the contractor to adapt it to the contractor's operation; will such elementary things as organizational responsibilities be applicable to the contractor?

f. If we specify compliance with a Government procedure, the procedure is effectively warranted. If the contractor follows the procedure, the resulting product or service will be acceptable. The only performance issue is whether or not the contractor followed the procedure.

4. Analysis of Work to be Done.

a. An adequately stated requirement or description of the scope of work is the most important attachment to the Procurement Request. The Statement of Work tells the prospective contractor what work will be required, the conditions under which the work must be conducted, how achievements will be assessed, what the obligations will be, and enables the contractor to assess its capabilities in light of the contract requirements. The wording in the Statement of Work as it appears in the Request for Proposals should be precise and suitable for use in the resulting contract.

b. An inadequate or poorly written Statement of Work may result in:

- unreasonable prices;
- failure to obtain competition that might otherwise be achieved;
- failure to obtain the desired effort from the contractor;
- a lengthening of the procurement process; and
- poor technical proposals and divergent cost proposals.

In addition, the work statement affects the number of sources willing to submit proposals, the evaluation of proposals, the type of contract that will be written, and the administration of the contract.

c. One approach used in SOW development is the Work Breakdown Structure (WBS). WBS involves breaking the overall requirement into major phases or tasks that represent a logical, and usually chronological, division of the work effort. Each major task should be broken down further into as many sub-tasks as practical, given the situation. This will make it easier to identify the work required, and to determine staffing, milestones, and schedule.

5. Contents of the Statement of Work. The following contents list is recommended for use throughout the Agency.

Title and Date
Background
Scope of Objective Statement
Task Description(s)
Milestones and Deliverables
Acceptance Criteria
Applicable and Controlling Documents
Special Reporting or Special Work Plan Requirements

6. Personal Services and Nonpersonal Services.

a. The Civil Service laws and regulations and the Classification Act lay down requirements which must be met by the Government in hiring its employees, and establish the incidents of employment. In addition, personnel ceilings have been established for the Agency. EPA may not award a personal service contract unless specifically authorized by statute. A personal services contract is a contract that, by its expressed terms or as administered, makes the contractor personnel, in effect, Government employees. On the other hand, contracts for nonpersonal services, properly issued and administered, represent an approved resource for the Agency in the accomplishment of its programs. The Contracting Officer is responsible for assuring implementation of this policy by considering the criteria set forth below, before entering into any service contract. Project Officers should also keep the criteria in mind when drafting the Statement of Work, and later, when administering the contract.

b. Criteria for Recognizing Personal Services.

(1) There are no definite rules for characterizing particular services as "personal" or "nonpersonal." There are many factors involved, all of which are not of equal importance. The characterization of services in a particular case cannot be made by simply counting factors, but can only be the result of a balancing of all the factors in accordance with their relative importance.

(2) The key question to ask yourself is: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract?

(3) The Contracting Officer will consider the following factors as a guide in assessing whether or not a proposed contract is personal in nature:

(a) Performance on site.

(b) Principal tools and equipment furnished by the Government.

(c) Services are applied directly to the integral effort of the Agency or an organizational subpart in furtherance of its function or mission.

(d) Comparable services, meeting comparable needs, are performed at EPA or other agencies using civil service personnel.

(e) The need for the type of service provided can reasonably be expected to last beyond one year.

(f) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to--

- Adequately protect the Government's interest;
- Retain control of the function involved; or
- Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

7. Reporting Requirements. Reports are critical to the monitoring of a contract. They provide the raw data for decision making. Failure to include a reporting requirement can later prove to be a costly mistake.

a. Types of Reports.

(1) The two most commonly utilized reports are progress and financial management reports. Collectively, these reports inform the Project Officer of the expenditure rate under a cost-reimbursement contract and the progress being made towards contract performance. They are what may be referred to as the "universal tools" in the Project Officer's contract monitoring tool box.

(2) The Project Officer must be aware that virtually any reporting requirement may be requested of the contractor. Where there is a need for unique content or frequency of reporting, it should be indicated in the procurement request. Reports by task/work assignments as well as charts, graphs, and other written displays may be obtained. The requirement for a work plan may also be specified. The overriding concern that should be addressed in deciding what reports and report content should be obtained is: what are the minimum informational needs I must have to maximize the chances of successful contract completion?

(3) For projects involving environmentally related measurements, the contractor must submit a QA Project Plan for review and approval within a specified period following the effective date of the contract. When approved, the Contracting Officer will incorporate the Project Plan in the contract by a change order. The QA Project Plan may then be utilized to track the contractor's quality progress in the tasks assigned. The QA Project Plan contains an element that may be used to require quality control reports to the Project Officer. Periodic review of quality control will be helpful to the Project Officer in

assessing the work progress.

b. Considerations in Use of Reports.

(1) There are many considerations to address in determining the type and content of reports. However, there are a couple of simple principles that should be kept in mind. The first is: the greater the percentage of cost risk assumed by the Government, e.g., cost-reimbursement contracts, the greater the need for reports. The second is: financial management reports are not utilized in fixed-price contracts; however, progress reports may be used.

(2) Considerations in determining the use, type, and frequency of reports are as follows:

(a) contract type;

(b) dollar value;

(c) criticality of the project;

(d) complexity of the work;

(e) performance records of firms within the industry; and

(f) internal reporting requirements.

One should keep in mind that reports are a part of the cost or price the contractor proposes. Indiscriminate requirements are a waste of both time and money.

c. Specifying Reports. Specify what types of reports--monthly or quarterly progress, or financial or other certification of satisfactory progress--will be required and the number of copies of each that are necessary. Be sure to specify the number of days needed for review of reports submitted and period for re-submittal. Specify the quantity of draft and final reports to be delivered by the contractor. However, remember the printing requirements of the Government Printing and Binding Regulations, published by the Joint Committee on Printing, Congress of the United States, limit printing (see FAR Subpart 8.8).

8. Writing Specifications for Commercial Products.

a. A commercial product is an item of supply that is sold to the general public in the course of normal business operations at prices based on catalog or market prices. Since most commercial products are produced in significant quantities and generally under highly competitive environments, the price of such products are lower than items produced to meet a specific specification and in small quantities. Commercial products are distributed through the commercial marketing/distribution systems and are generally available from local wholesale and retail outlets. For these reasons, Government agencies are required to use commercial products and the commercial distribution system whenever such products adequately satisfy the Governments needs.

b. Acquisition of commercial products begins with a description of the Government's needs stated in functional terms so that a market research can be conducted to determine whether commercial products are available to meet Government needs. The function description of the required product must be in sufficient detail so that commercial firms can determine whether their product meets the Government requirement.

c. An adequate purchase description should state the Governments minimum needs and not be written so as to specify a particular brand name, thereby precluding consideration of a product manufactured by another company, unless--

(1) It is a valid sole source procurement; or

(2) The identification of a requirement by use of a brand name is followed by the words "or equal." The brand-name-or-equal description should be used as a last resort when a more detailed description cannot be made available in time for the acquisition. Talk to your CO for more details before submitting the PR package.

d. A market research involves obtaining and analyzing the following type information:

(1) The availability of products and an analysis of their specifications;

(2) Catalog identification;

(3) The volume of sales and the number of years the products have been sold to determine their stability in the market place and product reliability;

(4) The distribution and support (maintenance and parts) capabilities of potential suppliers;

(5) Product warranty;

(6) Any laws or regulations relating to the control and use of the product.

d. Generally market surveys are made by publishing a request for product information in the Commerce Business Daily. However, other methods of other product information include:

(1) Catalogs published by manufacturer, distributors, and dealers;

(2) Source list for items of a similar nature maintained at contracting activities;

(3) GSA Federal Supply Schedules;

(4) Informational requests for quotations;

(5) Other Federal agencies.

CHAPTER 6 - PROPERTY AND DATA ISSUES

Table of Contents

1. Government Property 6-1

2. Property to be furnished and/or Acquired Before Contract Award 6-3

3. Lease Versus Purchase Determinations 6-3

4. Acquisition of Excess Property 6-5

5. Vesting Title to Educational Institutions 6-6

6. Joint Use of Property by Contractor and EPA 6-7

7. Use of Property Purchase with Funds of Another Agency 6-7

8. Contractor Use of Government Vehicles 6-7

9. Contractor Use the Federal Supply Services 6-8

10. Acquisition of Nonserverable Facilities 6-8

11. Rights in Data and Copyrights 6-9

12. Acquisition of Data 6-10

13. Definitions (data) 6-10

14. Delineating the Government's and Contractor's Rights 6-11

15. Confidential Business Information 6-12

CHAPTER 6 - PROPERTY AND DATA ISSUES

1. Government Property

a. Introduction. This section provides specific guidance on: (1) determining whether to include in the procurement request rationale a request that the contractor be allowed to either: (a) be provided with Government property under the contract; (b) obtain Government property under the contract; or (c) use Government property in its possession and (2) other considerations to be addressed when the contractor will have use of Government property. Chapter 5 of the Contracts Management Manual also provides guidance on providing Government property to contractors and improvements to non-Government realty.

b. Government property is classified into two main categories: real property and personal property. Whether the Agency has acquired property and furnished it to a contractor or the contractor acquired property through purchase made under a cost-reimbursement contract, EPA is concerned that funds are properly expended, unnecessary duplication of acquisitions is avoided, and that Government assets are controlled and accounted for. Consequently, procedures have been established to control both the acquisition of nonexpendable personal property by cost-reimbursement contractors and the furnishing of such property by EPA.

c. Definitions.

(1) Accessory Items: Items which facilitate the operation of capitalized nonexpendable equipment, but which are not essential for its operation. (Example: remote control devices)

(2) Accountable Property: All Government-furnished or contractor-acquired property which must be accounted for by the contractor. Contractor records of Government property established and maintained under the contract are the Government's official property records.

(3) Auxiliary Items: Items without which the basic unit of capitalized nonexpendable equipment cannot operate. (Example: motors)

(4) Capital Equipment and Fixtures. Capital equipment and fixtures are considered to be nonexpendable equipment which: is complete in itself; does not lose its identity or become a component of another item when placed in use; and is of a durable nature with an expected life of one year or more. Such property is reflected in official Government property records.

(5) Condition Codes: An appraisal of current condition of accountable property.

(6) Contaminated Property: Equipment/supplies that become contaminated with toxics or other chemicals which render them unsafe.

(7) Expendable Property (Supplies): Property that may be consumed or expended in the performance of a contract. It includes such items as: raw and processed materials, supplies, parts, small tools and components that generally cost less than $100. Expendable property remaining at the end of the contract must be accounted for and listed on the final inventory.

(8) Government Property: All real and/or personal property owned by the Government or acquired for the Government under the terms of a contract. It includes both Government-furnished property and contractor-acquired property as defined below:

(a) Government-furnished property: property in the possession of, or acquired directly by the Government and subsequently delivered or otherwise made available to the contractor; and

(b) Contractor-acquired property: property purchased or otherwise provided by the contractor using contract funds.

(9) Nonexpendable Property: CAPITALIZED: Property which has a unit cost of $500 or more including accessories; is complete in itself; does not lose its identity or become a component part of another item when placed in use; is of a durable nature with an expected life of one year or more; and must be accounted for by the contractor and reflected in EPA property records. NONCAPITALIZED: Property which has a unit cost of less than $500, is of a durable nature with an expected life of one year or more and must be accounted for by the contractor at the conclusion of the contract.

(10) Personal property relates to types of property other than real property, including such items as equipment, desks, etc. Personal property is further subdivided into two categories: expendable and nonexpendable.

(11) Property Administrator: An EPA employee designated by the Contracting Officer to administer property for contracts under which Government property is involved. The Property Administrator is responsible for evaluating the adequacy of the Contractors' property policy and procedures concerning receiving and inspecting accounting and control, obligation, maintenance, scrap and salvage, and disposal.

(12) Real Property: Includes land and rights therein, ground improvements, utility distribution systems, buildings and structures. As well as additions and improvements to such structures.

(13) Sensitive Items: Supplies and equipment which cost less than $500, and because of their nature and portability are particularly susceptible to misappropriation. These items are accounted for by the contractor and reflected in EPA records. (Examples: cameras, binoculars, portable typewriters, tape recorders and calculators.)

2. Property To Be Furnished and/or Acquired Before Contract Award.

a. Before preparation of the contract package, the Project Officer should review equipment requirements. If equipment will be needed, whether furnished by the Government and/or acquired by the contractor with contract funds, the Contract Negotiator should be advised so that property can be identified in the solicitation and discussed during negotiations with subsequent incorporation into the official contract.

b. If title to the property is to be vested with an organization other than EPA, the Contracting Officer should be advised so that it can be explicitly stated in the contract property article.

c. If the property being furnished and/or acquired is to be physically installed at the contractor's facility which may result in subsequent restoration and/or problems in removal after performance of the contract, a determination regarding disposal should be made and incorporated into the official contract at the same time the property is authorized in the contract. Various factors concerning restoration should be considered. For example, will the contractor's premises be restored at Government expense? Or will the property be abandoned in place?

3. Lease Versus Purchase Determinations.

a. Consideration should be given whether to lease or purchase equipment based on a case-by-case evaluation of comparative costs and other factors. Evaluation will indicate which of the acquisition methods will provide greater savings to the Government while satisfying user requirements.

b. The following factors, as a minimum, should be considered:

- ✓ Estimated length of the period the equipment is to be used and the extent of use within that period;
- ✓ Financial and operating advantages of alternate types and makes of equipment;
- ✓ Cumulative rental payments for the estimated period of use;
- ✓ net purchase price;
- ✓ transportation and installation costs;
- ✓ maintenance and other services costs;
- ✓ Potential obsolescence of the equipment because of imminent technological improvements.

c. The following additional factors should be considered, as appropriate, depending on the type, cost, complexity and estimated period of use of the equipment:

- ✓ Availability of purchase options;
- ✓ Potential for use by other agencies after its use by the acquiring agency is ended;
- ✓ Trade-in or salvage value;
- ✓ Imputed interest; and
- ✓ Availability of a servicing capability especially for highly complex equipment.

d. Acquisition methods. Generally the purchase method is appropriate if the equipment will be used beyond the point in time when cumulative leasing costs exceed the purchase price.

The lease method is appropriate if it is to the Government's advantage under such circumstances. The lease method may also serve as an interim measure when the circumstances require immediate use of equipment to meet program or system goals, but do not currently support acquisition by purchase. If a lease is justified, a lease with option to purchase may be preferable. However, such interim measures shall be fully discussed with the Contracting Officer. Generally, a long-term lease should be avoided.

4. Acquisition of Excess Property.

a. If GFP is needed for contract performance, in-house property sources within the Project Officer's sponsoring program should be checked first for availability. If the item is available, both the Contracting Officer and Property Administrator should be notified so that the contract and property records can be modified. The Accountable Officer should also be notified to arrange with the Property Administrator a detailed description of the item. Those Project Officers at locations other than the Property Administrator's station should first contact their Accountable Officer for a review and then forward it to the Property Administrator. The Property Administrator will first review the EPA excess catalog for availability within EPA. If the items are not available within EPA, the Property Administrator will coordinate with GSA regional offices in an attempt to locate and transfer the items to EPA. GSA Form 1539, "Request for Excess Personal Property," is prepared by the Property Administrator in locating excess from GSA. This method is more satisfactory than reviewing GSA excess property catalogs as it enables property transfer before it appears in the excess catalogs. If the item is available through GSA, a Procurement Request/Order will then be required with accounting information and approvals. This requisition will then be used as an authorization to prepare SF-122, "Transfer Order Excess Personal Property." The accounting information is required in the event any packing, crating, and shipping charges arise from the physical transfer of this property.

b. Occasionally, EPA may be responsible for an overseas return charge if the material was located in a foreign country. If so, a Miscellaneous Obligation Document is also required. This document should be forwarded to the appropriate Financial Management Office. Notification of any such charge will be given to EPA before transfer by GSA.

c. Procedure. If in developing the requirement it becomes evident that it is advantageous to either provide the contractor with property or allow the contractor to acquire it under the contract, then the Project Officer must include a Needs Justification in the procurement rationale which justifies the proposed action. The same procedure is applicable when a contract is to be modified to either allow for the provision of Government-furnished property or acquisition of property under a prime or subcontract.

d. Content of Needs Justification.

(1) Because of the seven areas to be considered, the Needs Justification is sometimes called "the Seven-Point Justification." The Contracting Officer will not authorize a contractor to (a) acquire property at Government expense,

(b) be reimbursed for unauthorized property acquired (c) obtain Government-furnished property, or (d) use Government-owned property in its possession until the Project Officer submits a justification. This justification must be approved by the program office division director or equivalent level and a level above the Contracting Officer.

(2) As a minimum, the justification of need must:

(a) Identify the specific program and project for which the property is required.

(b) Identify the type, quantity and estimated cost (including any transportation or installation costs) of each item of property required.

(c) Explain why the property is essential for contract performance.

(d) Explain why it is in the interest of the Government to provide the property rather than to require the Contractor to provide the property at no direct cost to the contract. (This is a very important element which must be documented with specific details.)

(e) Identify the location, if known, of the Contractor's facility at which the property will be used, and the Contractor's personnel responsible for acquisition and management of the property.

(f) For property to be acquired by the Contractor at Government expense, include a certification that no in-house excess property is available and include the concurrence of the local property office.

(g) For equipment to be acquired by the Contractor at Government expense, include a lease vs. purchase analysis (see paragraph 3 on page 6-3).

(3) A justification of need is required regardless of whether the need for the property is determined: (a) at development of the requirement; (b) at proposal evaluation or contract negotiations; or (c) after contract award.

5. Vesting Title to Educational Institutions.

a. EPA is authorized pursuant to Public Law 95-224 to transfer title of equipment purchased with research contract funds to educational institutions or nonprofit organizations whose primary purpose is the conduct of scientific research. (This situation does not apply to Government-furnished property.) EPA may vest title of property in an educational institution for

items with an acquisition cost of less than $1,000 if the appropriate Government property clause is incorporated into the contract. During the contract, EPA will retain title to items with an acquisition cost greater than $1,000.

b. Shortly after contract expiration, the Project Officer will be requested to advise the Property Administrator whether equipment should be transferred to the contractor or retained by the Government. The appropriate Government property clause permits the Contracting Officer to transfer title of contractor-acquired equipment to the contractor at any time during the term of the contract or upon its completion/termination. The Property Administrator will request the Contracting Officer's recommendation/concurrence for the transfer of title of the item(s). Written notification will be provided to the contractor by the Contracting Officer. If the appropriate Government property clause is not incorporated into the original contract to allow for this type of transaction, normal disposal regulations will govern disposal procedures.

6. Joint Use of Property by Contractor and EPA. Property furnished to on-site contractors should be itemized in the "Government-Furnished Property" clause of the contract. As a result of this clause, the contractor becomes responsible for the items listed and for any other items that are acquired. Government property is only to be used for the contract that authorizes its use, and then only as required for satisfactory completion of the contract scope of work. Property itemized in a contract as Government-furnished should be used by contractor personnel only. If property is to be used by both contractor and EPA personnel, the "Government-Furnished Property" clause within the contract should stipulate the percentage of time the property is to be used by the contractor.

7. Use of Property Purchased with Funds of Another Agency. The Project Officer must assure that the Government property clause within the contract stipulates ownership of property purchased with funds from another Agency that are being used on an EPA contract. The Project Officer must also advise the Property Administrator just before contract award of any special conditions that may exist concerning the use of the property (i.e., who will hold title to the property, who will be accountable for the property, whether EPA will be responsible for custodianship, disposal of the property, etc.).

8. Contractor Use of Government Vehicles. Contractors can be authorized to use Government vehicles from the GSA Interagency Motor Pool when a special clause is included in the contract. The Project Officer must submit to the Contracting Officer, with a copy to the Property Administrator, a determination and findings and a justification of need for the use of such vehicle.

The Property Administrator or the appropriate Accountable Officer will arrange with the GSA Interagency Motor Pool for assignment of the vehicle. The Project Officer must assure that all contract employees using the vehicle obtain Government driver's licenses. A list of those employees should be forwarded to the Contracting Officer and the Property Administrator.

9. Contractor Use of the Federal Supply Service. Contractors who have cost-reimbursement type contracts can be authorized to acquire material from GSA, Federal Supply Service, when a special clause is included in the contract. The Federal Supply Service is responsible for the procurement and supply of a wide range of common-use items that are available to customer agencies from a network of supply depots and self-service stores. Upon notification from the Contracting Officer, the Property Administrator will obtain the necessary codes, and GSA will supply the contractor with catalogs and instructions for use.

10. Acquisition of Nonseverable Facilities

a. Definition. For the purpose of this section, nonseverable or permanent improvements are considered to be improvements made to non-Government-owned real property.

b. Background. Comptroller General Decisions (42 Comp. Gen. 480 and 46 Comp. Gen. 24) have established the rule that appropriated funds ordinarily may not be used for permanent improvements to land not owned by the Government unless specifically authorized by law or unless certain conditions are present. Apart from the principles established by 42 Comp. Gen. 480, above, EPA possesses specific statutory authority, with respect to certain research activities, to use appropriated funds for permanent improvements to non-Government realty within the limitations set forth in 10 U.S.C. 2353. (See 42 U.S.C. 241--Public Health Service Act; 42 U.S.C. 3253(b)--Solid Waste Disposal Act; and 42 U.S.C. 1857b-1--Clean Air Act.)

c. Types of Improvements. Improvements to non-Government realty may be required for a number of reasons, including, but not limited to:

(1) Construction of a facility required to accomplish the objective of the contract;

(2) Construction of a concrete pad for use as a temporary storage facility.

d. Policy. Environmental Protection Agency cost-reimbursement contracts under which permanent improvements will be affixed to non-Government realty, and all contracts under which Government property will be furnished to or acquired by the contractor and affixed to non-Government realty must be

consistent with the standards of either 10 U.S.C. 2353 (if applicable) or 42 Comp. Gen. 480.

e. Determination and Findings (D&F)/Approval Requirements

(1) Prior to award of a contract of the nature described above, a determination and findings document must be prepared by the Contracting Officer and forwarded to the Director, Office of Acquisition Management.

(2) D&F and approval requirements do not apply to improvements which are incidental to or essential for the effective accomplishment of removal or remedial/Superfund actions (P.L. 96-510). For all other P.L. 96-510 actions, D&F and approval requirements apply.

f. Project Officer Informational Input to D&F. The following information must be provided by the Project Officer for inclusion into the CO's Determination and Findings:

(1) A description of the procurement, including identification of the funds to be used, contract type, property or services being procured, name of Contractor, and any urgency considerations or special circumstances.

(2) A description of the research, development, or test facilities or equipment, or other improvement to be provided to or acquired by the Contractor at Government expense. This description shall include the estimated cost of the improvement; information regarding ownership of the realty to which the improvement will be affixed; whether the improvement is severable from the realty without unreasonable expense or loss of value; whether the proposed improvement has general utility apart from performance of the instant contract; and an explanation of why the proposed improvement is necessary for performance of the contract.

11. Rights in Data and Copyrights.

a. It is necessary for EPA, in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of its contracts to meet programmatic and statutory requirements, including regulatory activities. At the same time, EPA recognizes that its contractors may have a proprietary right or other valid economic interest in certain data resulting from private investment, and that protection from unauthorized use and disclosure of this data is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the contractor's commercial position, and maintain EPA's ability to obtain access to or use of such data. The

protection of this data by EPA is necessary to encourage qualified contractors to participate in EPA programs and apply innovative concepts to such programs.

b. Policies and Procedures. Subpart 1527.70 of the Environmental Protection Agency Acquisition Regulations (EPAAR) set forth specific policies, procedures, solicitation provisions, and contract clauses relating to the acquisition of data and the rights in data or copyrights relative thereto.

12. Acquisition of Data. It is important for Project Officers to recognize that acquisition of data involves not only the identification and definition of the data to be acquired and the circumstances of its use, but also the rights of the Government to the use of such data. In fact, in many cases, the Government is acquiring the right to use of the data rather than title to the data itself. It is EPA's practice to identify and define its data requirements to the extent possible and appropriate in time to be included in the statement of work (SOW) which becomes the heart of both the solicitation and the contract. Recognizing that this may not always be feasible, EPA has made provisions for the acquisition of data subsequent to award of the contract. In either event, since preparation, maintenance, and storage of data generally represents a substantial expense to both the Government and the Contractor, data requirements shall be kept to a minimum consistent with program needs.

13. Definitions. Following are definitions of various terms as they are used in the EPAAR:

(1) "Computer software" means computer programs, computer data bases, and their documentation.

(2) "Data" means recorded information, regardless of form or media and includes computer software. It does not include information incidental to contract administration such as financial, business, or management information.

(3) "Form, fit, and function data" means data relating to, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

(4) "Limited rights" means the rights of the Government in limited-rights data, as set forth in a Limited Rights Notice if included in the data rights clause of the contract.

(5) "Limited-rights data" means data that embodies trade secrets or is commercial or financial and confidential or privileged to the extent that such data pertains to items, components, or processes developed at private expense, including

minor modifications thereof. [Contracting Officers may, with the concurrence of the Project Officer, use the following alternate definition: "Limited-rights data" means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.]

(6) "Restricted computer software" means computer software developed at private expense and that is a trade secret, or is commercial or financial and confidential or privileged, or is published copyrighted software.

(7) "Restricted rights" means the right of the Government in restricted computer software as set forth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

(8) "Unlimited rights" means the right of the Government, without additional cost to the Government, to use, disclose, reproduce, prepare derivative works, distribute copies to the public and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

14. Delineating the Government's and the Contractor's Rights.

a. All contracts which involve the acquisition of data discussed and defined above must contain clauses which define the respective rights of both the Government and the Contractor regarding such matters as the use, duplication and disclosure. The type of contract, the particular subject matter of the contract, or the intended use of the data, must be considered in selecting the appropriate contract clause. It is therefore essential that all Project Officers whose acquisition includes data be familiar with the various clauses so that they may assist the Contracting Officer in selecting the clause which best serves both the Government and the program being supported.

b. FAR Part 27 prescribes policies, procedures and contract clauses concerning patents, data, and copyrights. Specific questions regarding the selection of clauses, appropriate to program needs, should be addressed to the Contracting Office early in the pre-solicitation phase of the acquisition process.

15. Protection of Confidential Business Information.

a. Project Officers often are privy to information which contractors consider to be highly confidential. Examples of such confidential business information (CBI) include, but are not limited to:

(1) Trade secret formulas, devices and identities of chemicals;

(2) Industrial process information;

(3) Any financial data regarding a company (e.g., assets, profits, taxes), obtained from any source;

(4) Contractor-supplied information, generally, including:

- Direct labor rates,
- Indirect rates: overhead, general and administrative, fringe benefits, etc.
- Other contractor charges,
- Identities of their employees and their salaries,
- Monthly progress reports,
- Contractor proposals, and
- Fees.

b. Information contained in a document submitted by a contractor does not become non-confidential by virtue of being put into an Agency-generated document. Agency confidentiality regulations require that the Agency protect from disclosure any information which the contractor might consider CBI even if a CBI claim has not been made.

c. The Trade Secrets Act, 18 U.S.C 1905, imposes criminal liability on any Government employee who "publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law" trade secrets or confidential data. Care must be taken not to discuss anything known about a particular contractor to anyone (including other EPA employees) not having a "need to know."

d. Certain environmental statutes administered by EPA (e.g., TSCA, FIFRA) contain provisions authorizing the Agency to disclose to contractors information collected pursuant to those statutes. However, information not collected pursuant to an environmental statute from contractor A may not be disclosed to contractor B unless contractor A has given written consent to such disclosure.

e. The Office of General Counsel occasionally provides training on CBI; they will also answer specific questions on CBI.

CHAPTER 7 - ACQUISITIONS REQUIRING SPECIAL APPROVALS

Table of Contents

1. Procurement Request Approvals 7-1

2. Designated Office Approval 7-1

3. Management Approvals 7-6

4. Advisory and Assistance Services 7-7

5. Sensitive Contracting Areas 7-7

6. Management Approval of Advisory and Assistance or Sensitive Services 7-8

7. Unsolicited Proposals 7-10

8. Quality Assurance Program Plans 7-11

9. Foreign Research Contracts 7-15

CHAPTER 7 - ACQUISITIONS REQUIRING SPECIAL APPROVALS

1. Procurement Request Approvals

a. EPA management has established internal controls whereby certain goods and services require clearances and/or approvals prior to their acquisition.

b. It must be kept in mind that from time to time the Chief Executive and other responsible Executive Agencies place temporary moratoriums on specific supplies or equipment. Consequently there may be other constraints placed on the acquisition of supplies or equipment. It is advisable to check with your Contracting Officer at the time of PR development to determine which moratoriums are in existence.

2. Designated Office Approval - Note that office approvals must be obtained for the items listed below in addition to the management approvals listed in the next section. Offices designated below should be consulted prior to submission of requests for approval since authority may have been redelegated. The Agency objective is to limit Procurement Request approvals strictly to those that are clearly required by property delegation and official policies.

Item Description	Local Approval	Headquarters Approval
1. All purchases, regardless of value (includes all items listed in this matrix.)	Program Office	None
2. Equipment, equipment repair, supplies or furniture, including for bankcard purchases not exceeding $1,000.	FMSD or equivalent field office *	None
3. Printing; duplication; and composition	Office designated in Delegations Manual, NO. 1-5	None
4. Advertisements for acquisition of real property	None	FMSD

Item Description	Local Approval	Headquarters Approval
5. Commerical U-Drive Credit Card	None	FMSD, Delegations Manual, NO. 1-4-A
6. Facsimile equipment	None	FMSD, Delegations Manual, NO. 1-4-A
7. Communications equipment utilizing the radio frequency spectrum	None	FMSD, Delegations Manual, NO. 1-4-A
8. Watercraft over 25 feet or $15,000 or aircraft of any value	None	FMSD, Delegations Manual, NO. 1-4-A
9. Purchase or lease/hire for 60 or more consecutive days of passenger vehicles or light duty trucks	None	FMSD, Delegations Manual, NO. 1-4-A
10. Purchase or rental of copying machines and printing equipment	None	FMSD, Delegations Manual, NO. 1-4-A
11. Repair and improvement construction	FMSD or EPO Delegations Manual, NO. 1-4	FMSD (For use of Building and Facilities funds)
12. Equipment, services for creation, organi-ation, maintenance and disposition of Agency records and files including micrographic services and systems.	Limited offices as designated in the Delegations Manual NO. 1-1. Also, see the Records Management Manual.	None

Item Description	Local Approval	Headquarters Approval
13. ADP equipment, software maintenance and services, including those related to computer-related micrographic systems, word processing, time sharing, feasibility studies, and requirements analyses.	None	Office of Information Services (Delegations Manual NO. 1-10)
14. Paid advertising for recruitment of personnel in newspapers, trade journals of national or international circulation.	Local office of personnel (Delegations Manual NO. 1-2)	None
15. Collecting identical information or statistical data from ten or more persons.	None	AA for Office of Policy, Planning, and Evaluation (Delegations Manual NO. 1-22)
16. Protective services and equipment, including guard protection, security alarms, safes, and monitoring and detection services.	None	FSMD (Delegations Manual NO. 1-6)
17. Government-provided in-bound and direct dial out-bound long distance service, e.g., 800 service for hotlines.	None	OARM, NDPD, telecommunications

* FMSD approval required to ensure that equipment or furniture is not available from Agency stock; supplies are not available from GSA or EPA Supply Stores; or equipment repairs cannot be made under existing BPA's.

a. Printing and Binding. The Government Printing and Binding Regulations, published by the Congressional Joint Committee on Printing, place certain restrictions on sources that must be considered for obtaining printing and binding services outside the Government Printing Office (GPO). The regulations establish precise definitions for "printing, composition, microfilm, duplicating, and copying" and provide certain numerical thresholds beyond which the approval of the Joint Committee on Printing is required, should the Government or Agency desire to use other than the GPO. Examples of provisions for duplicating and copying that require these services to be provided by GPO, unless there are exceptional circumstances, are as follows:

(1) Work exceeding 5,000 production units of any one page, and work exceeding 25,000 production units in the aggregate of multiple pages, shall not be done without prior authority of: (a) the central printing and publications management organization as provided in the regulation; or (b) the Joint Committee on Printing.

(2) Duplication of documents reproduced in color.

(3) Provisions also are made for quarterly reporting to the Joint Committee on Printing, describing all work that exceeds the applicable thresholds. In EPA, the central printing and publications management organization is the General Services Branch, 3204, in the Facilities and Support Services Division.

b. Questionnaires - Forms. As a result of P.L. 90-620, no Federal agency may conduct or sponsor the collection of information on identical items from 10 or more public respondents without the prior approval and clearance of the Office of Management and Budget (OMB). If it is known that a survey will be required under a proposed contract, the initiating project office must undertake clearance action either before or at the same time the Procurement Request/Requisition is forwarded to the Procurement and Contracts Management Division. If an unanticipated survey develops during the period of contract performance, the contractor is prohibited from beginning the survey without EPA and OMB approval. All such clearance records must be routed from the initiating office to the EPA Regulation and Information Management Division. A copy of the clearance must be forwarded to the Contracting Officer.

c. Automatic Data Processing (ADP).

(1) Definition. ADP Equipment (ADPE) means general purpose, commercially available automatic data processing equipment or devises. These devices are the components and the equipment systems configured from them together with software, regardless of use, size, capacity, or price, that are designed to be applied to the solution or processing of a variety of problems or applications.
Included are:

(a) Digital, analog, or hybrid computers;

(b) Auxiliary equipment, such as plotters, data conversion equipment, source data automation equipment, magnetic tape, card or cartridge typewriters, computer input/output microfilm, or memory, either cable connected, wire connected, or stand alone, and whether selected or acquired with a computer or separately;

(c) Punched card machines; and

(d) Data transmission or communications, including front-end processors, computer terminals, sensors, and other similar devices, designed primarily for use with a configuration of ADPE.

(2) Software Definition. Software means: (a) pre-packaged, commercially available, proprietary computer programs; and (b) data products specifically designed to make use of and extend the capabilities of ADPE. This encompasses commercially available operating systems or applications programs, computer readable data collections, and directly related technical assistance for installation, training, conversion, documentation, and maintenance of the programs or data products. This definition also includes commercially available programs and data products for word processing equipment as well as office automation or general purpose ADPE.

(3) ADP Services and ADP-Support Services Definition

(a) ADP services means the computation or manipulation of data in support of administrative, financial, communications, scientific, or other similar Federal Agency data processing applications. It includes teleprocessing (including remote batch) and local batch processing.

(b) ADP-support services means source data entry, conversion, training, studies, facility management (other than for central facilities managed by NDPD, RTP), systems analysis and design, programming, and equipment operations that are ancillary and essential to agency ADP activities.

(4) ADP Equipment Maintenance Service Definition. ADPE maintenance service means those examination, testing, repair, or part replacement functions performed to:

(a) Reduce the probability of ADPE malfunction (commonly referred to as "preventive maintenance")

(b) Restore to its proper operating status a component of ADPE that is not functioning properly (commonly referred to as "remedial maintenance")

(c) Modify the ADPE in a minor way (commonly referred to as "field engineering change" or "field modification").

(5) Word Processing Equipment. Although GSA Bulletin FPMR A-79 reclassified word processing equipment from FSC Group 70 (General Purpose Automatic Data Processing Equipment) to FSC Group 74, Class 7435 (Office Information System Equipment), the procurement approvals and clearances requirements established for ADP equipment and services remain in effect for word processing equipment.

(6) Protective Services.

(a) Protective services include those services or kinds of equipment required for the physical security of a facility or installation: for example, guard protection, security alarms, security filing cabinets (safes), security fences or barriers, monitoring and detection devices, etc.

(b) Physical security includes those measures employed to provide protection against security hazards for personnel, property, Government funds and negotiable instruments, classified national security information and material, proprietary information, and facilities.

(c) Security hazards are conditions which may result in personal injury or loss of life; loss, damage, or destruction of property; loss of Government funds or negotiable instruments; loss or compromise of classified national security information and material, or of proprietary or Governmental information, or disruption of the activities of the Agency or facility.

3. Management Approvals. The following approvals apply to all procurement requests except those to add funds to incrementally funded contracts. These approvals are in addition to the designated office approvals.

a. Procurement Requests for Advisory and Assistance or sensitive/vulnerable Services:

(1) Services under the small purchase threshold must be approved Program official at least one organizational level above the initiating office. When award is made during the fourth quarter, a program official at least two organizational levels above the initiating office.

(2) Services other than small purchases, but not in excess of $5,000,000 must be approved by a Program official not below the level of Associate, Assistant or Regional Administrator, Inspector General, or General Counsel.

(3) Services exceeding $5,000,000, in addition to approvals in (2) above, approval is required by the Assistant Administrator for Administration and Resources Management. (Assistant Administrator or Equivalent at HQ or the Regional Administrator in the Regions should make the request for approval). Requests in this category must be routed through the Director, Office of Acquisition Management.

b. Small purchases, not in the category listed in paragraph a, should be approved in accordance with program office procedures. Requirements, not in the category listed in paragraph a, which exceed the small purchase threshold should be approved by a Program official designated by the Associate, Assistant, or Regional Administrator, Inspector General or General Counsel.

4. Advisory and assistance services (AAS). OMB Circular A-120 dated January 4, 1988, defines advisory and assistance services as those services acquired from non-governmental sources by contract or by personnel appointment to support or improve agency policy development, decision-making, management, and administration, or to support or improve the operation of management systems. A special justification for AAS must be prepared by the requesting office and approved in accordance with the management approvals discussed in paragraph 3. After consultation with the Project Officer, the Contracting Officer will determine if the services requested are advisory and assistance services and are appropriate for performance by contractors.

5. Sensitive Contracting Areas. Certain activities when performed under EPA contracts may place EPA in a vulnerable or sensitive position if adequate controls are not implemented. A listing of these sensitive contracting activities is included in EPA Order 1900.2 (which is attached to Chapter 2 of this Handbook). These sensitive contracting areas require the same justification and approval as advisory and assistance services under paragraph 3 above.

6. Management Approval of Advisory and Assistance or Sensitive Services. The following format shall be used for approval of advisory and assistance or sensitive services valued over $5,000,000:

MEMORANDUM

SUBJECT: Approval of Advisory and Assistance/Sensitive Services

FROM: (Assistant Administrator for Requesting Office)

THRU: (Deputy Assistant Administrator for Finance and Acquisition)

TO: (Assistant Administrator
Office of Administration and Resources Management)

I am requesting your approval of a proposed acquisition involving advisory and assistance services as defined in Office of Management and Budget (OMB) Circular A-120. In accordance with Agency policy, your approval is required for all contracts over $5,000,000 involving services designated by OMB as "advisory and assistance" or sensitive and vulnerable as defined in EPA Order 1900.2.

Under solicitation number **(insert solicitation number)**, **(indicate number and type of anticipated contract awards)** will be awarded with a period of performance **(insert length of base period and number and duration of option periods)** for a total maximum contract value of **(insert total maximum contract value)**. The proposed acquisition, **(insert title)**, is necessary to support our program in the following areas:

(describe briefly the services to be performed under the proposed acquisition)

In accordance with OMB Circular A-120, I certify that the services to be performed will not:

1) unnecessarily duplicate any previously performed work or services;

2) be used in performing work of a policy decision-making or managerial nature;

3) be used to bypass or undermine personnel ceilings, pay limitations or competitive employment procedures;

4) be contracted for on a preferential basis to former Government employees;

5) be used specifically to aid in influencing or enacting legislation; or

6) be used to obtain professional or technical advice which is readily available within the Agency or another Federal agency.

Accordingly, it is determined that the requested services are appropriate and meet the requirements of OMB Circular A-120, the Federal Acquisition Regulation 37.2, and applicable EPA guidance.

In accordance with EPA Order 1900.2 and Office of Procurement Policy Letter 92-1, the attached management controls are adequate to ensure that Agency officials remain accountable and retain control over the contractor's product. In summary, this contract will utilize the following management controls (**describe briefly the management controls to be implemented under the proposed acquisition**) to assure that the proposed contractor services will not place EPA in a vulnerable position and will ensure that Government policy is not being created or unduly influenced by contractors, and that contractor employees will not be assumed to be EPA employees.

CONCUR:

Contracting Officer	Date
Project Officer	Date
OAM Division Director	Date
Betty L. Bailey, Director Office of Acquisition Management	Date

APPROVED:

Assistant Administrator for Administration and Resources Management	Date

Attachments

7. Unsolicited Proposals. An unsolicited proposal is a voluntary offer submitted by an individual or an organization that has a scientific or technological idea which the offeror believes has a value to the agency. EPA encourages the submission of unsolicited proposals as part of its efforts to utilize all sources of scientific and technical expertise. [Refer also to Chapter 3 of the Contracts Management Manual.]

a. Control and Processing. A centralized control point has been established in the Office of Grants and Debarment (OGD) to process unsolicited proposals regardless of where they are received in the Agency. After acknowledging receipt, OGD assigns to each proposal a control number and transmits the proposal to a program office for purposes of evaluating its relative technical merit.

b. If the program office decides to fund the proposal as a grant or cooperative agreement, the proposal will be returned to OGD for further processing. Where a contract is the appropriate instrument, a procurement request must be prepared and forwarded to OAM.

★ Some important points to remember are:

- An unsolicited proposal is exactly that: "unsolicited." Project Officers should not involve themselves in suggesting or requesting that a firm submit an "unsolicited proposal."
- Ethical/legal considerations impose restrictions on the disclosure and use of data submitted with a proposal.
- Unless precluded by ethical/legal considerations, a market search will be conducted to assist in determining whether the substance of the proposal is available to the Government without restriction from another source.
- Only the Grants Administration Division is authorized to copy, photograph, or reproduce any parts of unsolicited proposals.
- Approval of an unsolicited proposal does not in and of itself justify noncompetitive procurement. A Justification for Other Than Full and Open Competition (JOFOC) must be prepared and submitted with the PR for the unsolicited proposal.
- EPAAR provides for mandatory cost sharing for most unsolicited proposals, except in cases where there is no measurable gain to the performing organization.

8. Quality Assurance Program Plans.

a. A review of all extramural project procurements must be conducted in order to determine the applicability of Agency Quality Assurance requirements for all contracts in excess of $25,000 which have the following object classification codes in the accounting and appropriation data:

25.32	Research and Development Contracts
25.35	Program Contracts
25.47	Occupational Health Monitoring
25.49	Occupational Health and Safety Sciences
25.70	Other Interagency Agreements
26.01	Laboratory Supplies
31.01	Scientific and Technical Equipment

b. The determination of QA applicability shall be certified on a Quality Assurance Review (QAR) Form. The QAR Form shall contain the signatures of the Quality Assurance Officer (or designee) and the Project Officer, and the completed Form must accompany the Procurement Request. The Contracting Office will not process a Procurement Request unless the signed QAR Form shown below is included.

QUALITY ASSURANCE REVIEW FOR EXTRAMURAL PROJECTS (CONTRACTS)

I. GENERAL INFORMATION

Descriptive Title: _____

Sponsoring Program Office: _____

Approximate Dollar Amount: _____

Duration: _____

II. This contract requires environmental measurements _____ (YES)
Complete form; _____ (NO) sign form and submit with the procurement request.

III. Quality Assurance Requirements (Projects involving environmental measurements):

YES NO

___ ____ a. Submission of a written quality assurance (QA) program plan (commitment of the offeror's management to meet the QA requirements of the scope of work) is to be included in the

contract proposal.

YES NO
___ ____ b. Submission of a written QA project plan is to be included in the contract proposal.

YES NO
___ ____ c. A written QA project plan is required as a part of the contract.

YES NO
___ ____ d. Performance on available audit samples or devices shall be required as part of the evaluation criteria (see list on the next page).

YES NO
___ ____ e. An on-site evaluation of the offeror's facilities will be made to ensure that a QA system is operation and exhibits the capability for successful completion of this project (see schedule on the next page).

YES NO
___ ____ f. QA reports will be required (see schedule on the next page).

IV. Determination (Projects involving environmental measurements)

Percentage of technical evaluation points assigned to QA _____.

Project Officer estimate of percentage of cost allocated to environmental measures _____.

For each parameter measured attach a summary which provides the following information:

a. Is QC Reference sampling or device available?

b. Are there split samples for cross-comparison?

c. Is it required for pre-award?

d. Specify frequency during the contract.

QA System Audits are required: Pre-award _____; during the contract _____.

QA Reports are required: with Progress Reports _____; with the Final Report _____.

The signatures below verify that the QA requirements have been established.

QA Officer:	Project Officer:
_____	_____
Signature	Signature
_____	_____
Date	Date

(1) The QAR Form will tell the Contracting Officer if a QA Program or QA Project Plan is required as part of the offeror's proposal and if a pre-award audit is to be part of the evaluation process. Based upon the information provided, the Contracting Officer will include the appropriate EPAAR provisions on Quality Assurance in the solicitation.

c. Offeror's Statement. The Quality Assurance Program Plan is a qualitative statement of the offeror's capability to conduct a viable QA program and should be submitted as a separate and identifiable part of the technical proposal. It should address the following:

(1) A statement of policy concerning the organization's commitment to implement a Quality Control/Quality Assurance program to assure generation of measurement data of adequate quality to meet the requirements of the Statement of Work.

(2) An organizational chart showing the position of a QA function or person within the organization. It is highly desirable that the QA function or person be independent of the functional groups which generate measurement data.

(3) A delineation of the authority and responsibilities of the QA function or person and the related data quality responsibilities of other functional groups of the organization.

(4) The type and degree of experience in developing and applying Quality Control/Quality Assurance procedures to the proposed sampling and measurement methods needed for performance of the Statement of Work.

(5) The background and experience of the proposed personnel relevant to accomplish the QA specifications in the Statement of Work.

(6) The offeror's general approach for accomplishing the QA specifications in the Statement of Work.

c. Quality Assurance Project Plans. The Quality Assurance Project Plan (QAPP) defines the data quality objectives for a project, identifies the critical measurements to be performed, and discusses the various QA/QC activities to be conducted during the measurement portion of the work. The QAPP is quantitative in content and should be a specific delineation of the offeror's approach for accomplishing the QA specifications in a Statement of Work. As in the case of the QA Program Plan, the QA Project Plan may be required as part of the technical proposal. Alternatively, the QAPP may be required as a deliverable under the contract. The form and content of the QAPP (unless specified otherwise) is as follows:

(1) Title page with provision for approval signatures.
(2) Table of contents.
(3) Project description.
(4) Project organization(s) and responsibilities.
(5) Quality Assurance objectives for measurement data in terms of precision, accuracy, completeness, representatives and comparability.
(6) Sampling procedures.
(7) Sample custody.
(8) Calibration procedures, references, and frequency.
(9) Analytical procedures.
(10) Data reduction, validation, and reporting.
(11) Internal quality control checks and frequency.
(12) Quality Assurance performance audits, system audits, and frequency.
(13) Quality Assurance reports to management.
(14) Preventive maintenance procedures and schedules.
(15) Specific procedures to be used in routinely assessing data precision and accuracy, representativeness, comparability, and completeness of the specific measurement parameters involved.
(16) Corrective action.

If the QA Project Plan is required as a contract deliverable, the contract must specify how many copies and when the QAPP must be submitted. The contract must also specify how many days the Government has to review the QAPP. When the QAPP has been approved, the Contracting Officer will incorporate the QAPP by issuance of a change order to the contract. The contractor will submit a request for an equitable adjustment to the contract in response to the change order. Depending on the nature of the change, the equitable adjustment may increase, decrease, or not change at all, the cost of the contract, or impact the delivery schedule.

e. Pre-Award Audits.

(1) Offerors determined to be in the competitive range based on the initial evaluation may be required to submit to a qualitative Technical Systems Audit, if required in the solicitation. The purpose of the systems audit will be to assess the adequacy of the offeror's quality control program as related to the scope of work for the contract. The systems audit will be performed by the EPA QA Officer or his designee.

(2) Some or all of the following areas of concern will be addressed, as appropriate, to the contract scope and goals: (a) facilities, (b) equipment, (c) methods, (d) Quality Control Systems, (e) recordkeeping, (f) data validation, (g) maintenance and calibration procedures, (h) reporting, (i) adherence to documented procedures, (j) procurement and inventory procedures, (k) personnel training, and (l) feedback and corrective action.

(3) Costs of the audit must be borne by individual offerors. Such costs will be limited to the personnel time required to coordinate the on-site systems audit.

(4) As an alternative, offerors in the competitive range may be required to participate in a (Quantitative) Performance Audit. The objective of this audit is to assess offerors' potential for producing a quality of data which meets project objectives. Quantitative audit techniques involve the use of reference materials of known composition or value and/or splitting of samples for independent analyses, independent calibration checks on individual system components, and/or the use of co-located samplers.

(5) A complete record of information including printouts, graphs, calibration charts, and all other pertinent information used to arrive at reported results will be included with the test results as part of the best and final offer.

(6) The measurement techniques to be audited will be defined by the Project Officer. Costs of participation in a performance audit shall be borne by the individual offerors.

9. Foreign Research Contracts. All proposed contracts involving research projects to be conducted in a foreign country by a foreign contractor must have clearance from the Department of State in order to determine the consistency of such projects with U.S. foreign policy objectives. This clearance should be requested by the initiating project office prior to negotiations. All such requests to the Department of State will be processed by the EPA Office of International Activities.

CHAPTER 8 - DEVELOPMENT OF THE PROCUREMENT REQUEST

Table of Contents

1. Introduction 8-1

2. The Procurement Rationale Checklist 8-2

3. The Attachments 8-3

4. Item Descriptions 8-5

5. Additional Attachments Not Listed in the 32 Point Checklist 8-20

6. Notify the CO Concerning the Following 8-22

CHAPTER 8 - DEVELOPMENT OF THE PROCUREMENT REQUEST

1. Introduction.

a. Once the decision to contract has been made and procurement planning accomplished, the next step in the acquisition process is the initiation of a procurement request (PR). Procurement requests must be utilized for the acquisition of personal property and nonpersonal services from commercial (i.e., non-Federal) sources of supply. The authorized forms to be used are EPA Forms 1900-8, Procurement Request/Order, and 1900-8A, Continuation Sheet.

b. This Chapter will provide detailed discussion on the content of and format to be used both in the Procurement Request Forms and other required documentation, such as the Procurement Request Rationale Checklist. As the Project Officer, it is your responsibility to determine whether initiation of a procurement request is appropriate; if so, to properly complete the necessary documentation; obtain the required approvals; and forward all documentation to the Contracting Officer for review and appropriate action.

c. The Procurement Request Package is made up of the 32 POINT PROCUREMENT REQUEST RATIONALE CHECK LIST and its ATTACHMENTS. Some of the attachments are required for all procurements and others are only required when the specific nature of the procurement dictates their use (i.e. Gov. Furnished Property, limitation of sources, Advisory & Assistance Services, high dollar value).

d. Preparation. To assist you in the preparation of the Procurement Request Package, the 32 POINT PROCUREMENT REQUEST RATIONALE CHECK LIST explanatory notes are included which will assist you in answering the questions and preparing the necessary documents. A concise version of the 32 POINT PROCUREMENT REQUEST RATIONALE CHECK LIST is found in the Contract Management Manual, Chapter 2.

IN ALL CIRCUMSTANCES WHERE IT IS FELT THAT ADDITIONAL INFORMATION OR DIRECTION IS NEEDED TO PREPARE THE PROCUREMENT REQUEST PACKAGE, THE PROJECT OFFICE IS ENCOURAGED TO CONTACT THE RESPONSIBLE CONTRACTING OFFICER.

NOTE: Because the Statement of Work (SOW) and the creation of the Technical Evaluation Criteria and explanation of the Technical Evaluation Process comprise a critical and substantial portion of the Procurement Request Package, these ATTACHMENTS to the 32 POINT PROCUREMENT REQUEST RATIONALE CHECK LIST are addressed in Chapters 5 and 9 of this Handbook.

2. The **PROCUREMENT REQUEST RATIONALE CHECKLIST** (to be submitted with EPA Forms 1900-8 and 1900-8A)

Item 1: The title of this procurement is _____.

The Title of the procurement is needed to identify the procurement action.

Item 2: This procurement request package contains the following documents. (Check all applicable boxes and attached documents as appropriate.)

See Attachment	Check	Description
_____	_____	EPA Form 1900-8
_____	_____	Procurement Abstract
_____	_____	Statement or Scope of Work
_____	_____	Concise Technical Proposal Instructions
_____	_____	Competitive Technical Evaluation Criteria
_____	_____	Justification for Other Than Full and Open Competition (JOFOC)
_____	_____	D&F to provide full and open competition after exclusion of source (see FAR 6.2)
_____	_____	Justification for Advisory and Assistance Services
_____	_____	Justification of Need (Government Furnished Property (GFP)/ Equipment)
_____	_____	Quality Assurance (QA) Review Form
_____	_____	Recommended Sources List
_____	_____	Reports Description
_____	_____	Government-Furnished Property Description
_____	_____	Discussion of controls for sensitive contracting
_____	_____	Discussion of how procurement fits into overall the contracting strategy (if required)

3. The Attachments. The project office must complete and provide the attachments which are required for the procurement action. An explanation of these and additional attachments is provided at the end of this check list.

a. EPA Form 1900-8 "Procurement Request/Order" This document provides funding for the procurement. When initiating a procurement a "planning purpose" 1900-8 is used which does not commit funds. However, the planning purchase request must provide the estimated dollar value of the procurement and the Allowance Holder Code, and the date funds are expected to be available. The request must be signed by the same officials required to authorize funding documents. Before a contract award is made, the PO must provide OAM with a funded "Procurement Request/Order." Additionally, per OAM memo entitled "Accuracy of Procurement Request Funding Data," dated 28 June 1993, program offices must attach a copy of the IFMS Requisition Accounting Line Inquiry Screen for each line of accounting data.

b. The procurement abstract is the basis for the procurement synopsis contained in the Commerce Business Daily. It should include:

(1) name of the office to be supported,
(2) a brief statement of the type of work required,
(3) the desired qualifications of a contractor so that the contracting community has enough information to decide if they are qualified to pursue the RFP,
(4) a statement of whether the procurement is to be openly competed or set-aside for small businesses, 8(a) firms or contain some other restriction,
(5) information on the magnitude of the requirement, i.e. for level-of-effort contracts the period of performance and maximum potential level-of-effort.

c. Concise Technical Proposal Instructions. [Required for all procurements for services.] The Solicitation has general instructions to each offeror for preparing the technical proposal. The Program Office may add additional specific instructions if it so chooses. These additional instructions may also include guidelines for proposal preparation (e.g. suggested length, organization, use of charts, etc.). Additionally, each solicitation for services includes boiler plate language designating the labor classifications and setting forth standard experience and educational qualifications. If the standard classifications and/or qualifications do not meet the requirements of the project office, a separate classification and/or qualification statements should be developed and furnished with the Procurement Request.

d. Competitive Technical Evaluation Criteria. [Required for all procurements.] This document contains an explanation of the Government's evaluation process. It must state that the Government will evaluate how well, to what extent, how many, how often, etc., the offeror demonstrates its capabilities in the specified areas of performance, skill and ability. It will also state the relative importance the Government places on each of these areas. For further information, please refer to Chapter 9 of this Handbook.

e. Justification for Other Than Full and Open Competition (JOFOC). The Federal Acquisition Regulation requires that procurements be awarded on a competitive basis in all practicable instances. However, there are times when full competition is not possible. The FAR part 6.302 lists the seven (7) circumstances which permit other than full and open competition according to the law.

They are:

(1) Only one responsible source and no other supplies or services will satisfy agency requirements.
(2) Unusual and compelling urgency.
(3) Industrial mobilization; or engineering, development, or research capability.
(4) International agreement.
(5) Authorized or required by statute.
(6) National security.
(7) Public interest.

A justification must fall within one of these areas before a procurement will receive restricted or non-competitive consideration. Requests which result from the lack of planning for future contracts **DO NOT** fall within one of these areas. It is important that the project office be aware of the time it takes to place a contract and to plan accordingly.

f. The form in the CMM, page 2-F4-1 is to be completed by the Project Office. Chapter 3 of this Handbook contains a detailed section on the preparation of the JOFOC. Because non-competitive procurement procedures are discouraged, the project office is advised to contact the procurement office as soon as a non-competitive procurement is contemplated to discuss the rationale for the action and to receive direction and guidance on the need and development of the JOFOC. This will speed up the acquisition process and help eliminate wasted effort.

g. D&F to provide full and open competition after exclusion of sources [FAR 6.2]. If it is determined that one or more sources of supply or services should be precluded from competing on a procurement action in order to establish or maintain an alternative source or sources, and that such action will likely

result in reduced overall costs for the acquisition, this justification shall be provided. This determination is not related to set-asides for small or disadvantaged businesses or labor surplus area concerns. The Responsible Associate Director is delegated authority to make the D&F per EPAAR 1506.2.

h. Quality Assurance (QA) Review Form [EPAAR 1546.201]. This form documents the need to assure that environmentally related measurements are scientifically valid. The PO indicates on the form whether environmental measurements will or will not be required. The form must be fully completed if the procurement is in excess of $25,000 and the accounting data object class is:

25.32	R & D contracts
25.35	Program contracts
25.47	Occupational Health Monitoring
25.49	Other work related to Occupation Health & Safety
26.01	Laboratory Supplies
31.01	Scientific & Technical Equip.

The Quality Assurance Officer shall be designated as a member of the Technical Evaluation Panel if the estimated value of the procurement is over $500,000. See Chapter 6 of this Handbook. [See CMM Ch. 2.5(a)(2) and fill out form provided in CMM page 2-F3-1&2]

i. Discussion of how procurement fits into overall contracting strategy (if required). This information shall be submitted if the Project Office has developed a long-term contracting strategy.

4. Item Descriptions.

Item 3: This procurement [ ] involves/ [ ] does not involve advisory and assistance services (AAS) or sensitive contracting areas. (If such services are involved, attach a copy of the justification required by Chapter 2 of the Contracts Management Manual, the original should be forwarded in accordance with Chapter 2.) For both AAS and sensitive contracting areas, attach a discussion of how the procurement fits into your overall contracting strategy. (See Chapters 2 and 6 of this Handbook for further information.)

Advisory & Assistance or Sensitive Contracting areas question and attachments.
[Ref.: CMM Ch. 2, pages 2-4 and 2-A-1 through 2-A-9]
A&A services include:

1. individual experts and consultants
2. studies, analyses and evaluations
3. management and professional support services
4. engineering and technical services

NOTE: The many EPA contracts involve AAS. If you believe your procurement does not fall into this category, contact your CO for a determiniation of whether or not this requirement applies.

Per OMB Circular A-120, para. 7, the A&A approval must address the reasons for use and make the certifications summarized as follows. The A&A services shall not be:

1. used for policy, decision-making, or managerial work which is the direct responsibility of Agency officials,
2. used to bypass personnel ceilings, etc.
3. awarded preferentially to former Gov. employees,
4. used to aid in influencing or enacting legislation,
5. procured through grants or co-op agreements, and
6. used to obtain professional or technical advice which is readily available within the Government.

NOTE: The Statement of Work and other documents must support and be in agreement with this determination.

For Vulnerable/**Sensitive Contracting areas**, i.e. budget preparation support, reg. support, policy support, eval. of another EPA contractor, etc., prepare certification per CMM Ch. 2. (page 2-C-1). Documentation similar to that for A&A Services is required. (See Chapters 2 and 7 of this Handbook for more details.)

Item 4: This procurement [ ] involves/ [ ] does not involve legal analysis. I have/ [ ] have not [ ] discussed this procurement with the Office of General Counsel which [ ] concurs/[ ] does not concur with proceeding with this procurement.

Legal Analysis Procurement question. This refers to legal services for analyzing & interpreting the law; not to be confused with litigation & regulatory support services. If the procurement is for legal services OGC must concur.

Item 5: I [ ] anticipate or have knowledge of/ [ ] do not anticipate or have any knowledge of organizational conflict of interests issues related to this procurement. (If affirmative, describe conflict in an attachment.)

Over the past several years, organizational conflict of interest (OCI) has been the object of mounting concern. This has been the subject of hearings held before the Senate Committee on Governmental Affairs and it has also been a major issue of concern in reports issued by The Office of Technology Assessment (OTA) and General Accounting Office (GAO). In acknowledgement of this concern the Agency has put an increased emphasis on conflict of interest issues.

If the Government were to award a contract to an offeror whose potential for a conflict of interest is clearly recognizable when comparing its business activities with its Government contract obligations, the Agency's credibility with the public could be severely damaged. Such a loss of public confidence in the integrity of the Agency's programs could adversely affect EPA's ability to execute environmental initiatives.

The Agency cannot risk relying upon contractors for management support who, by the very nature of their other work, either directly or through another firm, will place themselves in actual or potential conflict of interest situations. Consequently, the Agency has developed policies and procedures to avoid, mitigate or neutralize actual or potential conflicts of interest. Included in these policies are provisions which allow the Contracting Officer to prohibit any firm from receiving an award for a management support or advisory and assistance service contract if it is determined that actual or potential conflicts of interest, or the appearance of such, could occur if the firm were to perform the management support or advisory and assistance services. Such a determination is made on a case-by-case basis by comparing the statement of work with the representations made by each offeror regarding their business activities and affiliations. These policies and provisions also provide for the establishment of safeguards for avoiding and for identifying, mitigating and neutralizing conflicts of interest during contract performance.

If it is determined that firms performing certain types of work would be put in a conflict of interest situation by their very acceptance of this contract, the Project Officer shall document and give examples of all areas in the Statement of Work where a potential for COI exists. If the Contracting Officer agrees with the PO's documentation the CO will seek approval to exclude firms which perform the identified type of work from receiving an award under this procurement action. (Exempting Response Action Contractors from performing EPA management support type contracts is an example of this situation.) [Ref.: FAR 9.5, OAM Procurement Police Notice 91-06, dated 23 Jul 91]

Item 6: Listed below are special EPA employee(s) who are or will be participating in EPA's processing or managing of this procurement, together with a list of their non-Government employers. Check here if none [ ].

EPA Special Employees	Non-Government Employer
_____	_____
_____	_____

Special EPA employees listed. [Ref.: EPAAR 1503.600-71] A special EPA employee is an EPA officer or employee who is retained, designated, appointed or employed for not more than 130 days during any period of 365 consecutive days. EPA has developed a policy regarding the placement of contracts with such employees within 365 days of the termination of their employment to preclude conflicts of interest. The Project Office must identify these employees to insure that this policy is observed. (NOTE: Regular EPA employees are not mentioned in the checklist but are mentioned in the EPAAR reference.)

Item 7: This procurement [ ] is/ [ ] is not based on an Unsolicited Proposal.

Unsolicited proposal question. [CMM Ch. 3] Special procurement rules apply for awarding a contract based on an unsolicited proposal. All unsolicited proposals are to be forwarded to the Office of Grants and Debarment of OAM for processing. A copy of the technical proposal will be returned to the appropriate technical office for technical evaluation. (See Chapter 6 of this Handbook for further information.)

Item 8: NOT USED

Item 9: The name of the proposed Project Officer is _____. He/she [ ] has/ [ ] has not been certified as an EPA Project Officer.

The project office, Division Director or higher, shall designate a Project Officer for each procurement action. The Project Officer shall not act in that position until proper certification has been obtained, and thereafter shall perform the responsibilities of the position within the limits of the certification, barring any waiver. The certification process is delineated in chapter 7 of the Contracts Management Manual. To become certified, the designated individual must complete two courses, the Basic Project Officer Training course and Contracts Administration course. Certification is requested through EPA form 1900-65 (6-85) DESIGNATION AND APPOINTMENT OF PROJECT OFFICER/WORK ASSIGNMENT MANAGER/DELIVERY ORDER OFFICER and is approved by the Contracting Officer.

Item 10 : I [ ] recommend/ [ ] do not recommend prospective sources for this procurement. (If sources are recommended, list in an attachment.)

Sources Recommended question. The RSL is a list containing the names of contractors that, in the PO's professional judgement or experience and from sources identified through the Office of Small Disadvantaged Business Utilization, possess the relevant capabilities to perform the resultant contract. There is no standard form to follow. The list contains the names and addresses of the contractors.

Item 11: This procurement anticipates [ ] a new contract award/ [ ] an additional work modification to existing contract no. _____. It also anticipates that it will be processed as a [ ] competitive procurement/ [ ] other than full and open competition. (Note: If other than full and open competition is recommended; (a) attach appropriate justification as described in Part 1506 of the EPA Acquisition Regulation. Also see sample format (Figure 2-4 in the CMM). Attach the Project Officer's Certification that the data provided in the justification is accurate and complete.)

New contract or Modification question. (self explanatory) **Competitive or Non competitive question and attachment.** [Ref.: FAR 6.3; see EPAAR 1506 for JOFOC execution] [Also attach PO certification, CMM Figure 2-F4.] Procurements can be placed non-competitively if one of the following conditions exists.

1) Only one responsible source,
2) Unusual and compelling urgency,
3) Need for industrial mobilization,
4) International agreement,
5) Authorized or required by statute,
6) National security
7) Public Interest

NOTE: EPAAR specifically mentions the use of #1 & #5 in EPA considerations.

Item 12: This proposed procurement is appropriate for [ ] total small business set-aside/ [ ] total small business/labor surplus area (SB/LSA) set-aside; or [ ] partial SB/LSA set-aside; [ ] partial SB set-aside; [ ] 8(a) set-aside; [ ] LSA set-aside; or [ ] none of the above (check only one). Consult the Office of Small and Disadvantaged Business Utilization for advice.

Set-aside question. All procurement requests are to be processed through The Office of Small and Disadvantaged Business Utilization (OSDBU) whose review responsibilities are set forth in EPAAR 1519.201-2(c)(3). As indicated in

the checklist, the project office is to consult with the OSDBU and Prepare EPA Form 1900-37 "Record of Procurement Request Review."

This form, accompanied by a copy of the Statement of Work and a Project Officer recommendation regarding the extent of competition desired (i.e. open, complete or partial set-aside for small business or other minority, 8(a), etc.), shall be forwarded to the Small and Disadvantaged Business Utilization officer for review and recommendation.

(NOTE: For information on set-asides see: for Small Business Definition - FAR 19.001; Set-asides explained - FAR 19.501 & 19.502; for Labor Surplus Areas Definition - FAR 20.101.)

Item 13: (a) The estimated period of performance is _____ months after the effective date of the contract [ ] inclusive/ [ ] exclusive of submission of any final report which may be required.

(b) The schedule of deliverable items (excluding reports) is as follows. Check here if no deliverable items are required [ ].

Item No.	Description	Delivery Quantity	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If the Project office anticipates a contract period of performance exceeding 36 months, a written justification must be forwarded with the acquisition request package. EPAAR 1517.202(b) requires approval, by the Chief of the Contracting Office, prior to the release of the solicitation. The justification must include a detailed rationale for the increase. For example, if the effort is considered long term and disruption of the contract would, in some way, be detrimental to the Agency then this would constitute a viable reason to extend the period of performance.

Item 14: This procurement anticipates that the following options will be needed. Check here if no options are anticipated [ ].

Description of Option — Term of Option
(Description may be indicated in a separate attachment)

The Contracting Officer is responsible for justifying, to the Head of the Contracting Activity, the rationale for contract option quantities in excess of 50% of the base

quantity. This applies to each year of performance under service contracts. The justification must be supplied by the Project Office. It is a Project Office responsibility to adequately estimate the amount of effort necessary to complete a specific contract. When labor in excess of 50% of the base quantity is requested, OAM will question the validity of the government estimate. A legitimate reason for the increase might include the fact that the intended work is such that no specific measurement can be made to gauge future work and an increase in the base is the only way to insure contract coverage.

Item 15: The following reports are required (describe in an attachment). Check here if no reports are required [ ]. For each separate report required, describe the following:

(a) Type of report (e.g., draft, final, interim, special, etc.)
(b) Descriptive title (e.g., monthly progress report)
(c) Minimum content requirements
(d) Number of copies required
(e) Distribution (with complete addresses of all recipients)
(f) Delivery schedule
(g) Number of days the Government will have to reviews comments, approve (disapprove) and return (as appropriate)

Where specific report formats, containing the information above, are used repetitively, "standard" formats are established or may be established with the servicing CO. Maximum use of such standard formats is encouraged. Examples include monthly progress reports, financial progress reports and final reports.

Contractor to furnish Reports question and attachment. Attach Reports Description(s).

Item 16: Peer review of Contractor-generated documents [ ] will be/ [ ] will not be required.

Contractor Peer Review question . [Ref.: EPA Order 2200.4A "EPA Publications Review Procedure"] This question refers to scientific review of documents/deliverables.

Item 17: Government property, data, or services [ ] will be furnished/ [ ] will not be furnished under this procurement. (If furnished, describe in an attachment including quantity and date available.

Government Furnished Property, Data, Services question. Will the Government provide <u>anything</u> which the contractor will need in order to fulfill its contractual obligations? This includes data or other written material. All

Government furnished items must be clearly defined. If Government Furnished Property (GFP) is provided such action must be justified. If the Government is going to provide property to the contractor, the project office shall furnish an attachment giving a complete description of the property, its estimated value, its condition and an indication whether it will be consumed by the contractor during performance of the contract. Consult the EPA Property Manual, and CMM, Chapter 5 for complete information in this area.

Item 18: Budget. (An attachment may be used.)

(a) The total estimated budget for the basic effort and all options is $_____.

(b) The estimated funding for the current fiscal year is $_____.

(c) The estimated total cost of Other Direct Costs is $_____. (If possible, indicate estimate of significant sub-items such as travel, computer time, consultants, equipment and material.

(d) For level of effort actions and other actions where hours, rather than an end product, are to be purchased, indicate for the basic and all option periods the number of hours required, by category, with definitions for each category.

Note on para (c): Cost reimbursement contracts for services often need a general category for billing small miscellaneous expenses other than labor which are directly related to the performance of this contract. These are designated as Other Direct Costs (ODCs) and may include office supplies, testing equipment, travel, periodicals, etc. which the contractor uses exclusively in the performance of this contract. The Project Office should specify the maximum dollar amount which the contractor will be allowed to use for ODCs out of the total amount of the contract. Amounts should be specified for each base and option period in the contract. The Contracting Officer will enter these ceiling amounts in the RFP.

Note on para (d): For level-of-effort contracts where services are being purchased, the solicitation contains estimated levels-of-effort (labor hours). This is done for budgeting purposes and for standardization in evaluating the proposals. The Project Office must provide this information for inclusion in standard proposal instructions in the RFP. If the Project Office designates the use of labor classifications other than

those set forth in the standard solicitation language (Section L clause entitled "Definition of Labor Classifications"[EP52.215-120], as prescribed by Section L clause entitled "Instructions for the Preparation of Technical and Cost or Pricing Proposals" [EPAAR 1552.215-73], para. (b)(2)), then this information should be included as part of the Additional Proposal Instructions.

Independent Government Cost Estimate (IGE)
[Required for all procurements]
This is a detailed estimate of how much the Government thinks the contract will cost. Proposals for cost reimbursement contracts are evaluated on the reasonableness of proposed costs rather than on low price. Therefore the IGE is essential to the Government in determining if the proposed costs are reasonable.

The IGE must be developed without any contractor assistance. The IGE is the government's best estimate for the realistic cost of the project. The IGE should contain the rationale as to how the estimate was developed, whether it was based on historical costs to date or current cost of similar efforts of the same size and scope, etc. The IGE describes the labor hours required by category (Professional level/P-level) within the base and optional periods, the travel costs anticipated, and Other Direct Costs (ODC) such as equipment, consultants, or computer time. It is important to provide estimates of the ODC and Travel costs as part of the IGE as these figures may be provided to the offerors in the solicitation.

Item 19: This procurement [ ] is [ ] is not subject to the requirements of OMB Circular A-76. (If A-76 applies, required documentation must be provided with the PR.)

OMB Circular A-76 question. It is not the Government's intent to be in competition with private business. Therefore, if a commercial or industrial item or activity can be obtained from the private sector for less than it would cost the Government to make the item or perform the same activity, it should be obtained from the private source. However, if the Government has the capability to perform the requirement and can do it for less than any private source the item shall be made or activity shall be performed "in-house." If the Government has not developed the capability or capacity to make the item or perform the activity the procurement is not subject to the requirements of OMB Circular A-76. Inherently Government functions are outside the scope of this Circular.

Item 20: This procurement [ ] requires/ [ ] does not require priority processing (a brief priority justification may be attached).

(To be completed by procurement office:)

[ ] Approved [ ] Disapproved

_____ _____

Date Chief, Contracting Office

Priority processing question. The procurement office establishes a procurement milestone schedule for each procurement based on work load and does its best to meet the requirements of each project office. If the project office requests priority processing, a special effort will be made on the part of the procurement office to closely coordinate all aspects of the procurement with the project office and expedite individual elements of the procurement process in as far as possible.

The Procurement Request must include a written justification specifying the necessity for priority processing as it relates to program objectives and the Agency's mission.

The request shall be forwarded to the appropriate Chief of the Contracting Office who will review and must approve the priority justification and determine priority assignment.

The appropriate contract operations office will keep the program officer advised of the status of the request for priority procurement.

Should an action not previously designated as priority become a priority at a later date, a justification shall be submitted through the same channels and approvals as if it had initially been designated priority.

Item 21: This procurement [ ] will/ [ ] will not involve the testing of human subjects in accordance with EPA Order 1000.17.

Human subject testing question. (self explanatory)

Item 22: This procurement [ ] does/ [ ] does not include acquisition of membership in an association. (If membership in an association is included, attach a certification indicating that the primary purpose of membership is to obtain direct benefits for EPA necessary to the accomplishment of its functions or activities.)

The certification must indicate and demonstrate that the primary purpose of membership is to obtain direct benefits for EPA and are necessary to the accomplishment of its functions or activities.

Item 23: This procurement [ ] is/ [ ] is not for leasing of motor vehicles. (If affirmative, attach certification per FAR 8-1102.)

The certification shall address the requirement of FAR 8.1102, which generally indicate that leased vehicles:

1) must meet prescribed fuel economy standards,
2) must be essential to the agency's mission as certified by the head of the agency,
3) must meet any agency requirements or approvals, and
4) must not be available from GSA.

Item 24: This procurement [ ] is/ [ ] is not to be funded from more than one appropriation. (If affirmative, see Chapter 9 of the CMM and the memorandum from the Comptroller and the Director, Office of Administration on "Contracts Funded from Multiple Accounts--Procedures for Identifying Contract Costs," May 14, 1985.) [CMM, Ch. 9, para. 9.6 e.(1).]

This document must be developed for any contract that is expected to be funded from more than one appropriation, as required by the Contracts Management Manual and memorandum entitled "Contracts Funded from Multiple Accounts--Procedures for Identifying Contract Costs," May 14, 1985, from the Comptroller and the Director, Office of Administration. The rationale document must state the estimated allocation of the appropriations to be used as a percent of the total funding of the contract. This allocation formula should coincide with the benefits expected to accrue to program areas funded by the respective appropriations as a result of the services performed under the contract. The document requires approval by the Director, HQ Financial Management Division (3303).

Item 25: This procurement [ ] will/ [ ] will not involve statistical surveys, data collection, using questionnaires, or statistical analysis of survey data. (If affirmative, procurement office will include instruction in solicitation for offerors to obtain the EPA Survey Management Handbook).

SOW requires surveys and data collection question. [Ref.: Paperwork Reduction Act; EPA Survey Management Handbook] If, in the performance of this contract, the Contractor is required to solicit the same or similar information from ten

or more public respondents (anyone other than a Federal agency or its employees) the Contractor shall not proceed until prior approval is obtained from the Office of Management and Budget as required by the Paperwork Reduction Act. Such approval is identified by an OMB Approval Number which EPA shall furnish to the Contractor. The approval of a work assignment by the Contracting Officer does not in and of itself constitute approval for the Contractor to solicit information, unless the information request will include fewer than ten public respondents or the work assignment approval specifically references the OMB Approval Number.

The EPA Office of Policy, Planning and Evaluation, Phillip Roth (260-2683), puts out the EPA Survey Management Handbook which tells what to look for in creating a statistical survey.]

Item 26: To the best of my knowledge, the work specified in this procurement action does not unnecessarily duplicate any other work previously performed, or being performed, under my authority.

This requirement is not a duplication of work under another contract question. This question was developed by OAM in response to an IG concern over duplication of work because portions of many Statements of Work are similar, if not identical to each other. This certification made by the Project Office supports the Contracting Officer in assuring that the Government is not paying to have the same work done twice.

Item 27: To the best of my knowledge, the work specified in this procurement action does not involve any "prohibited contracting activities" listed in Chapter 2 of the Contracts Management Manual.

Prohibited contracting activities question. [Ref.: CMM Ch. 2, pages 2-F-1 through 2-F-5, or Chapter 2 of this handbook]

Item 28: This procurement [ ] will/ [ ] will not, involve any of the areas requiring special contract controls listed in Chapter 2 of the Contracts Management Manual. (If the procurement involves such areas, a special discussion must be attached detailing proposed control procedures to be enforced.)

Special controls question and attachment. Ref.: CMM Ch. 2, page 2-D-1 for list] Situations requiring special controls. They include:

1. Contractor in EPA office space,
2. Contractor provides Freedom of Information Act

response support,
3. Contractor works with Confidential Business Info.
4. Contractor personnel could appear to be EPA employees.

If one of these situations exists, controls are required. They are to be set forth in an attachment to the procurement package. Management controls that involve the contractor are to be clearly spelled out in the Statement of Work in the contract.

Item 29: This procurement [ ] does/ [ ] does not, involve requirements governed under the Federal Information Resources Management Regulation (FIRMR). [Note: If the procurement involves the FIRMR, a requirements analysis and draft Agency Procurement Request (APR) should be attached.] [Reference OIRM Memorandum dated 16 Jun 93.]

FIRMR controlled requirements question. If the procurement contains any ADP or Telecommunications work the justification must accompany the procurement request. A procurement can contain up to 2.5 million dollars worth of ADP or Telecommunications work without being processed as a FIRMR controlled procurement. If the procurement contains over 2.5 million dollars worth of ADP or Telecommunications work, the provisions of the Federal Information Resources Management Regulations will govern the procurement. In such cases the procurement for this equipment and these services will be placed through the ADP Placement Section and the project office must attach; 1) a Requirements Analysis, and 2) a Draft Agency Procurement Request.

This form is to be filled out by the Senior Information Management Official of the cognizant Assistant Administrator's office. This determination will indicate if the Statement of Work will require the Contractor to furnish/perform more than 2.5 million dollars worth of ADP equipment or services. The form is then sent to the Director, Office of Information Resource Management (MPES-OIRM, PM211-M) for approval. An approval from GSA is required for the purchase of ADP in excess of the 2.5 million dollar threshold. For questions regarding planned ADP procurements call Irv Weiss (202) 260-9388 or Tom Fioramonti (202) 260-8193.

Item 30: (a) The Statement of Work/Specifications involve the use of items subject to RCRA Procurement Guidelines (see CMM Chapter 13). ___ YES ___ NO

(b) If YES, the items are: _____
_____
_____
_____

(c) The specifications for the item(s) complies with the applicable RCRA Procurement Guidelines.
___ YES ___ NO

(d) If NO, the Project Officer must check the appropriate box and provide an explanation why items containing recovered materials were not used.

_____ the price is unreasonable;
_____ applying minimum-content standards results in inadequate competition;
_____ Obtaining the designated items results in unusual and unreasonable delays; or
_____ recovered items do not meet all reasonable performance specifications.

EXPLANATION (this may be provided in a separate attachment)

_____
_____
_____
_____

RCRA Procurement Guidelines question. [Ref.: CMM Ch. 13] EPA has an Affirmative Procurement Program for maximizing Gov. use of Recovered Materials (see Section 6002 of RCRA). OSW has issued procurement guidelines. A recovered materials clause and Contractor certification are included in the contract. The Project Office must provide a written justification if it requires the use of an item which is **NOT** produced from recovered materials, even though the item appears in the OSW "Recovered Materials" guidelines.

Item 31: The desired award date for this procurement is _____.

Desired date of contract award question. (self explanatory) This date is used by the procurement office when establishing procurement milestones.

Item 32: This procurement [ ] does/ [ ] does not, include a requirement for use of Government-provided in-bound and direct dial out-bound long distance services. (If affirmative, the

Statement of Work shall require mandatory use of the FTS-2000 network.)

Long distance phone call question. If the Contractor is required to use Gov. provided long distance phone service it must be so stated in the SOW along with a requirement that the Contractor use the FTS-2000 network. The project office must obtain Officer of Administration & Resources Management (OARM), National Data Processing Div. -RTP (NDPD) and Telecommunications approval.

_____ _____

Signature Date

_____

Title

_____

Phone Number

5. Additional Attachments Not Listed in the 32 Point Checklist.

a. **Technical Evaluation Panel (TEP) Appointments** [Required for all procurements][Reference EPAAR 1515.61]

The OAM Source Selection Official (SSO) appoints the TEP members based on recommendations from the project office. The recommendations shall include the name and relevant experience of each individual. The TEP must be comprised of at least three (3) members for procurements over $500,000. There is no upper limit on the number of panel members; however, with a higher number of members the logistics of finding a meeting location become more difficult and the consensus discussions become more involved. Per EPAAR 1515.612, the Project Officer is appointed the chairperson of the TEP. For procurements with a potential value of $500,000 or less, the Project Officer may be the only member of the TEP. All TEP members should have relevant knowledge and/or expertise of the types of services or assistance required by the solicitation. This is crucial to the integrity of the evaluation process, ensuring competent and equal treatment of each offerors proposal. The RFP cannot be released until the TEP selection document has been signed by the SSO.

It should be noted that TEP members are involved in the competitive procurement process from start to finish. TEP members play an IMPORTANT and NECESSARY role in the procurement process and need to devote a lot of time to the process in order for it to be successful. Panel members need to be aware of this commitment prior to serving on a panel.

b. **Award Fee - Performance Evaluation Board (PEB) Appointments** [Reference FAR 16.404, EPAAR 1516.404]

This document is required only when an award fee contract type is selected by the Contracting Officer. Per EPAAR 1516.404-276, the members of the Performance Evaluation Board (PEB) are selected through mutual agreement between the Responsible Associate Director (RAD) and the responsible program office. The chairperson of the PEB shall be the division director of the cognizant program office. The chairperson and Contracting Officer recommend other members of the PEB, including the Evaluation Coordinator, Executive Secretary and Performance Monitors. Members are recommended by memorandum to the Head of the Contracting Activity (HCA) who makes the formal appointment of the PEB through memorandum. This formal appointment must be made before the solicitation can be issued.

c. **Award Fee Plan**
[Reference EPAAR 1516.404.277]

This document is required only when an award fee contract type is selected by the Contracting Officer. The "Award Fee" is money which is used by the Government to reward a contractor for better than average performance. The award fee plan describes the process of monitoring, assessing and evaluating the contractor's performance to determine the amount of award fee earned. This plan is developed by the Performance Evaluation Board (PEB). Per EPAAR 1516.404.277, the Award Fee Plan should include the following elements:

(1) The base fee amount. (This is a fixed fee which the contractor will receive.)
(2) The total award fee pool. (Money available for payment of award fee.)
(3) Performance areas to be evaluated.
(4) Criteria to be used in the evaluations.
(5) Relative weights to be assigned to performance areas and to the evaluation criteria.
(6) Frequency and timing of award fee determinations.
(7) The proportion of the total award fee pool to be available for each evaluation period.
(8) The procedure to be followed (the timing involved) in evaluating performance and determining the award fee.

The Evaluation Criteria are included in the solicitation. During the evaluation the PEB compares the contractor's performance with the evaluation criteria to determine a performance rating and thus the amount of award fee which will be paid.

d. **Procurement Integrity Certifications**
[Required for all procurements] [Reference FAR 52-203-8, Chapter 1 of this Handbook]

Procurement Integrity Certifications must be signed by Agency officials who:

(1) draft SOWs.
(2) review & approve specifications
(3) develop the procurement package
(4) prepare & issue the solicitation
(5) evaluate bids or proposals
(6) select an offeror for award
(7) participate in negotiations
(8) review & approve contract award.

or who otherwise contribute to the fulfillment of an Agency need or requirement through the procurement process.

6. Notify the CO concerning the following:

a. Pre-Proposal Conferences. A pre-proposal conference is a collective meeting of all prospective offerors that is held by the Government for purposes of clarifying any questions offerors may have regarding the work required in the solicitation. Pre-proposal conferences may form an important part of the solicitation process. Although the final determination to conduct a pre-proposal conference is normally made by the Contracting Officer, you may suggest in your PR Rationale Checklist that one be held. Considerations to address in making your recommendations are as follows.

b. A pre-proposal conference would be advantageous to the Government and prospective offerors in order to:

(1) Clarify or explain complex specifications, Statement of Work, or proposed contractual provisions--e.g., patent rights and data requirements;

(2) Discuss or emphasize the importance of any qualification requirements that have been set forth in the synopsis and solicitation--e.g., offerors' capabilities, experience, facilities, and resources that are required to perform the Statement of Work;

(3) Disclose any ambiguities, inconsistencies, and gaps within or between the solicitation schedule, Statement of Work, specifications, and evaluation criteria; and

(4) Provide additional background material to prospective offerors--e.g., reports or other documents that are too voluminous to include with the solicitation, a site tour, or visits to the place of performance.

c. Site Visits. Most large support services contracts, such as Government-owned contractor-operated (GOCO) facilities contracts and other complex projects, include a Government-conducted tour of the work site. Prospective bidders have full opportunity to inspect the work site and observe the unique conditions which may hinder or facilitate their performance if awarded the contract. The tour is most often conducted by the Project Officer or a designee. During the tour, the PO identifies sections or language in the specifications peculiar to the work site and responds to specific questions. However, no additional information of a substantive nature is provided by any EPA representative during the inspection tour. If substantive issues arise during a site visit, answers are deferred until a formal addendum to the solicitation can be issued. The Project Officer should promptly bring such matters

to the CO's attention.

d. Reference Materials. Many requirements procured by EPA tie into previous contracts or pertain to a body of research or data. Consideration should be given to identifying reference materials that directly relate to the work to be performed that will provide prospective offerors both a better understanding of the requirement and will define EPA's needs. Typical reference materials are: General Accounting Office reports, previous contract findings, standards, etc.

CHAPTER 9 - PROPOSAL EVALUATION, NEGOTIATION, AND AWARD

Table of Contents

1. Introduction 9-1
2. Applicability 9-1
3. Policy 9-1
4. Source Evaluation Board Structure 9-1
5. Preparing for the Evaluation 9-3
6. Distribution and Proposal Control 9-5
7. Disclosure of Information 9-5
8. Technical Evaluation Process 9-5
9. Technical Evaluation Criteria 9-7
10. Price or Estimated Cost Factors 9-9
11. Evaluating Proposals 9-10
12. Technical Evaluation Report 9-14
13. Preparation of Business Evaluation Panel Report 9-14
14. Determination of Competitive Range 9-15
15. Written or Oral Discussions 9-17
16. Limited Discussions vs. Full Negotiations 9-17
17. Proposal Revisions 9-18
18. Source Selection 9-18
19. Award Notifications 9-19
20. Debriefings 9-20

Exhibits

1. Source Evaluation Structure 9-21
2. Tips on TEPs 9-22
3. Sample Technical Evaluation Criteria 9-26
4. Sample Score Sheets 9-29
5. Good and Bad Individual Score Sheets 9-33
6. Scoring Plan 9-39
7. Format of the TEP Report 9-40
8. Score Sheet Matrices 9-42

CHAPTER 9 - PROPOSAL EVALUATION, NEGOTIATION, AND AWARD

1. Introduction. The area of source evaluation is extremely critical to the successful accomplishment of the acquisition process. Here, you, as the Project Officer, and other key members are involved in the review of proposals that have cost thousands of dollars to prepare and will result in the obligation of substantial amounts of Government funds. This Chapter sets forth both the rules and responsibilities of the participants and sequentially sets forth the steps of the evaluation process.

2. Applicability. The provisions of this Chapter apply to all competitive negotiated procurements in excess of $25,000 except architect-engineering services.

3. Policy. EPA personnel shall conduct source evaluation and selection in accordance with consistent standards and procedures that ensure fair and impartial treatment of all offerors.

4. Source Evaluation Board Structure

a. Introduction. The Contracting Officer is responsible for performing all administrative actions leading to the award of a contract and occupies a key role in the source selection process. The need for management oversight of the administrative actions leading to contract award increases for larger dollar procurements since such procurements usually have a significant impact on the Agency's ability to accomplish its mission. This management oversight is accomplished by the monitoring of the evaluation and selection process by senior management officials and their review and approval of major pre-award decisions.

b. Source Evaluation Board Structure. Exhibit 5-1 at the end of this chapter sets forth the structure of EPA's source evaluation process.

c. Duties and Responsibilities of Parties Involved. Your responsibilities as the Project Officer and other participants in the Source Evaluation Board are as follows:

(1) Source Selection Official (SSO). The SSO is the official responsible for overall management of the source selection process. Duties of the SSO include appointing the members and chairpersons of the Source Evaluation Board, the Technical Evaluation Panel, the Business Evaluation Panel, and approving the solicitation document including any amendments. The SSO approves the competitive range and makes the source selection decision.

(2) Source Evaluation Board (SEB). The SEB consists of a chairperson, who is responsible for all of the procedural and administrative aspects of the SEB, and other specialists--e.g., technical, procurement, and financial--as may be deemed appropriate by the SSO. An attorney from the Office of General Counsel should serve in an advisory role to the SEB. The SEB makes recommendations to the SSO on selection of a contractor for award.

(3) Technical Evaluation Panel (TEP). The TEP develops the evaluation criteria and the Statement of Work for the solicitation and performs the technical evaluation of offers. All members of the TEP must review all proposals initially submitted in response to a solicitation. Unless approved in advance by the SSO, only individuals who evaluated initial proposals may evaluate revised proposals submitted after determination of the competitive range.

(4) Business Evaluation Panel (BEP). The BEP reviews the solicitation evaluation criteria and Statement of Work from a business perspective; evaluates the business and contractual aspects of the offerors' business proposals; and considers other factors such as responsibility of the offerors.

(5) Project Officer. The Project Officer is the Chairperson of the TEP and as such is responsible for recommending the TEP membership for the approval of the SSO. The Project Officer is designated by the EPA program official at the division, office or laboratory director level, with the concurrence of the SSO, as the technical representative for the procurement action.

(6) Contracting Officer. The Contracting Officer serves as Chairperson of the BEP and as such coordinates the activities of the BEP membership. He/she makes competitive range decisions and prepares the source selection decision for the SSO's subsequent approval.

(7) Contract Specialist. Responsibilities of the contract specialist include, but are not limited to, preparing the solicitation document, arranging and conducting pre-proposal conferences, conducting negotiations, ensuring complete and accurate documentation of the official contract file, preparing the competitive range determination and source selection memorandum at the direction of the Contracting Officer, and preparing the contractual instrument. The contract specialist is also responsible for receiving, safeguarding, and distributing offers to the TEP and BEP. The contract specialist is always a member of the BEP.

(8) Cost/Price Analyst. The cost/price analyst is responsible for evaluating the financial aspects of the

proposals, which includes performing preliminary evaluations of the cost proposals and detailed cost and price analyses. The cost/price analyst is always a member of the BEP when the value of the procurement exceeds $500,000.

(9) Chief of the Contracting Office (CCO). The CCO is the cognizant Division Director in OAM. The CCO monitors the solicitation preparation, the source evaluation and selection process, serves as SSO in specified instances, and provides advice or guidance when required.

(10) Quality Assurance Officer. For Procurement Requests involving environmentally related measurements and requiring QA/QC documentation in the offerors' proposals, the Quality Assurance Officer may be a member of the Technical Evaluation Panel (TEP) for the purpose of evaluating the adequacy of the offerors' QA/QC documentation.

(11) Other Personnel. Only regular or special employees of EPA or employees of other Federal Government agencies may participate in the evaluation and selection process. Employees of contractors do not participate either formally or informally in the evaluation/selection process.

5. Preparing for the Evaluation. Some tips and suggestions on technical evaluations are contained in Exhibit 2. As a participant in the selection process, you must know the concerns and responsibilities that must be addressed prior to initiation of the evaluation. They are as follows:

a. Personal Conflicts of Interest. Five CFR Part 2635, Standards of Conduct for Employees of the Executive Branch, prescribes the high ethical standards of conduct required of each EPA employee in carrying out his or her duties and responsibilities. You must be familiar with the provisions regarding conflicts of interest and inform the source selection official in writing if your participation in the source evaluation and selection process could be interpreted as a possible or apparent conflict of interest. If the source selection official determines that you have a conflict of interest, you will be relieved of further duties in connection with the evaluation and selection process and a successor will be designated.

b. Members of the Source Evaluation Board, including the Business Evaluation Panel and the Technical Evaluation Panel, will be told to determine that:

(1) All members are regular or special employees;

(2) No member's spouse or minor child holds a financial interest in any contract or firm from whom a proposal is

received;

(3) No member is an officer, director, employee, partner, nor consultant to an offeror from whom a proposal was received;

(4) No member is negotiating for nor has any arrangement concerning future employment with any offeror.

(5) No member's family has a relationship with an offeror which could present the appearance of a conflict of interest or impropriety.

c. In addition to being concerned with any personal conflict of interest problem, you, as a member of the evaluation panel, must be aware of the conflict of interest regulations stated in EPAAR Subpart 1503.6 regarding current or former EPA employees. These regulations deal with conflicts of interest and improper influence or favoritism in connection with contracts involving current or former employees. They state:

(1) No contract may be awarded without competition to a current regular or special EPA employee or to a former regular or special EPA employee whose employment terminated within 365 days before submission of a proposal to EPA. Likewise, no contract is to be awarded without competition to a firm which employs, or proposes to employ, a current regular or special EPA employee or a former EPA regular or special employee whose employment terminated within 365 calendar days before submission of a proposal to EPA. These restrictions apply if either of the following conditions exists:

(a) The current or former EPA regular or special employee is or was involved in developing or negotiating the proposal for the prospective contractor.

(b) The current or former EPA regular or special employee will be involved directly or indirectly in the management, administration, or performance of the contract.

(2) The foregoing restriction may be waived in writing by the Assistant Administrator for Administration and Resources Management if the award would not involve a violation of the U.S.C. code, EPA regulations at 40 CFR Part 3, or the Federal Acquisition Regulation at 48 CFR 3.602 and if the award would be in the best interests of the Government.

(3) The above prohibition does not apply to competitively awarded contracts. However, such awards must not involve violation of 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, or 48 CFR 3.601 and must not be based on improper influence or favoritism arising out of an EPA employee's current or former EPA

employment.

(4) If a conflict is perceived of this nature, you must inform the Contracting Officer in writing.

6. Distribution and Proposal Control.

a. Offerors' identities, offer contents, and prices shall be treated with the utmost discretion to avoid compromising the evaluation results or giving any offeror an unfair competitive advantage. Any questions regarding the receipt and distribution of offers, status of the proceedings, or other matters shall be referred to the CO or designated contract specialist.

b. After receipt of proposals, the contract specialist will serially number all proposal copies received, distribute the required number of proposal copies to the TEP and BEP, and be responsible for the collection and final disposal of proposal copies. The panel chairpersons must maintain a log of proposal distribution within the TEP and BEP. The contract specialist will destroy all excess copies of proposals in a timely manner. The original copy of each unsuccessful proposal should be retained by the contract specialist as a reference in conducting debriefings. A minimum of two copies of the successful proposal should be retained (contract file copy/Project Officer file copy) for reference in administering the contract. Final disposition of the file shall be accomplished in accordance with the EPA Records Management Manual.

7. Disclosure of Information. During the course of evaluation and selection, you must not reveal any information concerning the evaluation (except as may be required for internal clearance or technical assistance) to anyone who is not participating in the same evaluation proceeding. The right to information during the evaluation process does not extend to your supervisor. However, this does not preclude reasonable status reports of activities on a "need to know" basis to persons having procurement responsibility, provided that no information relating to the status or content of a specific proposal is disclosed. Of particular concern here is that you realize that no discussion should be held with either offerors or other organizations which have requested information regarding the evaluation. Such inquiries should be referred to the Contracting Officer.

8. Technical Evaluation Process

a. Background. The technical evaluation process is the most important pre-award function served by the Project Office. The evaluation process demands objectivity, expertise, rational judgement, and integrity. If any of these needs are lacking, the

results could be protests, delay of award, or in extreme circumstances, court appearances.

b. The TEP should expect to expend about two weeks of effort to evaluate the proposals. This will vary, however, depending on the number of proposals received and the complexity of the requirement. The members recommended for the panel should be submitted by memorandum at the time the Procurement Request package is received in OAM. OAM will contact the TEP chairperson in advance of the proposals being received and confirm a block of time that the panels' services will be needed. It is important that the Project Office set aside the time for this process to minimize delays. Management should be advised that certain individuals will be needed on a full-time basis for the period of time necessary to evaluate the proposals. It is also suggested that the evaluations be conducted away from normal working conditions so that everyday distractions do not delay the evaluation process.

c. Purpose. The basic function of the technical evaluation process is to determine in the most objective and fair method possible, which of the technical proposals received in response to a solicitation best meets the requirements of the solicitation and is most advantageous to the Government.

d. BASIC REQUIREMENTS. The technical evaluation process is built around the technical evaluation criteria. Evaluation criteria should be tailored to the specific procurement rather than to a standard format. For most competitively negotiated procurements, however, sound planning requires several issues to be addressed during solicitation preparation in order to avoid problems during negotiations. These are:

(1) The evaluation criteria must be established before issuance of the solicitation and must be adhered to during the evaluation process. Changes to the evaluation procedures after receipt of proposals can be construed as favoring one offeror over another, threaten the integrity of the procurement, and can lead to protests and delays in contract award.

(2) Evaluation criteria are standards against which each proposal will be measured. Panel members must understand that competing proposals are not rated against each other, but against the Government standard -- the evaluation criteria.

(3) All evaluation criteria used must be stated in the solicitation. Also, the relative importance of each evaluation factor must be indicated. The best way to do this is by specifying the numeric weight associated with each factor. The weighting of the criteria should reflect, as accurately as possible, the relative importance of the evaluation criterion.

For example, if the requirement calls for heavy emphasis on certain technical expertise, then a "Key Personnel" criterion may be the most critical factor for successful completion of the effort and should therefore be the most heavily weighted.

(4) Evaluation criteria must not unduly favor the incumbent contractor.

e. The key to a successful technical evaluation process, then, is sound technical evaluation criteria and a fair, objective and rational process that compare offerors against a known standard.

9. Technical Evaluation Criteria (TEC).

a. TEC (see Exhibit 3 for sample) are a means for providing uniform guidance to the evaluators on how to rate/score an offeror's proposal with respect to a given factor. They focus the evaluation on each individual factor and assist in achieving consistent and impartial evaluations.

b. The selection of technical evaluation factors must be directly related to the specific procurement described by the SOW, which describes the work/tasks the contractor is required to perform. The factors selected should be those that allow the evaluator to determine, based upon the proposal submitted, how well the offeror understands the Government's requirements and establish a degree of confidence that the offeror can successfully meet the Government's requirements.

c. The number of TEC developed should be the minimum needed to enable the TEP to properly discriminate between the relative merit of proposals. Use of a large number of criteria can mathematically dilute the evaluations during scoring to the point where any proposal can achieve a reasonably high score, but actually be poor in one or more extremely important factors. Do not use factors that overlap or duplicate each other. If one factor is dependent upon another, then use one or the other, but not both. Also, a large number of criteria will make the evaluation process extremely difficult, especially where numerous proposals have been received. Keep in mind that, as part of the evaluation process, a detailed write-up (narrative) for each criterion must be provided as part of the TEPR that will be submitted to the CO.

d. Typical TEC may include:

(1) Technical Approach. This factor refers to the merit of the offeror's proposed method for accomplishing the technical objectives/requirements of the contract and the appropriateness of the plan for successful completion of the work. The

techniques, processes, and tests that the offeror plans to use should be examined. This may include how the offeror will use its resources for the work. The offeror's grasp of the difficulties and problems involved in performing a particular job reflect on its understanding and ability to perform that job well.

(a) To demonstrate the offeror's understanding of the technical scope of the issues and tasks to be undertaken in the proposed contract, the Technical Approach criterion may be divided into two subparts. The first part may ask the offeror to describe its technical approach for fulfilling the overall requirements specified in the SOW. In the second part, the offeror would be required to participate in a simulation exercise such as a hypothetical work assignment to further demonstrate its abilities. The offeror would be furnished a sample work assignment and would be requested to describe its philosophy and proposed (specific) technical approach for accomplishing it. The scenario covered by the sample work assignment should be representative of the type of work the offeror would be asked to provide during contract performance. The use of a sample work assignment or delivery order is usually a good idea since it gives an indication of how the offeror would perform under the actual contract.

(2) Corporate Experience. This factor refers to the firm's technical experience and abilities that are relevant to the requirements of the RFP. It measures the extent of the offeror's past and current experience in performing similar work. However, be careful not to attach too great an importance (weight) to this criterion since this can result in a small group of offerors with very similar scores and can favor the incumbent contractor (a practice that must be avoided). Awarding consistently high ratings to the more experienced offerors can stifle future competition by consistently eliminating the less experienced offerors. **Generally, no more than 15% of the total points available should be assigned to the corporate experience criterion.**

(3) Management Plan. This factor refers to the merit of the offeror's plan for managing and administering the contract. It is worthwhile to evaluate the degree to which the offeror's management plan has established well-defined lines of authority, responsibility and communication. Other areas that may be evaluated include how swiftly the organization can respond to technical changes and increased workloads and can mobilize to resolve problems; how well the offeror's management techniques can be expected to identify performance problems at an early stage and cost overruns and to help work around subcontractor delays and similar problems.

(4) Personnel. This factor refers to the availability, competency, pertinent education, and related experience of a firm's technical personnel. The experience and ability of key technical and support personnel are important factors in successful performance of a contract. The proposal should clearly relate the offeror's personnel qualifications and availability to the requirements of the Statement of Work. The offeror should be required to designate and discuss specific personnel for all, or at a minimum, the most important technical disciplines. The number of people and their labor category (P4 (highest), P3, P2, etc.) should be stated. It is also a good idea to require offerors to discuss how personnel of different professions will be organized as a team to perform certain tasks.

(5) Past Performance. This factor refers to the offeror's record of conforming to specifications and to standards of good workmanship; the offeror's record of containing and forecasting costs on any previously performed cost reimbursable contracts; the offeror's adherence to contract schedules, including the administrative aspects of performance'; the offeror's history for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the offeror's business-like concern for the interests of the customer. This factor should be used to assess the relative capabilities of competing offerors and to help assure greatest value source selections. However, this factor should be written as to allow newly established firms to compete for contracts even though they lack a history of past performance. The TEP may contact offeror-provided references to ascertain information for evaluating this factor.

10. Price or Estimated Cost Factors.

a. In a technical competition, price or estimated cost is not as important a consideration as the offeror's technical ability to perform the work. However, it still is an important factor that must be taken into consideration in the source selection process.

b. In awarding cost-reimbursement contracts, proposed costs are only estimates and not absolute figures; therefore, they may or may not be the determining factor in source selection. Generally, as technical proposals become more equal in merit, cost or price becomes more important.

c. The language to describe price or estimated cost factors as an evaluation factor is very rarely drafted by the program office. Program office input may be required in instances where price or estimated cost will be a numerically-weighted evaluation factor but, for all intents and purposes, the program office is

not required to develop documentation to describe the evaluation scheme with respect to price or estimated cost.

11. Evaluating Proposals.

a. After the specified time for opening proposals, the CS will open all proposals received "on time" and create an abstract of proposals. This is a logging-in function to be contained in the contract file. The cost proposals will be extracted and the technical proposals will then be distributed to the panel members for evaluation. The technical evaluation process begins when the CO/CS formally delivers the proposals to the TEP and briefs the TEP on the proper procedures for handling and evaluating the proposals.

b. Score sheets are also required for the evaluation process. Score sheets are forms used during the evaluation process for recording the evaluator's scores and narratives applicable for the proposals received in response to the solicitation. Score sheets shall contain the same evaluation criteria and sub-criteria as stated in the RFP (see Exhibit 4). While the evaluation score sheets can be prepared by the PO prior to the beginning of the evaluations, in many cases, the CO has a set of standard forms that can be used. If the PO does prepare her own score sheets, the best course of action is to include a copy with the Procurement Request (PR) package so that the CO or CS may review them before hand.

c. Ground Rules.

(1) All persons associated with a technical evaluation must treat Offerors' identities and proposal contents with total confidentiality to avoid compromising evaluation results or leading to unfair advantage.

(2) TEP members shall not discuss any aspects of the proceedings with anyone outside the TEP. If there is any question in your mind regarding who has a "need to know" contact the CO. This does not preclude discussions with TEP member's management relative to status and timing. However, discussions relative to particular offerors or aspects of their proposals are prohibited.

(3) Refer to the CO any attempted communications by offerors.

(4) If any additional information is needed, the TEP shall request it through the CO in the form of interrogatories/ discussions. Interrogatories/discussions are any oral or written communication between the government and an offeror. Interrogatories/discussions involve information essential for determining whether a proposal is acceptable. Interrogatories also provide the offeror an opportunity to revise or modify its

proposal.

(5) Each member of the TEP shall independently evaluate and score each proposal. After the individual evaluations, the group will convene to develop a panel consensus score for each proposal. The TEP Chairperson moderates this discussion and is responsible for developing the consensus narrative. Averaging of scores is **NOT** permitted (see GOOD and BAD score sheet narrative examples in Exhibit 5).

(6) For the consensus summary, a detailed, written narrative must be provided for each individual scoring element fully supporting the consensus rating assigned. It is imperative that the narrative correlate precisely with the score given. A separate discussion must be written for each proposal that summarizes the relative strengths and weaknesses of the offeror in each of the major criteria. Upon completion of the consensus summary, a TEPR will be submitted to the CO. Each individual on the panel must sign the report to attest to its validity.

(7) Scoring standards establish the rating scale that will be used to evaluate proposals. Each score on the scale must be defined. EPA furnishes a standard scoring plan that must be used to evaluate technical proposals. The scoring plan is based on a 0 (poorest) to 5 (best) point scale (see Exhibit 6).

12. The Technical Evaluation Report (TEPR).

a. The following are guidelines on how to prepare the TEPR. It is very important that you follow the format provided in Exhibit 7 for the final report and follow the directions listed below. Your report must include, at least, the following elements:

(1) Individual Panel Member Reports. This information should be held in a backup file by the PO and made available upon the request of the CO. This information is comprised of the individual score sheets with detailed notes from each TEP member covering each criterion for each offeror. The notes must discuss the relative strengths and weaknesses associated with each proposal. When evaluating the strengths and weaknesses, evaluators should reference proposal page numbers wherever possible.

(a) The narrative descriptions must fully support all scores. For example, for a score of 1, you must clearly describe all of the problems with the offeror's proposal. On the other hand, a perfect score of 5 also must have a detailed narrative supporting that score. You must state WHY and HOW the offeror deserves the score given. A perfect score of 5 , however, does not preclude the government from requesting interrogatories or

discussions.

(b) Each member must read each proposal in its entirety and must independently evaluate and score each proposal. Please note that each member must sign his/her individual score sheets.

(b) If the CO has not requested the information previously, the PO must submit this backup file to the CO for inclusion in the official contract file prior to contract award.

(2) Consensus Report. After the individual scores are completed, the panel members should fully discuss their findings and provide a detailed consensus report. This report will be prepared by the TEP Chairperson and while the contracting officer may require additional information, at a minimum, the following information should be included:

(3) Matrices of Individual Scores and Consensus Scores for Each Offeror. This part of the report must include the individual panel member scores for each evaluation criterion. One table must be prepared for each proposal evaluated. Each table must show the numerical (1 to 5) scores each evaluator awarded and the TEP consensus score and points (score x .2 x point weighting) (see Exhibit 8).

(4) Consensus Members Score Sheets and TEP Consensus Score Matrix. This part of the report shall include the consensus score sheets with detailed notes from the consensus discussion of the TEP covering each criterion for each offeror. The notes must discuss the relative strengths, weaknesses, and risks associated with each offer, etc. In evaluating the strengths and weaknesses, and in developing narratives and interrogatories, refer to proposal page numbers whenever possible. Detailed narrative descriptions must fully support the scores given.

(5) The TEP Chairperson is responsible for compiling the consensus scores and narrative and for facilitating the consensus process. It is recommended that the panel members share the responsibility of recording the consensus notes and narrative during the process in order to assist the Chairperson. Please note that each member must sign the consensus signature summary page attached to the back of the consensus report.

(6) A matrix depicting the TEP consensus scores for each criterion should be included in the summary. A complete listing of consensus scores must be shown for each offeror.

(7) Both the individual scores with narrative and the consensus scores with narrative become part of the official contract file.

(8) Interrogatories. The purpose of interrogatories is to better understand an offeror's proposal and to satisfy the legal requirement to have meaningful discussions with all firms in the competitive range. When offerors' proposals contain deficiencies, ambiguities, and/or suspected mistakes, you must formulate questions or interrogatories for offerors. The term deficiencies is a general term of art referring to any part of a proposal that fails to satisfy the government's requirement. Interrogatories are also required for ambiguities and suspected mistakes.

(a) Although, there is a difference between deficiencies and weaknesses resulting from the offerors lack of diligence, competence or inventiveness in preparing the proposal, interrogatories should be used to point out weaknesses and deficiencies identified by the TEP in offerors' proposals. Interrogatories should also be used to clarify information contained in the proposal and/or request information that should have been provided but was omitted.

(b) The goal is to avoid technical leveling through interrogatories. Technical leveling is helping an offeror to bring its proposal up to the level of other proposals through successive rounds of interrogatories, which may include technical transfusion. Technical transfusion occurs when the Government discloses information from one offeror's proposal that results in improvements a competitor's proposal.

(c) Thus, during the evaluation process, members of the panel should write down questions for each offeror, if applicable. Questions should be stated in such a manner to avoid technical leveling or leading the offeror in a specific direction. The chairperson will consolidate and record interrogatories for the consensus report based on the full panels discussion.

(9) Panel Comments. The panel can include any other pertinent information or comments in this section. If for example an offeror's proposal was severely deficient, or if there is a conflict on interest, it should be noted here.

(10) Certifications. Each member must sign and return the following certifications:

(a) Certification for Conflict of Interest

(b) Certificate for Unauthorized Disclosure of Procurement Information

(c) Procurement Integrity Certification

(11) Conflict of Interest Statement. A signed Statement of COI (See Exhibit 8) for each member of the panel should accompany the consensus report. This certifies that no apparent COI exists in evaluating the proposals. An example of a COI might be if one of the panel members has a spouse working for one of the offerors. An apparent conflict must be brought to the attention of the CO immediately so that the CO can determine whether or not the person can remain on the panel. The statement also contains a separate area to identify any potential or actual COI which may result in contracting with any of the offerors. (Paragraph 5a. of this Chapter explains personal conflicts of interest).

13. Preparation of the Business Evaluation Panel Report.

a. Concurrent with your preparation of the TEP Report, the Chairperson of the Business Evaluation Panel must prepare a Business Evaluation Panel Report. The BEP Report, delivered to the Contracting Officer upon the completion of initial evaluation of the business portion of offers received, includes: a discussion of any factors which might prevent award to an offeror (i.e., appearance on a suspended/debarred list) and a preliminary analytical cost evaluation report. The report may include worksheets or a formal narrative to identify cost elements which appear unreasonable or questionable. For level of effort contracts, the report will compare proposed costs with the cost standards specified in the solicitation, e.g. man-hours per labor category.

b. A supplemental BEP Report is delivered to the Contracting Officer after completing the evaluation of revised proposals and prior to final selection. The BEP Report narrative is in sufficient detail to permit the selection of source for final contract award. It includes the appropriate consideration, analysis, and findings concerning the following elements of the business proposal of each offeror in the competitive range:

(1) A detailed cost analysis on the business proposals;

(2) Evaluation of proposed management structure to be utilized for performance;

(3) Evaluation of offeror's subcontracting program as it relates to small business, labor surplus area concerns, and socially and economically disadvantaged business enterprises;

(4) Evaluation of those business elements submitted with each proposal which could lead to a determination of nonresponsibility by the Contracting Officer.

(5) Evaluation of the offeror's record of performance under prior EPA contracts as it relates to timely performance, history of cost control, requests for changes, and quality of the

end product. The BEP should obtain this information from the Contractor Performance Evaluation System. Where the offeror is known to have performed contracts with other Government agencies for comparable work, the BEP should contact those agencies for a record of past performance; and

c. Both the TEP and BEP reports must also include:

(1) A statement that the respective panel members are free from actual or potential personal conflicts of interest; and

(2) Any information which might reveal that an offeror has an actual or potential organizational conflict of interest.

14. Determination of the Competitive Range.

a. Determination of the competitive range is a responsibility of the Contracting Officer, subject to the approval of the SSO, and involves his or her consideration of the ranking of the technical proposal, price, cost, and other factors. The competitive range is comprised of those proposals that have a reasonable chance of being selected for award.

b. The attainment of a particularly high technical score would seem to indicate that an offer should be considered within the competitive range. However, upon consideration of the price offered, it may not be practical to trade the superior technical aspects of the offer for a significantly higher price. Generally, the attainment of a high technical evaluation score in itself is not a sufficient basis for a Contracting Officer's determination that the offer is within the competitive range. Conversely, an offer with a lower technical evaluation may meet the minimum requirements of the solicitation and offer a price that should be given further consideration.

c. The business evaluation of offers is an essential element in determining the competitive range, and is of particular significance where several offers have received technical scores that are close in numerical value. In such cases, the business evaluation may be the determining factor in arriving at the competitive range. Similarly, the factors such as prior performance, past experience, or conflicts of interest may be of such importance that the offer cannot be reasonably determined to be within the competitive range.

d. When the procurement action is expected to exceed $5,000,000, complete documentation supporting the competitive range decision is presented to the HCA for review and approval. The HCA may call for an oral briefing by the SEB prior to granting approval of the competitive range decision.

e. When only one offer is determined to be in the competitive range, the CO must review the solicitation document to assure that it did not unduly restrict competition. The competitive range determination must include the CO's determination that the solicitation is not restrictive. The determination will also include a discussion of the relevant aspects of the solicitation.

f. The Contracting Officer makes the determination of the competitive range for the subsequent approval by the SSO. As with the preceding discussions regarding evaluations, no stringent rules can, or should, be applied in determining the competitive range, nor can a mathematical formula be devised. Where there is reasonable doubt regarding the inclusion of a particular offer within the competitive range, that doubt is resolved in favor of inclusion. Because the determination of the competitive range is based on informed judgment and is complex in nature, all such determinations must be completely documented to set forth rationale supporting the determination.

g. Competitive Range Example. The following example highlights the principle of determining the competitive range based on the technical and business evaluations of a group of offers:

Offeror	Technical Evaluation Score	Cost/Price
A Co.	330	$250,000
B Inc.	325	175,000
K Co.	275	145,000
D Co.	245	150,000
C Co.	150	115,000
G Co.	125	92,000

(1) G Co., while offering the lowest price/cost, has submitted an offer that is seriously lacking in essential technical qualities. A review of the scoring would show several technical elements to have been scored as "0" or "1". Therefore, G will not be included in the competitive range.

(2) A Co., while attaining the highest technical ranking, has offered a price/cost that is unreasonable for the effort required. If an analysis of the business proposal shows that several elements of price/cost are unusually high, but may be susceptible to downward revision, the offer should be included in the competitive range; however, if those circumstances do not exist, the offer may be considered to be outside the competitive range because of price/cost.

(3) C Co. has attained a score showing that portions of the proposal do not meet the minimum requirements. This is also reflected in the business proposal. The offer should not be

considered within the competitive range.

(4) The offers of B Inc., D Co., and K Co. are close with respect to both the technical evaluation and price/cost offered. Therefore, these three offers should be included within the competitive range. Depending upon the circumstances, A Co.'s offer may also be included.

15. Written or Oral Discussions

a. Background. The Federal Acquisition Regulation (FAR) requires that, except under specified circumstances, the Contracting Officer conduct oral or written discussion with all responsible offerors who submit proposals within the competitive range. The purpose of oral and written discussions is to:

(1) Advise the offeror of deficiencies in its proposals so the offeror is given an opportunity to satisfy the Government's requirement;

(2) Attempt to resolve any uncertainties concerning the technical, or other terms and conditions of the proposal;

(3) Resolve any suspected mistakes; and

(4) Provide the offeror an opportunity to submit any cost/price, technical, or other revisions to its proposal.

b. Limitations. The Contracting Officer will chair the Government negotiation team and all members must use careful judgment in determining the extent of discussions. They must not engage in technical leveling, technical transfusion, or auction techniques. Any discussions should scrupulously avoid disclosure of technical information, ideas, or cost data from any other offeror. No indications should be given to any offeror of a price which must be met or bettered to obtain further consideration since such practice constitutes an auction technique. On the other hand, this does not prohibit pointing out price or cost elements that do not appear to be justified, or encouraging offerors to put forward their most favorable price proposals. In so doing, the price elements of any other offeror must not be discussed, disclosed, or compared.

16. Limited Discussions vs. Full Negotiations.

a. To satisfy the varying nature of different acquisitions, the Contracting Officer may suit the negotiation strategy to the circumstances of the procurement. Factors which influence this decision include the number of proposals and relative closeness of technical scores and costs.

b. After determination of the competitive range, the

Contracting Officer may proceed with limited cost/full technical discussions with the firms in the competitive range, generally through interrogatories, and final in-depth negotiations with one or more firm(s) still within the competitive range after evaluation of revised proposals; complete/full cost and technical negotiations with all firms comprising the competitive range; or a variation of these two approaches as the circumstances of the procurement dictate. Regardless of which approach is used, the Contracting Officer should raise cost questions as early as possible and not defer them to final negotiations. Discussions/ negotiations with contractors in the competitive range shall include questions on past performance (Government and non-Government) that was less than satisfactory.

17. Proposal Revisions.

a. Notifications. All offerors included in the competitive range are notified by the Contracting Officer at the conclusion of limited discussions or full negotiations of the opportunity to submit a revised proposal. A final common cut-off date for receipt of revised proposal and/or confirmation of negotiations (best and final offer) is established. The notification includes information to the effect that discussions are concluded; offerors are being provided the opportunity to submit a revised proposal (which can be a confirmation of a prior offer); and the confirmation or revised final offer must be received by the cut-off date specified. Offerors are cautioned to submit information in support of changes to their initial offer(s). Where limited negotiations were held, the notice may indicate that further negotiations may be conducted with the source selected.

b. Receipt. Any revised proposal received after the established final common cut-off is handled as a "late proposal." In these instances, the prior proposal is considered as being the offeror's complete submission.

c. Evaluation. Revised proposals are subject to a final evaluation (price or cost, technical, and other salient factors considered) to the extent deemed necessary by the Contracting Officer. Evaluations are performed in accordance with the procedures previously prescribed for use in the evaluation of initial offers in order to determine the relative ranking of the revised offers. Any changes to scores resulting from revised proposals must be substantiated with a complete rationale--i.e., written explanation of what elements of the proposal were changed and how it affected the rating.

18. Source Selection.

a. General. The selection of a source is made following receipt and evaluation of all proposal revisions. The selection

of a source or sources is based upon consideration of the TEP and BEP findings of significant strengths, weaknesses, and risks associated with each offer, business and management ratings, price or cost, and other factors which may influence the award decision. With regard to technical scores, EPA normally uses technical point ratings of offers in establishing the relative ranking of offers. Technical point ratings are useful guides in the evaluation of offers, but they are not conclusive as to the actual merit of offers. The final merit of the offers is determined by review of technical evaluation narratives, descriptive ratings, and other relevant information in addition to point scores. After technical merit is determined, consideration is given to the price or cost proposed and other business aspects. Also other factors (record of prior performance, subcontracting plans, etc.) may properly influence the decision to select one offer in preference to other offers received as unscored discriminating elements to determine the winner between two otherwise substantially equal offers.

b. Source Selection Decision. The Contracting Officer prepares the source selection decision, including:

(1) The source selected;

(2) Comprehensive rationale for the decision including the consideration given to price or cost, technical merit, and other factors contained in the solicitation;

(3) A statement of approval of the decision prepared for the signature of the SSO.

c. SSO Approval. A copy of the source selection decision and supporting materials prepared by the CO is presented to the SSO for approval of the decision. When the value of the procurement action is greater than $5 million, complete documentation supporting the selection is submitted to the HCA.

d. Negotiations with the Source Selected. Where the Contracting Officer followed some form of limited discussion with the selected source, further negotiations may be necessary on areas that had not yet been covered. Such negotiations do not involve material changes which would alter the basis of the source selection decision.

19. Award Notifications.

a. Preaward Notifications. When the proposal evaluation period is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range, the Contracting Officer notifies those offerors outside the competitive range that their proposals are unacceptable.

b. Postaward Notices. Promptly after contract award, the Contracting Officer notifies the unsuccessful offerors, in writing, of the source selected for award, unless the offeror had been given a preaward notification.

20. Debriefings.

a. When a contract is awarded on a basis other than price, unsuccessful offers may request a debriefing concerning the basis for the selection decision and contract award.

b. The Chief of the Contracting Office (CCO), or his/her designee is responsible for conducting debriefings. Unsuccessful offerors who submit a written request that has been signed by a corporate official, senior partner, or other comparable executive of the organization may request an individual debriefing. The Project Office may be requested by the CCO to participate in the debriefing. Debriefings must be absolutely factual and in conformance with the documentation supporting the approved source selection decision. The release of information relating to proposals other than the organization being debriefed is limited in accordance with FAR 15.1001(b).

c. Debriefing information will include the Government's evaluation of the significant weak or deficient factors in the proposal; however, point-by-point comparisons with other offerors' proposals may not be made. Debriefing must not reveal the relative merits or technical standing of competitors or the evaluation scoring. Moreover, debriefing must not reveal any information that is not releasable under the Freedom of Information Act; for example:

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques; and

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.

d. The Contracting Officer will include a summary of the debriefing in the contract file.

EXHIBIT 9-1

SOURCE EVALUATION STRUCTURE

Official	Acquisitions whose estimated value is greater than $5M ($25M for Superfund)	Acquisition whose estimated value is less than $5M ($25M for Superfund) *
Source Selection Official	Chief of the Contracting Office	Chief of the Contracting Office
Source Evaluation Board	Chief of the Contracting Office	Determined by the Chief of the Contracting Office, if necessary
Technical Evaluation Panel (TEP) Chairperson	Project Officer	Project Officer
TEP members	At least two technically knowledgeable individuals	At least two technically knowledgeable individuals
Business Evaluation Panel (BEP) Chairperson	Contracting Officer	Contracting Officer
BEP Members	Contract Specialist, Cost/Price Analyst	Contract Specialist, Cost/Price Analyst
* For acquisition valued at $500,000 or less, the Project Officer may be the only member of the TEP and the Contracting Officer or contract specialist may be the only member of the BEP.		

EXHIBIT 2 : TIPS - SUGGESTIONS - DOs AND DON'Ts (OR EVERYTHING YOU NEEDED TO KNOW ABOUT TEP REPORTS BUT WERE AFRAID TO ASK)

o Always keep in mind the end result: Complete, detailed consensus report. In order to achieve this, your individual evaluation must be complete.

o Your evaluation must be supported by a strong detailed narrative which is consistent with scores. Do not use phrases such as "looks good to me" or "strong write-up in this area."

o Support the statements you make in your narratives by providing examples right out of the proposals. Ask yourself **WHY** and/or **HOW** an offeror fulfilled or met the evaluation criteria elements.

EXAMPLE:

Statement: The offeror demonstrated **excellent** experience in managing large dollar, highly complex, multi-tasked contracts.

WHY/HOW: The offeror cited over 200 prior contracts that they have successfully managed. These contracts include the $60 M EPA Technical Enforcement Support contract, DOE's $2.5 billion Strategic Petroleum Reserve Project and $900 M Uranium Mill Tailings Remedial Action Program. The offeror has over 40 years of experience with Federal contracts from many different agencies spanning many program areas including Superfund and RCRA Enforcement.

o Write up your narratives FIRST then assign that criterion a numerical score. You will find it easier to score once you have read over what you have written.

o Do NOT reiterate the TEC elements. EXAMPLE: under CORPORATE EXPERIENCE you would NOT say "The offeror has demonstrated relevant enforcement related experience." Once again, **HOW** did they demonstrate that experience?

o Do not downgrade a proposal because it did not address something we never asked for in our request for proposals (RFP).

o In evaluating strengths and weaknesses, and in developing narratives and interrogatories, reference proposal pages whenever possible.

o Do not infer prior knowledge of a company into the evaluation, i.e., "I know they can do it, but they didn't say so". Be like a judge; look only at the written evidence.

o Avoid "reading into" or "reading out of" any portion of the offer a meaning other than the exact language appearing in the offer. If a clarification is needed, prepare an interrogatory addressing it.

o Avoid the tendency to interpret the meaning of the offeror's proposal when the writing is ambiguous. Clarify ambiguities with an interrogatory.

o Recognize that the assignment of a score to an element is subjective and based upon your best reasoned judgement.

o Recognize that offerors often use "catch phrases, buzz words," and semi-legalistic phraseology which may indicate a less-than-thorough understanding of the solicitation.

o Recognize the substantive quality of the proposal and do not be influenced by form, format or method of presentation. Look for content.

o Recognize flattery on the part of the offeror.

o It is recommended that the Chairperson direct the panel members to read the proposals in different order, i.e., panel member 1 would start with proposal from XYZ and panel member 2 would start with proposal from ABC and panel member 3 would start with proposal from UBSTER, etc.

o Avoid forming "first impressions" of an offer that might tend to influence the score assigned.

o Do NOT compare proposals to one another. Each proposal stands on its own merit, and is evaluated strictly against the RFP technical evaluation criteria.

o Advise the Contracting Officer if any proposals are totally unacceptable and would require a major rewrite.

INTERROGATORIES

o Your interrogatories should be in the form of questions, not suggestions. Don't slip into the mode of telling an offeror how you would like to see the proposal.

o Do NOT ask an offeror to address something that we never asked for in the RFP.

o Recognize ambiguities, inconsistencies, errors, omissions, irregularities, and deficiencies that can affect the scoring. These should be recorded on the individual/consensus evaluation sheets under weaknesses. These will result in interrogatories.

o Questions should be stated in such a manner as to avoid technical leveling (i.e., helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal).

o Questions should be stated in such a manner as to avoid technical transfusion (i.e., Government disclosure of technical information pertaining to a proposal that results in improvement of a competing proposal).

CONSENSUS

o Individual scores should **NOT** be totaled and averaged to reach a consensus score.

o The consensus process is NOT a democracy where the majority rules. No member can be "out-voted". Consensus means the "collective opinion" of all members of the panel. Remember, by signing the consensus report, you agree with the final report.

o During the consensus process, it is recommended that panel members take turns recording the consensus narratives, scores and discussion to help assist the chairperson. The chairperson is responsible for consolidating all comments into the final report but that person is also needed to facilitate the process itself. It is also recommended that after consensus is reached on a particular criterion, that the recorder repeat the narrative recorded to make sure he/she has captured accurately, the narrative and interrogatories discussed and agreed to by the panel members.

The TEPR must support all ratings (scores) given with factual statement and not simply conclusionary statements. For scores of "4" and "5", the superior features (strengths) must be cited. The benchmark (minimum requirement) must be cited in the TEPR. A rating of "3" would indicate that a proposal met the minimum requirements. Narratives with factual rather than conclusionary statements must accompany scores "3.5" or "4.5" and clearly indicate what the distinction is that merits a half score.

The TEPR must identify any weakness, deficiencies, concerns, uncertainties, or suspected mistakes. It should indicate whether the weakness/deficiencies are significant or minor, and whether risks to contract performance are anticipated if uncorrected or unchanged.

For scores of 0 or 1, be emphatic. Provide representatives, if not exhaustive examples of the deficiencies that result in the score. Give references to pages or sections of the offer where

possible. Even where there are scored 0 or 1, it is possible that as a result the offeror may be put in the competitive range. As a result, keep in mind how or whether it would be possible to phrase interrogatories to identify the weakness.

A score of 2 SUGGESTS that an interrogatory is to be prepared, if the offeror is otherwise in the competitive range. Do not use a score of 2 to soften the impact if in fact the item is unacceptable and should be scored 0 or 1. Where a 2 is used, try to phrase the comments to fit the form of the interrogatory.

For scores of 3 to 5, it is appropriate and even NECESSARY to frame interrogatories if there ar deficiencies in the offer that could be corrected. Any deficiencies that are not raised in the TEPR and interrogatories cannot be used later to justify selection.

It is suggested that technical panels use a "bottom" up approach to the report in the areas that are scored 3 to 5.

First, indicate that the element is considered adequate or good or superior. If the score is at the 3 level, indicate specific examples of what made the element acceptable. Here, and throughout the evaluation, remember to use page references wherever possible.

Second, if the score is over 3, then ADD examples of the superior features. If there are no deficiencies, but the superior features are not so great as to merit a 5, simply indicate what was adequate and superior, and that there were no deficiencies. Remember that the TEPR will be very carefully reviews for a score of 4 that 'the offeror's approach was supervisor in all areas except for discussion of ozone analysis will be read to suggest that there is a weakness in ozone analysis that should be disclosed to the offeror.

Third, however, if there are weaknesses that you feel could be addressed and improved, then go on to indicate those areas as weaknesses, again phrasing the comment so as to fit the interrogatory.

EXHIBIT 3: SAMPLE TECHNICAL EVALUATION CRITERIA

POINTS

1. CORPORATE EXPERIENCE 15

a. Enforcement Experience (10)

The offeror will be evaluated on the extent of their demonstrated relevant enforcement-related experience. The offeror should describe experience concentrating on the specific elements outlined in the SOW. Offerors will be evaluated according to their capability and experience as indicated by their completed and current projects related to enforcement guidance development, program implementation and evaluation; and according to their capability and experience in conducting enforcement programs of similar type, scope, and complexity as outlined in the SOW.

b. Management Experience (5)

The offeror will be evaluated on the extent of their management experience anticipating or resolving potential problems during contract performance and in managing large dollar, highly complex, multi-tasked, multi-disciplinary contracts.

2. Personnel 35

a. Experience, Qualifications and Availability of Key Personnel (20)

The Key Personnel will be evaluated on the extent to which they are senior people with appropriate experience and education; knowledgeable about environmental enforcement programs; capable of providing expert testimony, project management and review, and have substantive knowledge within their issue area; and are available to work on this contract.

b. Experience, Qualifications and Availability of Project Group (15)

The Project Group's ability to successfully manage and complete work assignments for enforcement programs will be evaluated based on their demonstrated experience, academic qualifications, training, availability/ percentage of time dedicated to this contract, accomplishments, and knowledge of enforcement issues under environmental statutes, including consideration of the group's composition, position within the overall organization, and experience to resolve expected problems.

3. Technical Approach 20

The offeror will be evaluated on the extent to which they demonstrate a thorough understanding of environmental enforcement programs and the requirements of these programs; and an understanding of and the ability to perform the tasks listed in the SOW for each of the following areas:

(1) State Enforcement Programs (3)
(2) Federal Facility Response Actions (3)
(3) RCRA/CERCLA Relationship and Other Cross Program Issues (4)
(4) CERCLA and RCRA General Enforcement Support (4)
(5) Cost Recovery (3)
(6) Program Management and Support (3)

4. Sample Work Plan 10

The offeror will be evaluated on their response to the Sample Work Assignment attached to the RFP as Attachment B.

The Sample Work Plan will be evaluated according to the following criteria:

a. Soundness of Technical Approach and Understanding of Problems Associated with the Task (4)

b. Adequacy of Project Staffing and Management Plan (3)

c. Degree to which proposed schedule is realistic and comprehensive within a multi-task and short lead-time tasking environment (3)

5. Management Plan 20

The offeror will be evaluated on the extent to which their proposed organizational mechanisms can successfully fulfill the requirements of the contract.

a. Organization and Resources (4)

The offeror's effectiveness to successfully manage this effort will be evaluated in terms of the clarity of lines of authority and communication between staff and management; the adequacy and appropriateness of corporate management's plans for identifying and addressing any problems that might arise; the degree to which the roles and responsibilities of staff and management are defined; and the level of integration of staff, subcontractors and field offices.

b. Cost Forecasting and Tracking (4)

Ability to show how costs in the monthly report will reflect up-to-date information will be evaluated including consideration of monthly billing cycles, accuracy of cost projections and ad-hoc reporting capability.

c. Management Control (4)

The quality and effectiveness of the offeror's management information system to maintain management control of the contract including tracking the progress of work assignments, providing tools for effective management, such as a deliverables tickler system, performing overall cost analysis of types of assignments, etc., will be evaluated. Further, the ability to ensure security and integrity of enforcement related records, how work assignments will be reviewed and distributed in a timely manner, and how conflict of interest checks will be made, shall also be evaluated.

d. Equipment and Additional Personnel (3)

(1) Equipment (1)

The demonstrated availability, or ability to obtain relevant equipment, vehicles, and supplies sufficient for the scope of work will be evaluated. This will include acquisition, disposition, and maintenance procedures.

(2) Personnel (2)

The ability to recruit and maintain staffing levels, including acquisition of non-team subcontractors, required under the contract will be evaluated.

e. Responsiveness (3)

The ability of the offeror to provide quick turnaround response to EPA's needs will be evaluated. Consideration will be given to the location of your project team and all offices to be used for this contract.

f. Quality Assurance Plan (2)

Demonstration of how quality assurance/quality control procedures will yield products of high quality will be evaluated including the frequency and types of audits and internal control checks.

EXHIBIT 4: Sample Score Sheets

INDIVIDUAL SCORE SHEET FORMAT

TEP NAME: _____ OFFEROR: _____

ATTACHMENT A - TECHNICAL EVALUATION CRITERIA RFP _____

1. CORPORATE EXPERIENCE TOTAL 20 POINTS

a. Enforcement Experience 10 Points

The offeror will be evaluated on the extent of their demonstrated relevant enforcement-related experience. The offeror should describe experience concentrating on the specific elements outlined in the SOW. Offerors will be evaluated according to their capability and experience, as indicated by their completed and current projects related to enforcement guidance development, program implementation and evaluation; and according to their capability and experience in conducting enforcement programs of a similar type, scope, and complexity as outlined in the SOW.

STRENGTHS: Page No.

WEAKNESSES:

INTERROGATORIES:

Score: _____ Weight: 10 Total: _____

INDIVIDUAL SCORE SHEET FORMAT

TEP NAME: _____ OFFEROR: _____

ATTACHMENT A - TECHNICAL EVALUATION CRITERIA RFP _____

1. CORPORATE EXPERIENCE TOTAL 20 POINTS

b. Management Experience 10 Points

The offeror will be evaluated on the extent of their management experience anticipating or resolving potential problems during contract performance and in managing large dollar, highly complex, multi-tasked, multi-disciplinary contracts.

STRENGTHS: Page No.

WEAKNESSES:

INTERROGATORIES:

Score: _____ Weight: 10 Total: _____

CONSENSUS SCORE SHEETS

TEP NAME: _____ OFFEROR: _____

ATTACHMENT 1 - TECHNICAL EVALUATION CRITERIA RFP _____

1. CORPORATE EXPERIENCE TOTAL 20 POINTS

a. Enforcement Experience 10 Points

The offeror will be evaluated on the extent of their demonstrated relevant enforcement-related experience. The offeror should describe experience concentrating on the specific elements outlined in the SOW. Offerors will be evaluated according to their capability and experience, as indicated by their completed and current projects related to enforcement guidance development, program implementation and evaluation; and according to their capability and experience in conducting enforcement programs of a similar type, scope, and complexity as outlined in the SOW.

STRENGTHS: Page No.

WEAKNESSES:

INTERROGATORIES:

Score: _____ Weight: 10 Total: _____

CONSENSUS SCORE SHEETS

TEP NAME: _____ OFFEROR: _____

ATTACHMENT 1 - TECHNICAL EVALUATION CRITERIA RFP _____

1. CORPORATE EXPERIENCE TOTAL 20 POINTS

b. Management Experience 10 Points

The offeror will be evaluated on the extent of their management experience anticipating or resolving potential problems during contract performance and in managing large dollar, highly complex, multi-tasked, multi-disciplinary contracts.

STRENGTHS: Page No.

WEAKNESSES:

INTERROGATORIES:

Score: _____ Weight: 10 Total: _____

EXHIBIT 5: Good and Bad Individual Score Sheets

GOOD GOOD GOOD INDIVIDUAL SCORE SHEETS GOOD GOOD GOOD
TEP NAME: Jane Doe OFFEROR: UBSTER, INC.

ATTACHMENT C - TECHNICAL EVALUATION CRITERIA RFP W000000-E1

1. CORPORATE EXPERIENCE TOTAL 20 POINTS

a. Enforcement Experience 10 Points

The offeror will be evaluated on the extent of their demonstrated relevant enforcement-related experience. The offeror should describe experience concentrating on the specific elements outlined in the SOW. Offerors will be evaluated according to their capability and experience, as indicated by their completed and current projects related to enforcement guidance development, program implementation and evaluation; and according to their capability and experience in conducting enforcement programs of a similar type, scope, and complexity as outlined in the SOW.

STRENGTHS: **Page No.**

UBSTER, Inc. has extensive experience in supporting almost all areas of EPA activity. They demonstrated excellent experience in areas of developing enforcement documents and cost recovery actions, citing several very good examples (Pgs. 7-10). They show strong experience in policy and information areas, and regulatory document development. They provided many examples of documents they assisted in developing which were clear, concise and well-written (Pgs. 20-45). They also show strong experience in the areas of training and database development. UBSTER listed over 100 different examples of training courses they developed and presented for EPA and other agencies (Pgs. 51-55). They demonstrated their experience in RAC Indemnification issues, as well as experience in most levels of specific environmental enforcement issues. Their exhibits (Exhibit B/Pages 35-65) indicate over 200 projects and activities of large dollar value that demonstrate considerable expertise and experience in all of the specific elements outlined in the SOW.

WEAKNESSES: UBSTER did not address, or indicate, any experience in the areas of administrative orders/consent decrees and administrative, civil and criminal actions. In addition, it was difficult to evaluate their experience in the areas of work plan, RI/FS and RODS since they were not mentioned in their proposal.

INTERROGATORIES: 1. Please clarify your experience in the areas of administrative orders/consent decrees and administrative, civil and criminal actions.

2. Please clarify your experience in the areas of work plan RI/FS and ROD development.

Score: 4 Weight: 10 Total: 8

GOOD GOOD GOOD GOOD GOOD GOOD GOOD GOOD GOOD GOOD GOOD GOOD GOOD

INDIVIDUAL SCORE SHEETS

TEP NAME: Jane Doe OFFEROR: UBSTER, INC.

ATTACHMENT C - TECHNICAL EVALUATION CRITERIA RFP W000000-E1

1. CORPORATE EXPERIENCE TOTAL 20 POINTS

b. Management Experience 10 Points

The offeror will be evaluated on the extent of their management experience anticipating or resolving potential problems during contract performance and in managing large dollar, highly complex, multi-tasked, multi-disciplinary contracts.

STRENGTHS: **Page No.**

UBSTER illustrated in their proposal an excellent contingency plan to address problems as they arise (Page 26) and they have several checkpoints built into their plan to prevent problems. UBSTER demonstrated they could respond to EPA problems, i.e. a staff member worked around the clock for two months to provide analytical and reporting support for a Congressional hearing on the adequacy of the RCRA groundwater monitoring program at land disposal facilities. UBSTER clearly demonstrated experience in resolving management problems on short notice and for those requiring critical actions (Page 44). UBSTER recognized and emphasized the importance of extensive communications with EPA personnel at all levels and outlined a complete, effective communications network in their proposal (Page 56).

UBSTER demonstrated superior experience by indicating prior contracts where they have successfully managed large, multi-disciplinary contracts. These contracts include the $60 M EPA Technical Enforcement Support contract, DOE's $2.5 billion Strategic Petroleum Reserve Project and $900 M Uranium Mill Tailings Remedial Action Program (Page 19). In addition, UBSTER, Inc. has supported OSW, OERR and OWPE since the passage of RCRA in 1976 and CERCLA in 1980. They have been involved with all of these programs on activities including regulatory development and program enforcement (Pgs. 20-25). They are currently managing 35 large dollar EPA contracts in the areas of Superfund and RCRA. (Exhibit A/Pg. 106). They have over 40 years of experience with Federal contracts for various other agencies.

WEAKNESSES: None were identified.

INTERROGATORIES: None were identified.

Score: 5 Weight: 10 Total: 10

BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD

INDIVIDUAL SCORE SHEETS

TEP NAME: Jane Doe OFFEROR: UBSTER, INC.

ATTACHMENT D - TECHNICAL EVALUATION CRITERIA RFP W000000-E1

1. CORPORATE EXPERIENCE TOTAL 20 POINTS

a. Enforcement Experience 10 Points

The offeror will be evaluated on the extent of their demonstrated relevant enforcement-related experience. The offeror should describe experience concentrating on the specific elements outlined in the SOW. Offerors will be evaluated according to their capability and experience, as indicated by their completed and current projects related to enforcement guidance development, program implementation and evaluation; and according to their capability and experience in conducting enforcement programs of a similar type, scope, and complexity as outlined in the SOW.

STRENGTHS: **Page No.**

UBSTER, Inc. has demonstrated good experience. Their proposal was well written. They appeared to understand most of the Statement of Work. They were strong in some areas and weak in others.

WEAKNESSES:

UBSTER, Inc. did not show any experience in seven out of the 11 areas outlined in the SOW.

INTERROGATORIES:

1. Please clarify your experience in the areas outlined in the Statement of Work.

Score: 4.5 Weight: 10 Total: 9

BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD BAD

INDIVIDUAL SCORE SHEETS

TEP NAME: Jane Doe OFFEROR: UBSTER, INC.

ATTACHMENT D - TECHNICAL EVALUATION CRITERIA RFP W000000-E1

1. CORPORATE EXPERIENCE TOTAL 20 POINTS

b. Management Experience 10 Points

The offeror will be evaluated on the extent of their management experience anticipating or resolving potential problems during contract performance and in managing large dollar, highly complex, multi-tasked, multi-disciplinary contracts.

STRENGTHS: Page No.

UBSTER, Inc. has lots of real good experience. Their write-up in this area was strong. They included many exhibits and graphs illustrating their experience. UBSTER, Inc. has managed a lot of contracts for the private sector. They indicated in their proposal that they can resolve problems. They know how to get the job done.

WEAKNESSES:

UBSTER, Inc. has no EPA contracts.

INTERROGATORIES:

1. Do you have any EPA contracts?

Score: 3 Weight: 10 Total: 10

EXHIBIT 6: SCORING PLAN

The evaluation of technical proposals shall be accomplished using the Scoring Plan specified below. The values used in technical evaluation shall be limited to those established in the Scoring Plan.

Value	Descriptive Statement
0	The element is not addressed, or is totally deficient and without merit.
1	The element is addressed but contains deficiencies that can be corrected only by major or significant changes to relevant portions of the proposal.
2	Clarification is required. Final scoring of the element will be made following limited discussions or full negotiations if discussions or negotiations are held with the offeror.
3	The proposal element is adequate. Overall meets specifications. However, comments should be made on any perceived weaknesses or on areas in which an offeror could improve.
3.5*	Intermediate merit.
4	The proposal is good with some superior features.
4.5*	Intermediate merit.
5	The proposal is superior is most features.

* The values 3.5 and 4.5 are to be used to indicate intermediate merit. If used, the chairperson of the Technical Evaluation Panel shall provide a narrative to explain the distinction between 3 and 4 or values 4 and 5.

The numeric values (1-5) should be converted into percentages of the total available points for that value. For instance, if a score of 4 (80%) is assigned to a sub-criteria that accounts for 10% of the total technical evaluation criteria weight, the following calculation produces the total score for that sub-criteria. Thus, the value score percentage of 80% (4) is multiplied by the sub-criteria weight of 10 to produce a sub-criteria total of 8.

EXHIBIT 7: FORMAT OF THE TEP REPORT

MEMORANDUM

SUBJECT: Technical Evaluation Panel Report on Proposals submitted under RFP _____

FROM: _____, Chairperson
Technical Evaluation Panel
Office of _____

TO: _____, Contracting Officer
Office-Mail Code

A. Introduction

In this section, describe when the panel met; that the _____ (Contracting Officer's name) from OAM briefed the panel on _____, 199_; how long you met; who the panel members are; refer to an attachment containing all the disclosure statements; etc. Also state that no panel members had a conflict of interest in this section.

B. Background (Make the following Statement)

The proposals received were evaluated in accordance with the evaluation criteria contained in the subject RFP and pursuant to EPAAR 1515.6.

C. Individual Technical Evaluations

Indicate that attached to this report as Attachment A are the individual score sheets of each TEP member for each proposal.

D. Consensus Technical Evaluations

Refer to Attachment B (Consensus Score Sheets) and what it represents. The consensus should include a detailed narrative on all of the technical evaluation criteria elements.

E. Overview

The following is a summary of the results of the TEP evaluation:

Insert Attachment C - Consensus Matrix

F. Certifications

Attachment D - Certificate for Conflict of Interest

Attachment E - Certification for the Unauthorized

Disclosure of Procurement Information

Attachment F - Procurement Integrity Certification.

G. Attachments

List your Attachments

H. CONSENSUS Signature Page

Add the signature sheet, with original signatures, for each consensus report (see below).

CONSENSUS REPORT SIGNATURE PAGE

_____ _____

Date , Chairperson

_____ _____

Date

_____ _____

Date

_____ _____

Date

EXHIBIT 8: Sample Individual and Consensus Score Sheet Matrices

INDIVIDUAL SCORE SHEET MATRIX

TEP NAME: _____ OFFEROR: _____

ATTACHMENT A - TECHNICAL EVALUATION CRITERIA RFP _____

CRITERIA NO.	(VALUE) SCORE		X	WEIGHT	=	TOTAL
1.a.	3	(60%)		10		6.0
1.b.	5	(100%)		10		10.0
2.a.	4	(80%)		20		16.0
2.b.	4.5	(90%)		10		9.0
3.1.	2	(40%)		03		1.2
3.2.	3	(60%)		03		1.8
3.3.	3.5	(70%)		04		2.8
3.4.	3	(60%)		04		2.4
3.5.	1	(20%)		03		0.6
3.6.	3	(60%)		03		1.8
4.a.	4	(80%)		04		3.2
4.b.	5	(100%)		03		3.0
4.c.	5	(100%)		03		3.0
5.a.	3.5	(70%)		04		2.8
5.b.	5	(100%)		04		4.0
5.c.	3	(60%)		04		2.4
5.d.1	3	(60%)		01		0.6
5.d.2	4	(80%)		02		1.6
5.e.	4.5	(90%)		03		2.7
5.f.	4	(80%)		02		1.6

Total			100	76.5
Value Key:	5.0 = 100%	3.5 = 70%	1.0 = 20%	
	4.5 = 90%	3.0 = 60%		
	4.0 = 80%	2.0 = 40%		

CONSENSUS SCORE SHEET MATRIX

TEP NAME: _____ OFFEROR: _____

ATTACHMENT 1 - TECHNICAL EVALUATION CRITERIA RFP _____

CRITERIA NO.	(VALUE) SCORE		X	WEIGHT	=	TOTAL
1.a.	3	(60%)		10		6.0
1.b.	5	(100%)		10		10.0
2.a.	4	(80%)		20		16.0
2.b.	4.5	(90%)		10		9.0
3.1.	2	(40%)		03		1.2
3.2.	3	(60%)		03		1.8
3.3.	3.5	(70%)		04		2.8
3.4.	3	(60%)		04		2.4
3.5.	1	(20%)		03		0.6
3.6.	3	(60%)		03		1.8
4.a.	4	(80%)		04		3.2
4.b.	5	(100%)		03		3.0
4.c.	5	(100%)		03		3.0
5.a.	3.5	(70%)		04		2.8
5.b.	5	(100%)		04		4.0
5.c.	3	(60%)		04		2.4
5.d.1	3	(60%)		01		0.6
5.d.2	4	(80%)		02		1.6
5.e.	4.5	(90%)		03		2.7
5.f.	4	(80%)		02		1.6

Total				100	76.5

Value Key:

5.0 = 100%	3.5 = 70%	1.0 = 20%
4.5 = 90%	3.0 = 60%	
4.0 = 80%	2.0 = 40%	

CHAPTER 10--PROTESTS

1. Definition 10-1

2. Procedures 10-1

3. Protests Filed with EPA 10-2

4. Protests Filed with the GAO 10-3

5. Protests of the GSBCA 10-5

CHAPTER 10--PROTESTS

1. Definition.

a. A Protest is a written objection by an interested party to a solicitation (this includes both RFPs and IFBs) for a proposed contract for the acquisition of supplies or services. A protest could also be a written objection by an interested party to a proposed award or the award of such a contract.

b. An interested party for the purpose of filing a protest means an actual or prospective offeror whose direct economic interest could be affected by the award of a contract or the failure to award a contract.

2. Procedures.

a. There are specific procedures for filing protests. The action that the Contracting Officer will take will be affected by whether the protest is submitted: (1) before award, or (2) after award, and whether filed directly with (1) EPA, (2) the General Accounting Office (GAO), or (3) the General Services Board of Contract Appeals (GSBCA) for automated data processing (ADP), and whether the protest is sustained or denied.

b. If an offeror voices a complaint about a procurement and the way the procurement is being handled, document the complaint and refer the offeror to the Contracting Officer. Do not discuss the matter with the offeror yourself.

c. Factfinding.

(1) In order to make a decision as to whether to sustain or deny the protest, the Contracting Officer must assemble, review, and evaluate all pertinent information related to the procurement and to the protest. This process involves a great deal of factfinding and may involve you as the technical representative. The information gathered may be put into a statement called a Findings of Fact. Typically, this statement includes a chronological detailing of events, from receipt of the purchase request to award of the contract--or to whatever point in the process was reached when the protest was filed.

(2) If the protest pertains to the substance of the RFP/IFB (e.g., an allegation that the statement of work or specifications are unduly restrictive), the factfinding would be expanded to include, as appropriate:

- The procurement history of the item.
- Reasons for restrictions (if, in fact, there were restrictions).
- Quality requirements.

- Time constraints.
- Special factors for responsibility.
- Other pertinent aspects of the procurement.

3. Protests filed with EPA.

a. Pre- and post-award protests made to EPA only are handled by the Contracting Officer in accordance with the rules established in the FAR, Subpart 33.1 and EPA Acquisition Handbook, Unit 7.

b. Pre-Award Protests.

(1) When a written protest against making award is filed only with the EPA, the Contracting Officer must not proceed with award until the matter is resolved unless it can be determined that:

(a) The items being solicited are urgently required;

(b) Performance or delivery will be severely delayed if award is not made promptly; or

(c) It is advantageous to the Government to make prompt award.

(2) If the Contracting Officer determines that award should be made because of one of these factors, he or she must prepare a written justification and obtain concurrence for award from the Office of General Counsel and the Director of the Office of Acquisition Management.

(3) If the Contracting Officer or a higher official in EPA sustains a pre-award protest the RFP/IFB must either be amended or canceled.

c. Post-Award Protests.

(1) When a written protest against an awarded contract is filed with EPA only, the Contracting Officer need not suspend contract performance or terminate the awarded contract unless it appears likely that the award will be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest. In this event, the Contracting Officer will consider making a mutual agreement with the contractor to suspend performance on a no-cost basis or, if appropriate issue a "stop-work" order.

(2) If the Contracting Officer or a higher official in EPA sustains a post-award protest, the following are actions which may be taken, according to the circumstances of the contract:

(a) Cancel the award as being improperly awarded;

(b) Terminate for convenience; or

(c) Allow the improper award to stand considering:

- Degree of performance already completed,
- Need to prevent performance delays, and
- Incumbent contractor's good faith in entering into the contract.

(3) If the Agency denies the protest, the protestor may file a "subsequent" protest with GAO.

4. Protests to the GAO. The GAO is authorized by statute, to render decisions on protests filed with it by any interested party. The decisions are made by or for the head of GAO, the Comptroller General of the United States, and they are referred to as Comptroller General decisions.

a. Time for Filing. Protests based on alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals must be filed prior to bid opening or the closing date for receipt of initial proposals, or, in the case of amendments to the solicitation, not later than the next closing date for receipt of proposals. In other cases, protests must be filed not later than 10 days after the basis of the protest is known or should have been known. Under the prescribed procedures, if an offeror initially submits a protest to the Contracting Officer, any subsequent protest to the Comptroller General must be filed within 10 days after receipt of formal notification of, or actual or constructive knowledge of initial adverse action taken by the Agency.

b. EPA Actions Required.

(1) The GAO will notify the Contracting Officer within one day by telephone of the receipt of a protest. If the award has already been made, the contractor must be notified of the protest; protests filed before award will require that the Contracting Officer notify all offerors "who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied."

(2) Upon notification of receipt of the protest by the GAO, the Contracting Officer has 25 work days to prepare a report for submission to the GAO or 10 work days after receipt of a GAO determination to use the express option. Copies of the submitted report must also be furnished to all interested parties. The following should be included in the Agency report:

(a) Copy of the protest;

(b) Copy of the protesting offeror's proposal;

(c) Copy of the proposal being considered for award or proposal which is being protested;

(d) Copy of the solicitation, including specifications or portions relevant to the protest;

(e) The abstract of bids or offers or relevant portions;

(f) Any other documents relevant to the protest;

(g) A statement which explains the Contracting Officer's actions and the reasons behind them; and

(h) Findings, actions, recommendations, and other information necessary for determining the validity of the protest.

(3) When EPA has received notice from the GAO of a pre-award protest filed directly with the GAO, the Contracting Officer cannot award a contract unless the Director of the Office of Acquisition Management determines in writing that:

(a) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit waiting the decision of the GAO; and

(b) Award is likely to occur within 30 calendar days of the written finding.

(4) If the agency receives a notice from the GAO, within 10 calendar days after award of a contract, that a protest has been filed against the award, the Contracting Officer must immediately suspend performance or terminate the contract. An exception to this requirement is that the Director of the Office of Acquisition Management may authorize performance upon a written finding that, (i) contract performance will be in the best interest of the United States; or (ii) urgent and compelling circumstances that significantly affect the interest of the U.S. will not permit waiting for the GAO's decision. Contract performance may not be authorized until the agency has notified GAO of the above finding.

When it is decided to suspend performance or terminate the awarded contract, the Contracting Officer should attempt to negotiate a mutual agreement on a no-cost basis.

c. GAO Decision Time. The GAO is required to issue its recommendation on a protest within 90 work days, or within 45 calendar days under the express option, unless the GAO establishes a longer period of time.

d. GAO Authority.

(1) When a protest is filed with the GAO, the Comptroller General will determine whether the solicitation, proposed award, or award complies with statute or regulation. If the Comptroller General determines that the solicitation, proposed award, or award does not comply with a statute or regulation, the Comptroller General may recommend that the Federal agency:

(a) Refrain from exercising any of its options under the contract;

(b) Recompete the contract immediately;

(c) Issue a new solicitation;

(d) Terminate the contract;

(e) Award a contract consistent with the requirements of such statute and regulation;

(f) Implement any combination of the above recommendations; or

(g) Implement such other recommendations as the Comptroller General determines to be necessary in order to promote compliance with procurement statutes and regulations.

(2) The Comptroller General will make recommendations on protests without regard to any cost or disruption from terminating, recompeting, or reawarding the contract.

(3) If a protest is sustained, the GAO may declare that the protestor is entitled to the cost of filing and pursuing the protest, including attorney fees and bid and proposal costs. Cost awarded by the GAO must be paid promptly by the agency from agency funds.

5. Protests of the GSBCA. An interested party may file a written protest concerning an RFP or IFB for the procurement of ADP or ADP services, or a proposed award or the award of such contract conducted under the authority of Section 111 of the Federal Property and Administrative Services Act to the GSBCA. The GSBCA Bid Protest Rules of Procedure are contained in 48 CFR Chapter 61.

a. Time for Filing.

(1) The GSBCA rules provide that protests based on alleged improprieties of the solicitation which are apparent before bid opening or the closing date for receipt of proposals shall be filed before bid opening or the closing date for receipt of initial proposals. Otherwise, the protest shall be filed no later than 10 days after the basis for the protest is known.

(2) GSBCA procedures require that a protester furnish a copy of its complete protest to the agency official, or the location designated in the solicitation, or to the Contracting Officer, the same day as the protest is filed with the Board.

b. EPA Actions Required.

(1) The GSBCA procedures state that within one working day after receipt of a copy of the protest, the agency shall give either oral or written notice of the protest to all parties who were solicited or, if the solicitation has closed, only to those who submitted a sealed bid or offer; and written confirmation of notice and a listing of all persons and agencies receiving notice should be given to the Board within five working days after receipt of the protest.

(2) Within 10 work days after the filing of the protest, the agency is required to file with the GSBCA a protest file. Except where the agency determines under appropriate authority to withhold classified or privileged information or information that would give a competitive advantage, the protest file must include the following:

(a) A Contracting Officer's decision, if any.

(b) The contract, if any.

(c) All relevant correspondence.

(d) Affidavits or statements of witnesses on the matter under protest.

(e) All documents relied upon by the Contracting Officer in taking the action protested.

(f) A copy of the solicitation, the protester's bid or proposal and, if bid opening has occurred and no contract has been awarded, a copy of any relevant bids and the bid abstract.

(3) No later than 15 work days after the filing of the protest, the Contracting Officer must file its answer to the Board setting forth its defense of the protest.

c. GSBCA Authority to Suspend Award. If a protest contains a timely request for a suspension of procurement authority, the Board will hold a hearing no later than 10 calendar days after the filing of the protest. The Board will suspend the procurement authority (DPA) unless the agency establishes that:

(1) Absent suspension, the contract award is likely within 30 calendar days; and

(2) Urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision.

d. GSBCA Hearings and Decision Authority.

(1) The Board will hold a hearing on the merits of a protest no later than 25 work days after the protest filing and a decision on the merits of a protest will be issued within 45 work days after the filing of a protest, unless the Board's Chairman determines that the unique circumstances of the protest require a longer period.

(2) The Board is required to conduct such proceedings and allow such discovery as may be required for the expeditious, fair, and reasonable resolution of the protest. In making a decision on the merits of protests brought under this authority, the Board is required to give due weight to the policies of the protest authority section of the CICA, and the goals of economic and efficient procurement. The Board may take one or more of the following actions:

(a) The Board may dismiss a protest the Board determines is frivolous or which, on its face, does not state a valid basis for protest.

(b) If the Board determines that a challenged agency action violates a statute or regulation or the conditions of any delegation of procurement authority, the Board may suspend, revoke, or revise the procurement authority of the Administrator or the Administrator's delegation of procurement authority applicable to the challenged procurement.

(c) In addition when the Board determines that the agency action violates a statute or regulation or the conditions of a DPA, the Board may also declare an interested party to be entitled to the costs of filing and pursuing the protest, including reasonable attorney's fees, and bid and proposal preparation costs.

(d) The Board may also order any additional relief which it is authorized to provide under any statute or regulation in addition to actions authorized under the CICA, Section 2713.

APPENDIX A

GLOSSARY OF TERMS

Account Number - A set of 10-didgit numbers used for tracking financial transactions in EPA's financial management systems and associating it with appropriation accounts.

Advisory and Assistance Services - Services to support or improve Agency policy development, decision making, management and administration, or to support and improve operation of management systems. OMB Circular A-120 mandates Agency control measures. The AA for OARM approves all services in excess of $1 million.

Allocable Costs - A cost is allocable to a Government contract if it is assignable or chargeable to one or more cost objectives incurred specifically for the contract, benefits both the contract and other work, and is necessary to the overall operation of the business.

Allowable Costs - Contract costs acceptable for payment under Government Cost Accounting Standards. Criteria for the acceptability of these costs include reasonableness, allocability, terms of the contract, and any limitations set forth in FAR Subpart 31.2 on contract cost principles.

Antideficiency - A violation of the Antideficiency Act in which a Federal agency incurs obligations or makes expenditures (1) prior to appropriations or (2) in excess of amounts available in appropriation or fund accounts.

Award Fee Contract - A cost reimbursement contract that provides for a fee consisting of (1) a base fee fixed at inception of the contract and (2) an award fee amount that the contractor may earn in whole or in part during contract performance.

Bona Fide Need - A fiscal year appropriation may be obligated only to meet a legitimate or bona fide need arising in the fiscal year for which the appropriation is available.

Certificate of Current Cost and Pricing Data - A certificate supplied by a contractor authenticating that to the best of his knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of final agreement on price. The certificate may be the basis for a price reduction in the contract if information known to the contractor affecting the contractor's price was disregarded.

Commitment - Funds reserved by a Program Office for obligation by the Contracting Officer on a contract action.

Competition in Contracting Act - Requires the Government to compete all procurements above $25,000 unless criteria justifying the use for other than full and open competition are met. Those seven criteria are: (1) Only One Responsible Source, (2) Unusual and Compelling Urgency, (3) Industrial Mobilization or Experimental, Development or Research work, (4) International Agreement, (5) Authorized or Required by Statute, (6) National Security and (7) Public Interest.

Confidential Business Information - Any information considered confidential and proprietary. Examples include: profit margins, indirect cost rates, number and kind of employees, individual salary rates, amount of award fee earned, and resumes of contractor employees.

Conflict of Interest (COI) - Because of other activities or relationships with other entities, a person is unable or potentially unable to render impartial assistance or to advise the Government, or a person's objectivity in performing contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Contracting Officer (CO) - Official who has delegated authority from the Administrator through the Director, Procurement and Contracts Management Division to enter into contracts on behalf of the Agency.

Cost Accounting Standards (CAS) - Standards established by law for certain contracts that provide for consistency in estimating, accumulating, and reporting costs. CAS is set forth in FAR Part 30.

Cost Plus Fixed Fee Contract - (term or completion)- A contract where the Government pays all reasonable, allowable, and allocable costs plus a negotiated fixed fee. There are two types: term and completion. Completion describes the scope of work to be done as a clearly defined specific task. Term describes the scope of work in general and obligates the contractor to devote a specific level of effort for a stated period of time.

Cure Notice - Notice sent to a Contractor requiring remedies to noted deficiencies in contract performance.

Debarment and Suspension - (Debarment) Action taken by a debarring official to exclude a contractor from Government contracting and Government approved subcontracting for a reasonable, specified period. (Suspension) Action taken by a suspending official to disqualify a contractor temporarily from Government contracting and Government approved subcontracting. Suspension is an immediate action taken to protect the Government's interest pending the completion of an investigation or legal proceedings.

Delivery Order - An order for supplies or services placed against an established contract or with Government sources of supply.

Delivery Order Project Officer (DOPO) - Defines work requirements for the Delivery Order Officer and Contracting Officer to use in the preparation and issuance of delivery orders under indefinite delivery/indefinite quantity contracts. Also monitors contractor performance.

Directed Subcontract - An illegal action where the Government instructs a prime contractor to utilize a particular subcontractor to perform certain contract requirements.

Disputes - The disputes procedure is the formal means for resolving conflicts arising under a contract which cannot be resolved by means of negotiation and mutual agreement. The contractor may appeal a Contracting Officer's final decision to the Department of Interior Board of Contract Appeals.

Document Control Number (DCN) - A unique 6-digit number assigned by the Funds Certifying Official to each commitment or obligation transaction to track actions on them. Each commitment notice must have a unique DCN specifying funding purpose and source.

Fixed Price Contract - Government pays a fixed price established before award which is not subject to adjustment regardless of the contractor's costs incurred. The risk of performance is on the contractor.

Funds Certifying Official - EPA officials, designated by allowance holders, to ensure that sufficient funds are available in an allowance for the amount and time period requested and the purpose is correct according to existing authority before an obligation is requested. This official assigns DCNs and maintains a DCN register for all transactions of an allowance holder.

Incremental Funding - Partial funding of a cost reimbursement contract. It is used in situations where program offices do not have the full amount of funding available at the time of contract execution, but expect to have it later in the contract period.

Indefinite Delivery, Indefinite Quantity Contract - A type of contract under which orders are placed against the contract after award. Orders specify time and place of delivery and quantity to be delivered. The contract contains a minimum amount which the Government must order, and a maximum amount which may not be exceeded.

Indirect Cost Rates - The percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor costs, manufacturing costs, or another

appropriate base for the same period. Provisional or billing rates are established temporarily for interim reimbursement of incurred indirect cost. Final rate is the indirect cost rate established and agreed upon by the Government and the Contractor after completion of a Contractor's fiscal year that is not subject to change.

Inherently Governmental Function - Function so intimately related to the public interest as to mandate performance only by Federal employees. These include functions which require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government.

Invoice/Voucher - The contractor's bill for services rendered and for supplies, usually submitted on a monthly basis.

Head of the Contracting Activity - The official who has overall responsibility for managing the contracting activity. At EPA, the Head of the Contracting Activity is the Director, Office of Acquisition Management.

Level of Effort Contract - A cost reimbursement term form contract. The Contractor's obligation is to furnish a fixed number of person hours over a specific time period for performance of a general statement of work.

Modifications within Scope/Additional Work - Modifications to the contract that fall clearly within the original intention of the parties during contract award. Additional work outside scope must follow the CICA guidelines and be justified on a sole source basis.

Monthly Progress Report - A monthly report from a Contractor giving a complete status of all project elements i.e. financial, technical, management, and administrative.

Obligation - When the Contracting Officer executes a contract action and previously committed funds are reserved for use under the contract.

Option - A unilateral right of the Government for a specified time to purchase additional supplies or services, or to extend the term of the contract.

Privity of Contract - A direct contractual relationship. The Government has privity only with the prime contractor. The Government has no privity with a subcontractor.

Procurement Executive - The individual who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policy, regulations, and standards of the executive agency. At

EPA, the Procurement Executive is the Director, Office of Acquisition Management.

Procurement Integrity Act - A federal law prohibiting employees from accepting bribes or gratuities, or discussing employment with a contractor during pre-contract award activities, and prohibiting former Government employees from working on contracts for a Contractor for which they had personal and substantial involvement during the pre-award phase while a Government employee.

Project Officer (PO) - Primary technical representative of the Contracting Officer for the contract. She/he may plan acquisitions, initiate requirements, perform technical evaluation, and monitor the contractor's performance after award. This individual does not have contracting authority.

Property Administrator - An employee designated by the Contracting Officer to administer Government property on contracts.

Protest (GAO, GSBCA) - A written objection by an interested party to a solicitation or to a proposed award or the award of a contract. GSBCA may decide protests on ADP acquisitions. GAO decides protests on all other types of acquisitions.

Purchasing System Review - A formal review of a contractor's purchasing system by OAM for compliance with federal regulations.

Recertification of Funds - A carryover allowance granted by the Agency Comptroller for multiple year appropriations. For example, if a two year appropriation covering fiscal years 92 and 93 is not obligated by September 30, 1992, the Comptroller must recertify the funds prior to obligation in FY 93.

Request for Proposals (RFP) - A formal request for receipt of proposals from offerors which allows for negotiations.

Sealed Bid - A method of contracting that employs competitive bids, public opening of bids, and award to the lowest responsible, responsive offeror. Sealed bidding involves no negotiation between offerors and the Government.

Severable Services - Those services which are continuing in nature or may otherwise be separated into components, each of which can be independently performed to meet a separate need of the Government. Examples include Guard services and Janitorial services.

Small Business Set-Aside - The reserving of an acquisition exclusively for participation by small business concerns.

Synopsis - A published summary in the Commerce Business Daily to identify proposed contract actions and contract awards.

Technical Direction - Direction provided to a contractor by a Project Officer to assist the Contractor in accomplishing the statement of work and other contract requirements. Technical direction may not alter the terms and conditions of the contract.

Termination for Convenience - The Government's unilateral right to cancel work in whole or in part under a contract whenever it determines that is in the Government's best interest. Contractors are entitled to reasonable costs resulting directly from the termination action.

Termination for Default - The Government's unilateral right to terminate a contract in whole or in part when the contractor has failed to perform its contractual obligations. Contractors are not entitled to any costs that may result directly from the termination action.

Work Assignment Manager (WAM) - A technical representative of the Contracting Officer on a specific work assignment. Develops the work assignment, monitors performance, provides technical direction, and recommends any necessary modifications to the Project Officer on cost reimbursement level-of-effort contracts.

Work Assignment - A specific task for work issued under a cost reimbursable, level-of-effort contract.

8(a) Contract - Section 8(a) of the Small Business Act authorizes the Small Business Administration to contract with Federal agencies and then to subcontract the work to socially and economically disadvantaged small businesses. In effect, the Government has the authority to enter into contracts with such businesses on a sole source basis under the 8(a) program.

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Environmental Protection Agency

GUIDE FOR PREPARING INDEPENDENT GOVERNMENT COST ESTIMATES

TABLE OF CONTENTS

Page

I. PURPOSE OF GUIDE . . . . . - 4 -

II. BACKGROUND . . . . . - 4 -

III. DEFINITION AND USES OF IGCEs . . . . . - 5 -
1. Definition . . . . . - 5 -
2. Types of Cost Estimates . . . . . - 5 -
3. Uses of IGCEs . . . . . - 6 -
4. Who is responsible for preparing IGCEs? . . . . . - 7 -

IV. PREPARING THE IGCE . . . . . - 7 -
1. Statement of Work. . . . . - 7 -
2. Work Breakdown Structure (WBS) . . . . . - 8 -
3. Databases . . . . . - 8 -
4. Identifying Costs . . . . . - 9 -
5. Steps for Estimating Direct Labor . . . . . - 11 -
6. Fringe Benefits . . . . . - 14 -
7. Overhead . . . . . - 14 -
8. Travel . . . . . - 14 -
9. Other Direct Costs (ODCs) . . . . . - 14 -
10. General and Administrative (G&A) . . . . . - 15 -
11. Profit or Fee . . . . . - 16 -

APPENDICIES

A. Sample Work Breakdown Structure (WBS)
B. Sample IGCE - Cost Reimbursable Contract
C. Sample IGCE - Fixed Rate/Indefinite Quantity Contract
D. IGCE Forms - Cost Reimbursable Contract
E. IGCE Forms - Fixed Rate/Indefinite Quantity Contract

I. PURPOSE OF GUIDE

This guide has been prepared to provide general guidance to the Environmental Protection Agency (EPA) personnel in their preparation of independent government cost estimates (IGCEs). This document does not contain required Agency procedures. It demonstrates ways of preparing IGCEs and provides forms and examples which will be helpful in preparing your IGCEs. IGCEs are prepared in support of procurement requests leading to new contracts, to support modifications and change orders, and to support the issuance of new work assignments and delivery orders under existing EPA contracts. This basic guidance can be used for new and existing contracts. On existing contracts we should have better defined needs for work assignments (WA) and delivery orders (DO) which should result in more detailed cost estimates.

This guide does not provide program specific guidance. It does provide a thorough overview for preparing an IGCE. It is expected that each EPA program office will supplement this guide with information relative to the specific program's requirements. The development and maintenance of good databases are essential to effective cost estimating. Some programs have developed program specific databases and computer software that facilitate the preparation of their IGCEs. All program offices are encouraged to take similar actions.

II. BACKGROUND

Independent Government Cost Estimates have always been an integral part of effective acquisition programs both in Government and private industry. The Administrator's Standing Committee on Contract Management in its report issued on June 30, 1992, disclosed that this agency provides little guidance on cost estimating and has not allocated adequate program resources to support development of IGCEs. The General Accounting Office (GAO) has long been concerned with EPA's failure to develop independent cost estimates. The EPA Office of the Inspector General (OIG) has identified improper contractor assistance with cost estimation on Automated Data Processing (ADP) contracts. The Administrator's Task Force on Implementation of the Superfund Alternative Remedial Contracting Strategy (ARCS), issued its report (the Dunne Report) in October 1991, and commented on the lack of independent cost estimates in the Superfund program. As a result of the Dunne Report, Superfund began developing guidance and databases specifically for the Superfund remedial programs.

For purchases of ADP equipment, related services and related equipment, the Federal Information Resources Management Regulations (FIRMR) require agencies to establish and document requirements for Federal Information Processing (FIP) resources by conducting a requirements analysis commensurate with the size and complexity of the need. This analysis and an alternatives analysis are required to accompany the Agency Procurement Request to obtain a Delegation of Procurement Authority (DPA) (when a DPA is required). "The analysis of alternatives requires Agencies to compare the costs of each feasible alternative unless the anticipated cost of the acquisition is less than $50,000 (41 CFR 201-20.2). Required guidance for cost calculations can be found in Office of Management & Budget (OMB) Circular N. A-94, "Benefit-Cost Analysis of Federal Programs; Guideline and Discounts" for calculating alternative costs." "Further information on whether the FIRMR applies to your solicitation is in the FIRMR (41 CFR 201-20.305) and associated FIRMR Bulletins (Bulletin A-1), published by Government Services Administration (GSA) and available in the Headquarters Library. Further guidance on when your solicitation may require a Delegation from GSA may be found in the FIRMR (41 CFR 201-20.305)."

The Administrator's Standing Committee report says the development of in-house cost estimation skills is an Agency contracts management priority. This guide is one step in complying with the Standing Committee recommendation on IGCEs and making IGCEs a normal part of the EPA acquisition process.

The current policy requires IGCEs be submitted with contract actions greater than $25,000. Contract actions include new contract awards, modifications to increase the scope of

work of the contract, work assignments and delivery orders.

III. DEFINITION AND USES OF IGCEs

1. Definition

A cost estimate is generally defined as a projection or forecast of the economic or financial value of goods and/or services to be delivered in the future. An Independent Government Cost Estimate is a detailed estimate of the cost to the Government for services and/or supplies to be acquired, generally from contractors. The estimate must be the Government's own in-house estimate and must not be based upon information obtained from contractors/ offerors from which proposals will be solicited. An IGCE is the Government's estimate of what a responsible contractor should propose based on the statement of work. The IGCE should not be divulged to any potential contractor.

There are various steps required in the development of an IGCE. All are necessary for a good cost estimate. The time expended and the depth of information needed for each step will depend on the phase and complexity of the work being estimated. The various steps are summarized in the following paragraphs:

A. Know the requirement, project or service being procured. In Government contracts, the Statement of Work (SOW) is the source document which defines the requirement, project or service. Any work not included in the SOW should not be included in the cost estimate.

B. Establish ground rules and assumptions. Examples of things to look for here include the following:

- Determine what the schedules and milestones are for completing the cost estimate and for completion of the entire project.
- Determine if this is a brand new endeavor, continuation or follow-on procurement.
- Determine if management has the need for any built in reserves and what impact budgets may have on your estimating.
- Document all ground rules and assumptions.

C. Determine if any historical databases are available and what other sources of data are available for the cost estimator to use. This could include experience on like or similar efforts, any type of professional materials, surveys and personal expertise of the cost estimator and co-workers. Document all sources of information.

D. Determine what method of estimating will be used. The two methods to be discussed in this guide are the "Top-down and the Bottoms-up" methods. You may use a combinations of these methods. Document the estimating method chosen and why it was selected.

E. Using the chosen method of estimating, prepare your estimate for quantities for labor, materials, travel and other elements of cost. Document the quantities used and how they were determined.

F. Review and organize your information and estimate unit costs for each category of cost and compute your estimate. Document the source and dates of your costs.

G. Review the resulting cost estimate for credibility, reasonableness, accuracy, and completeness. Make sure all steps in the IGCE preparation have been well documented.

H. Use the estimate to prepare the procurement package.

2. Types of Cost Estimates

Every cost estimate will be based on forecasts and cannot be predicted with absolute certainty. EPA's goal for cost estimates is to achieve predictions that are as accurate as possible using the information available and the best estimating

technique for a given situation. Generally speaking, there are two major types of cost estimates, parametric (top down) and engineering (bottoms-up). In many instances a combination of these two methods may be used.

Parametric or Top Down. This is called the ballpark approach and is based upon pricing major measurable units such as manhours, cubic yards, number of moves, number of laboratory tests or number of computers, major computer systems requirements, etc. to determine an approximate estimate of the costs. This approach requires the use of a database with like elements of work. It requires collecting and organizing historical data and relating it to the work output being estimated. When making any estimates based on historical data, adjustments have to be made to the database information for the specific work required and for cost increases/decreases due to differing requirements and economic conditions.

The top down method would be used in the early planning stages of a project when the precise quantities or needs are not yet known or when requirements are not fully known or detailed specifications are not available. This is the method which would probably be used when preparing an IGCE for a new contract as opposed to a work assignment or a delivery order on an existing contract. The estimate would result in an "order-of-magnitude" projection of costs, and would have to be refined as the work product becomes more defined. The top down approach may not detail all peripheral costs, such as site preparation access, regulatory permitting costs, specific license requirements, mainframe time-share costs or software, but some estimates of the cost of these items should be included.

Engineering or Bottoms-up. This is called the detailed estimate and represents the opposite end of the cost estimating spectrum. It presumes that the total effort can be separated into a work breakdown structure (WBS), and pricing can be applied to each element such as labor, overhead, travel, equipment, other direct costs and G&A. The database for a bottom-up estimate has to be very detailed and represents the accumulated experiences of many previous and similar projects. Adjustments still have to be made and you should never depend entirely upon any historical database. If a program is just starting to prepare IGCEs, formal supporting databases may not exist. However, there may be sufficient in-house experience and prior contracts for similar work which will provide information to assist you in using this method.

This type of estimate is prepared following completion of a detailed design specification of a proposed construction project, detailed requirements for software development, and whenever the needs are well defined. Each program should have as a top priority, preparing well defined needs for your SOW prior to even considering a Purchase Request (PR) package. In this scenario, fairly complete knowledge of the work to be done is assumed, and exact work steps or tasks and subtasks have been developed. Typically, SOWs address "what is required", not "how to do it." Therefore, offerors may propose different methods of "how to do it" than anticipated by the cost estimator. The Agency wants the bottom-up type of detailed IGCE for all work assignments and delivery orders.

3. Uses of IGCEs

EPA uses IGCE's for several purposes. Among them are the following:

A. For evaluation of proposals for new contracts. Once an IGCE has been completed, all offers received can be compared to the IGCE. Differences and similarities can be compared and various conclusions can be drawn. The Project Officer (PO), Contracting Officer (CO), cost estimator and cost analyst participate in this comparison analysis, depending on the situation. Examples of what this comparison might disclose include the following:

(1) The proposals overstate work required.

(2) The proposals understate the work required.

(3) The SOW does not sufficiently explain the requirements.

(4) The SOW is good, the IGCE is good, the technical proposals are good, but the proposal prices are either too high or too low.

(5) The proposals may include ideas and/or new technologies not considered by the Government.

B. For budget purposes prior to awarding contracts, issuing DOs and WAs. A good IGCE can be used to prepare the budget, prioritize areas of concern and monitor the work in process. You must always keep in mind that the IGCE is an estimate and may differ from the final cost. In an ideal situation these differences will be insignificant. However, there may be significant differences. You should analyze closely the differences to understand why they occurred and learn from them for the future. It is a good idea to document significant differences for future references.

C. For evaluating proposals for work assignments and delivery orders. This is similar to evaluating proposals for new contracts. One difference is the lack of competition since the contract has already been awarded. The lack of competition increases the importance of a complete and accurate IGCE. The quantities and levels of expertise and the associated amounts for other direct costs used in the IGCE are extremely important in this situation since rates for labor and indirect cost and associated amounts for other direct costs will have been negotiated for the contract as a whole.

D. To document negotiation objectives. This is a continuation of the process of comparing the IGCE to the proposals. The differences and similarities should be highlighted and the CO and PO should work together to determine what the Government's negotiation objectives should be and what issues will be discussed during negotiations. Desired outcomes should be documented as part of the CO's prenegotiation plan.

E. To document award decisions. Any contract award should be based on a fair and reasonable price for the required work. The IGCE will assist the CO and POs in their determination that the Government will pay a fair and reasonable price and will get an acceptable service or product. Any significant difference between the IGCE negotiation objective and the final cost/price negotiated, should be addreseed and documented for the contract file.

4. Who is responsible for preparing IGCEs?

It is the responsibility of the Program Office (RPM/WAM,PO/DOPO or other technical personnel) to develop the Independent Government Cost Estimate. These persons are responsible for determining the resources necessary to perform the work described in the statement of work. If your office or region has an in-house cost estimator he/she will probably be utilized for new procurements and large, complex WAs/DOs. In these situations the program technical personnel and the cost estimator should work very closely to ensure that the cost estimator is receiving and utilizing current, accurate and complete technical information and that there is complete agreement among all concerned parties as to the content of the IGCE. For most of the WAs/DOs, the project officer or lower level technical personnel will be responsible for preparing the IGCE. The accuracy and completeness of the IGCE are the responsibility of the Program Office, not the Contracting Officer. However, the Contracting Officer should be available to address specific contractual issues. Teamwork between the contracting office and the program is vital for a good IGCE.

IV. PREPARING THE IGCE

1. Statement of Work.

The basic requirement for a sound and defensible IGCE is a good SOW. The SOW is the starting point for the cost estimator in the preparation of the IGCE. The SOW is the source document that defines the Government's requirements for a product, project or service. It should provide information on the requirements, descriptions of the efforts required, and the timing and locations of efforts. An accurate and defensible IGCE cannot be developed without a clear, complete and concise SOW and detailed specifications. The SOW is the basis for both the IGCE and the contractor's proposals. A good SOW should provide the necessary foundation for the EPA to obtain the goods

and services it contracts for at a fair and reasonable cost and to get the best product, project or service on time and within the budget.

Planning the SOW. EPA personnel must allow a reasonable amount of time to develop and prepare the SOW so that it includes detailed descriptions of the technical requirements for a material, product, or service and includes the criteria for determining whether the requirements are met. A rushed project will usually result in a poor SOW with incomplete requirements and may lead to failure of the entire project. To start the SOW process, an outline of the major tasks to be performed should be developed. This will reduce the likelihood of major omissions and redundant steps.

Developing the SOW. After the SOW outline has been completed, the details can be added with the assurance that all facets of the work are included and that a clear, concise and complete SOW will emerge.

Utilizing the SOW. In addition to the obvious use of the specification in the resulting contractual instrument, it is also used to develop the performance schedule, evaluation criteria for negotiated contracts, provide a basis of measurement for analyzing contractor performance, identification of deliverables, and to develop the work breakdown structure (WBS).

2. Work Breakdown Structure (WBS)

A well written SOW should permit the user to develop a work breakdown structure for the requirement. Sometimes the WBS is actually prepared before the SOW. The important point is to prepare a WBS.

A WBS is prepared by dividing a requirement, project or service into its major tasks and dividing its major tasks into subtasks and dividing the subtasks into sub-subtasks, etc. This division into small subtasks makes it easier to identify the work required, to determine required staffing needs, to schedule the work and to estimate the initial cost for the desired output. It permits the cost estimator to assign quantities such as manhours, disciplines, labor category levels, number of trips, duration of trips, and equipment, etc.

A WBS provides overall visibility to the work to be performed and provides some assurance that all required tasks and subtasks are considered. It is a valuable tool for identifying activities, deliverables and milestones and provides a baseline to track actual vs. estimated costs to help determine potential cost overruns and underruns. It can be used to identify potential duplications and redundant tasks.

This is an important tool not only for estimating initial costs, but for scheduling the work, managing the resources and costs, and tracking the deliverables and expended effort throughout the period of performance. Good planning should allow sufficient time and effort to be devoted to preparing a WBS to produce a useful product. We recommend the WBS be prepared using some type of automated spreadsheet so changes can be made easily.

Included as Appendix A, is a sample WBS for building a Garage and using the WBS for estimating direct labor hours and dollars.

3. Databases.

A database is a collection of information. The simplest form of a database is a list. The more complex databases are computerized and contain many different types of information which can be sorted to provide printouts in different formats to fit the needs of the user. Each program should be developing databases appropriate to their needs.

In almost every situation, having a database of like and/or similar projects will facilitate the preparation of an IGCE. The cost estimator is strongly cautioned to not rely completely on historical data. Historical data may, in some instances, reflect quantities and prices that are unreasonable and unacceptable under current conditions or include inefficiencies for past works. They are a good starting point, but adjustments have to be made based on current needs. Historical databases usually will consist of two primary categories: (1) the quantity of items to be acquired such as hours (level of efforts) pieces of equipment, number of service calls of a particular type, number of types and duration of trips, number and type of lab analyses, number of PCs ordered, (2) the specific costs or dollar amounts incurred for these items.

The database of quantities should reflect projects which are similar in scope - in terms both of type of work and size - to the project for which the estimate is being prepared. If no formal database exists, the IGCE preparer should review invoices and monthly progress reports containing the actual costs incurred for WAs or DOs which were issued for like purposes. The information may or may not be broken down into tasks and subtask level of detail to permit a meaningful analysis.

The database of costs will consist of the specific cost or pricing information such as direct costs (hourly labor rates, travel costs, equipment costs, etc.), indirect costs, fixed rates or prices and unit prices. If there is no formal database, review of prior invoices and progress reports and personal experience will all be helpful. If the IGCE is being prepared for a WA or DO on an existing contract, the contract will contain much of the cost data needed to prepare the IGCE.

If relevant databases are unavailable, the IGCE preparer may consult with other programs or agencies where similar work may be performed to obtain assistance. Examples of other agencies which might have useful information are the U.S. Army Corps of Engineers for Superfund Clean-up or GSA for ADP requirements. The Work Assignment Managers (WAMs) and Delivery Order Project Officers (DOPOs) can consult with senior or more experienced project officers. Each major program office should take steps to develop and maintain databases for all work commonly performed by contractors. It is extremely important to keep a database updated once it is in place. Some EPA programs may have to update their reporting requirements in their contracts to facilitate the establishment of a useful database for use in preparing IGCEs, staying within budgets and better overall management of their contracts and budgets.

4. Identifying Costs

As stated in Part III of this guide, an IGCE is essentially a forecast of what the estimator believes it will cost the Government for services and/or supplies to be acquired, generally from contractors. This estimated cost includes any profit or fee that the contractor will earn.

In this section we address a broad spectrum of costs. When you prepare your IGCE you have to exercise your professional judgement as to the detail you include on each cost element. You should be careful about letting external forces, such as time constraints or funding limits influence your IGCE.

Contractors incur costs in two broad categories, direct costs and indirect costs. A distinction is made between the two categories because they are given different accounting treatments. For a Government contract this distinction insures that a contractor recovers the costs of performing work and that only those costs for which a benefit is received by the Government are charged to the Government.

It is important to have a general understanding of the difference between direct and indirect costs because it is necessary to make a distinction between direct and indirect costs when preparing an IGCE. Federal Acquisition Regulation (FAR) 31.202 and 31.203 define these terms. These terms are simplified for this guide. Direct costs are costs that can be directly associated with a particular project or contract. If a cost is incurred specifically for a contract and would not otherwise be incurred, it is a direct cost. Examples of direct costs include direct labor, materials, travel, equipment, subcontracts, consultants, computer usage time, courier service and long distance phone calls to name just a few. An estimator preparing an IGCE has more control over direct costs than indirect costs. Indirect costs are not directly associated with a specific project or contract but are necessary for the work to be done. Examples of possible indirect costs are as follows:

Utilities	*Depreciation*
Management salaries	*Accounting fees*
Maintenance cost	*Rent*
Recruitment costs	*Telephone*
Office supplies	*Fringe benefits*
Legal fees	

There is no specific rule or cost principle which defines whether a particular cost will be direct or indirect. A particular element of cost may be treated as direct or indirect depending upon the circumstances as long as the contractor treats the cost consistently. Clerical labor is an element of cost that can be charged direct or indirect depending on the specific contractor's practices. Generally, contractors

will charge clerical labor which can be identified with specific contracts as direct labor and all other clerical labor as indirect labor. This is acceptable as long as the accounting is consistent. It is important that the estimator understands the way a contractor charges the different cost elements on current contracts. On new procurements the estimator must document whether he/she considered specific elements of cost as direct or indirect. Whether a cost is direct or indirect depends on the contractor's accounting system and consistent treatment of like costs. **A contractor cannot be directed or required to charge a cost in a way that differs from his usual accounting practice unless his procedure is in violation of accepted Government cost principles.** For example, if it is a contractor's accounting practice to direct charge the president's time when he meets on problems dealing with a specific contract, EPA cannot direct or require him to charge his time to an indirect account when he holds meetings for your specific contract. **At EPA it is not the responsibility of the estimator to review and analyze the contents of the indirect pools and bases.** These details are left to the experts in the Cost Policy and Rate Negotiation Branch (CPRNB) of EPA's Cost Advisory and Financial Analysis Division located in the Office of Acquisition Management.

CPRNB is a central office which is responsible for approving indirect billing rates and negotiating final indirect rates for contractors. Any confirmation of an indirect rate or any question dealing with indirect rates should be addressed to this Branch. Remember, the estimator only needs to know the rates and the bases to which they are applied. Any detailed assessment of details is the responsibility of agency experts in the accounting and cost advisory areas.

Contractors may have one indirect rate or dozens of indirect rates. It depends on their accounting systems. Generally speaking, most contractors will have a minimum of two indirect rates i.e., an overhead rate and a General & Administrative (G&A) rate. Overhead expenses are common expenses for everyday management of a project or contract such as rent, utilities, clerical labor, etc. The base for the overhead expense pool may be direct labor hours, machine hours, direct material costs or direct labor dollars. The most common base is direct labor dollars. On an existing contract, it is necessary for the cost estimator to know and use the contractor's basis for allocating indirect costs to ensure accurate amounts for indirect costs. On a new procurement, it is necessary for the cost estimator to select a basis of allocation for indirect rates and document his selection.

G&A expenses are generally expenses for the overall management of a company. Examples of expenses found in G&A pools are salaries for upper management, accounting and legal expenses, rent and utilities for corporate offices, etc. The base for allocating G&A expenses is generally total cost, but other allocation bases may be used. For example, a contractor may use a base that excludes subcontracts.

There is no rule for an acceptable or unacceptable number for an indirect rate. No one can make an informed opinion about a company's proposed costs from just knowing their indirect rate(s). A complete understanding of the pools, bases and the accounting system is required. Any question regarding the indirect rates should be addressed to the CPRNB.

When preparing the IGCE, the estimator should generally assume that all work will be performed by the prime contractor. In other words do not price team subcontract costs out separately. Pricing in this way simplifies the process and the cost impact is small.

However, there may be instances on existing contracts where the estimator and/or PO are aware that the required work falls within the expertise of one or more of the subcontractors. In these instances the cost estimate should be based on the subcontractors' rates and any oversight costs required by the prime contractor.

When preparing the IGCE, document why costs have been included and any assumptions made that impact the costs. Once a project has been completed you can go back and determine where the differences are and where your assumptions differ from actual occurrences. Also, when using your IGCE during negotiations, having your assumptions all laid out will make it much easier for you to discuss areas of differences with the contractor. Each and every assumption and/or decision used in choosing cost factors, quantities, schedules and any other IGCE item should be documented not only for

use during and after negotiations but for any possible future reviews by management or other interested parties.

It is strongly recommended that an automated cost template or spreadsheet be set up for each contract, WA or DO. This will prevent simple math errors and allow for changes with a minimum of effort. Remember to update your documentation whenever you change your template.

5. Steps for Estimating Direct Labor.

Because such a large percentage of EPA's contracts are labor intensive, a good Government estimate for direct labor is fundamental to a clear, concise and complete IGCE. Preparing a good estimate for direct labor is both the most difficult and the most important part of the IGCE. Recommended steps for estimating direct labor are as follows:

A. In order to prepare a good estimate of direct labor, the estimator must have a good understanding of the work required. This should be clearly delineated in the SOW so that the contractor and the EPA estimator have the same understanding of the work effort required.

As stated above, preparing a good estimate for direct labor is both the most important and the most difficult part of the IGCE. As such, the estimator should make use of all the Government expertise available. Probably the most effective method of tapping the available Government expertise is to use the so called roundtable method. This involves bringing together Government representatives having the specific knowledge and experience of the subject requirement. Each invited expert should be given a copy of the SOW in advance and given sufficient time to study the SOW and independently estimate the number of hours required for their area of expertise. At the roundtable discussions, differences will be highlighted, and strong and weak areas of the SOW will be disclosed. If the requirement has a good SOW, the experts will have little difficulty understanding it. However, an unclear and disorganized SOW will result in the experts having difficulty understanding it and the estimates may be meaningless. The roundtable discussions should be completely open and allow the invited experts to discuss all aspects of the requirement. These discussions will probably result in adjustments to the individual estimates. The round-table method may also be utilized in the acquisition planning stage. It is the responsibility of the estimator to determine the final estimate of hours based on the input from the experts. The SOW may be revised at this point to clarify areas of concern disclosed by the roundtable discussions. Using the information and knowledge gained from the roundtable discussion, the estimator is ready to continue with his estimate of direct labor. At the WA or DO level, discussions with your supervisor and some of your peers may give you sufficient input to determine if you have a strong SOW or if you have a lot of experience, your personal experiences and professional judgement may be adequate.

B. A work breakdown structure (WBS) of the project will enhance everyone's understanding of the requirement, facilitate the roundtable discussions and result in a more meaningful IGCE. If a WBS has not been prepared, you should prepare one. This includes breaking the statement of work into as many tasks and subtasks as can be identified or as considered necessary.

C. Identify the hours, Professional (P) & Technical (T) levels and disciplines and/or labor categories and associated descriptions required for each task. A helpful hint to keep in mind is "if the work was performed 'in-house' what resources would be needed." The write-up must include all assumptions and the basis for selections. Decisions will probably be derived from one or a combination of the following:

(1) Current database for similar work being performed on this contract or a similar contract with adjustments for any differences.

(2) Roundtable discussions with Government experts, supervisors and peers.

(3) Personal experiences and professional judgement.

(4) Available Government models for the type of work required.

(5) Historical data on prior similar contracts. (Caution: You should never rely completely on historical data; there will generally be some adjustments required.)

D. If this is a delivery order on a contract already in place, compare the estimated P & T levels and disciplines with the contract to insure that the contract contains these levels and disciplines.

If this is a new contract to be placed, work with the CO to insure that the appropriate P & T levels and disciplines are included in the solicitation.

E. Price the hours, P & T levels and disciplines identified in C above.

If the estimate is for a new procurement, use historical databases on previous work with adjustments for escalation and differences in the complexity of work. You may also contact one of the Cost Advisory offices in the Office of Acquisition Management (Headquarters, Cincinnati, and RTP) to see what information they may have on rates being currently proposed on similar procurement. Sometimes, you may have a situation when you know the maximum dollar amount available to you and you have to basically estimate how many hours you can potentially buy. Whatever situation you find yourself in -- always document your decision in writing.

If you have a delivery order under an existing fixed rate type contract, use the negotiated rates from the contract for each applicable category. These are usually loaded rates (i.e., they include the direct labor, overhead, G&A and profit). The only additional items to be priced would be any travel and/or ODCs and applicable G&A and profit on these additional direct costs.

If the estimate is for a DO or WA under an existing cost type contract, generally there have been average rates negotiated for each P and T level which may be used for pricing. However, there may be situations where the level of expertise or personnel required is of a significantly higher or lower level than the average rate. In these situations the accuracy of the estimate can be increased by getting the contractor's average rates for more specific categories instead of the P & T categories. If you provide more specific categories or disciplines to the CO, he/she can request current information from the contractor or they can request the Cost Analyst to get this information from the contractor. **The COs are the best sources for information on existing contracts.**

If the work crosses a contractor's fiscal year, it will be necessary to either use escalation factors or review the contract files to determine if different rates have been negotiated for subsequent years. In some cases you may want to use weighted average rates which cover more than one year. The contract or contractor's best & final (BAFO) proposal should provide rates for each contract year.

After the number of hours are estimated, completing the direct labor estimates includes multiplying the number of estimated hours by the labor rates.

The next page contains an example of how a final direct labor hour estimate may look.

COST TEMPLATE FOR DIRECT LABOR

		YEAR 1			YEAR 2			YEAR 3			TOTAL	
LABOR CATEGORY	P/T LEVEL	HOURS	RATE	AMOUNT	HOURS	RATE	AMOUNT	HOURS	RATE	AMOUNT	HOURS	AMOUNT
PROJECT MANAGER	P4	1800	$55	$ 99,000	1800	$57.75	$103,950	1200	$60.64	$ 72,765	4800	$275,715
HYDROLOGIST	P4	500	$45	$ 22,500	600	$47.25	$ 28,350	400	$49.61	$ 19,845	1500	$ 70,675
CHEMIST	P4	200	$40	$ 8,000	200	$42.00	$ 8,400	200	$44.10	$ 8,820	1400	$ 25,220
ENVIRONMENTAL ENGINEER	P4	500	$40	$ 20,000	500	$42.00	$ 21,000	400	$44.10	$ 17,640	1400	$ 58,640
SYSTEMS ANALYST	P4	500	$35	$ 17,500	500	$36.75	$ 18,375	400	$38.59	$ 15,435	1400	$ 51,310
BIOLOGIST	P3	2400	$30	$ 72,000	2400	$31.50	$ 75,600	2400	$33.08	$ 79,380	7200	$226,980
CHEMIST	P3	3600	$33	$118,800	3300	$34.65	$114,345	3000	$36.38	$109,148	9900	$342,293
COMPUTER PROGRAMMER	P3	2000	$29	$ 58,000	1500	$30.45	$ 45,675	1000	$31.97	$ 31,973	4500	$135,648
SYSTEMS ANALYSTS	P3	1500	$28	$ 42,000	1000	$29.40	$ 29,400	800	$31.87	$ 24,696	3300	$ 96,096
COMPUTER PROGRAMMER	P2	900	$19	$ 17,100	500	$19.95	$ 9,975	300	$20.95	$ 6,284	1700	$ 33,359
ENVIRONMENTAL ENGINEER	P2	1500	$22	$ 33,000	800	$23.10	$ 18,480	500	$24.26	$ 12,128	2800	$ 63,608
COMPUTER PROGRAMMER	P1	2000	$15	$ 30,000	1300	$15.75	$ 20,475	900	$16.54	$ 14,884	4200	$ 65,359
SYSTEMS ANALYST	P1	500	$15	$ 7,500	300	$15.75	$ 4,725	200	$16.54	$ 3,308	1000	$ 15,533
LAB TECHNICIAN	T3	2000	$14	$ 28,000	2000	$14.70	$ 29,400	2000	$15.44	$ 30,870	6000	$ 88,270
DRAFTSMAN	T3	600	$15	$ 9,000	400	$15.75	$ 6,300	300	$16.54	$ 4,961	1300	$ 20,261
LAB TECHNICIAN	T2	2000	$12	$ 24,000	2000	$12.60	$ 25,200	2000	$13.23	$ 26,460	6000	$ 75,660
TOTAL P/T		22500		$606,400	19100		$559,650	16000		$478,595	57600	$1,644,645
CLERICAL		1800	$13	$ 23,400	1800	$13.65	$ 24,570	1800	$14.33	$ 25,799		$ 73,769
TOTAL LABOR		24300		$628,800	20900		$584,220	17800		$504,395		$1,718,414

Notes

(1) Every Work Assignment Manager (WAM) or Delivery Order Project Officer (DOPO) should have access to the basic contract or information on the various rates in the contract. They are available from either the Project Officer or Contracting Officer. ***CAUTION! These documents contain Confidential Business Information and unauthorized release of the information may be a criminal offense.***

(2) If the requirement is a work assignment or delivery order under an existing contract, the authorized labor categories may be contained in the contract files.

(3) P (Professional) and T (Technical) factors are based on the education and experience level of the people that will be needed for the project. You may have to go to the Best and Final proposal to get the negotiated rates. ***CAUTION! These documents contain Confidential Business Information and unauthorized release of the information may be a criminal offense.***

6. Fringe Benefits.

Many contractors apply a fringe benefits rate to direct labor dollars in order to recover the cost of items such as health insurance, social security, etc. If the cost estimate's for an order under an existing contract, check the contract to determine if a fringe benefit rate is contained in the contract. If there is a fringe benefit rate, compute the fringe benefit costs by multiplying the rate times the direct labor total.

7. Overhead.

Once the direct labor pricing has been computed, the estimator applies the applicable overhead rate(s). Check Section G in the contract for the appropriate bases and rates. If the contract has been in effect for any length of time the rates may have changed. Therefore, any amendments regarding rates should be reviewed. You may also contact the EPA Cost Policy and Rate Negotiation Branch at headquarters for the latest information on indirect rates for specific contractors.

If an IGCE is being prepared for a new procurement, the project officer may consult program personnel with experience with similiar contracts, the CPRNB to obtain information on typical contractors who might bid on the procurement or the contracting officer for advice on how to estimate the indirect cost.

For new procurements, the estimator may want to use an average loaded rate for projected P&T levels which would include labor, indirects (overhead and G&A) and profit. This information could be retrieved from the historical database for similar work with adjustments for escalation and any other differences. If you are pricing an individual work assignment and/or delivery order, you will want to be more specific and price categories of cost separately.

8. Travel.

Determine if performance of the SOW will require any travel by the contractor. If yes, the IGCE should be specific as to :

- The purpose of the travel and the contractor's role
- number of trips
- numbers of persons per trip
- the beginning and ending destinations for each trip and the length of time for each trip
- expected necessity of car rental vs. public transportation
- estimated per diems
- estimated airfares and/or train fares
- estimated amounts for taxis and other miscellaneous expenses

The narrative should include the purpose of each trip and any assumptions you have made regarding travel required to perform the SOW. This will be used to compare your estimate with the contractors estimate. Note: Contractors' travel costs must be in compliance with FAR 31.205-46 which generally limits travel costs to those authorized for Federal employees.

9. Other Direct Costs (ODCs).

Determine what ODCs will be required for contract performance. Examples of ODCs include the following:

Telephone	*Supplies*	*Reports*
Postage	*Reproduction*	*Computer*
Equipment	*Messenger Service*	

The narrative should include all assumptions you used in pricing these items. Some points to consider for each of the above are as follows:

Telephone - Based on historical data or personal experience, estimate the number of long distance calls per week and the average amount per call.
i.e. 2 calls per week at $5 per call and 52 weeks per year
2 X $5 X 52 = $520 for telephone calls/year

Postage - Consider what types of items are mailed. Some contracts have a lot of samples that are mailed or shipped.
e.g. 25 samples per month at $45/sample
25 X $45 = $1,125/month shipping charges

Equipment - For any special equipment needs consider specific items. Does the Government already own such items that can be used for the contract or project? Would it be more economical to rent or lease rather than buy? Include specific quantities and cost for each equipment item. It is EPA's policy that generally, contractors should provide all resources necessary to perform agency contracts. This includes equipment. However, in some situations it may be necessary to provide Government furnished equipment or to permit the contractor to acquire specialized equipment at Government expense. This is a CO decision and must be based on a written justification of need provided by the PO with concurrence at the Program Office Division Director or equivalent level. The requirements and regulations pertaining to Government furnished property are found in Chapter 5 of the Contracts Management Manual (CMM) and FAR Part 45. The requirements and regulations pertaining to lease vs purchase of equipment are found in FAR Subpart 7.4 - Equipment Lease or Purchase.

Reports - Review what reports are being received on the current contract or similar contracts. How many are being received? What is being done with them? Can any be cut out or the number reduced? Are additional reports required? Could some reports be combined? Keep in mind that any changes to reports on a current contract would require CO approval and modification of the contract. Once the number of reports and the estimated number of pages needed per report, has been determined, the cost estimator can estimate, based on historical data how much it costs per page and compute the total estimate,
i.e. if the historical base shows a cost of $3.50/-page and the average report is 50 pages and 3 different reports are required per month.

$3.50 X 50 X 3 = $525/month for reports

Reproduction - This is usually estimated on a per page basis. The rates generally range from $.05 to $.15 per page. *You could use an average of $.10 and an estimate of pages needed based on prior history.*

$.10 X 10,000 pages = $100 month for xeroxing.

Note: Environmental Protection Agency Acquisition Regulation (EPAAR) 1552.208.70 Reproduction or copying is permitted up to 5,000 copies of one page not to exceed 25,000 copies in the aggregate of multiple pages per job or individual requirement.

Messenger Service - This is an area where cost savings can be realized if monitored closely. Many times contractors use a messenger service at $15 or $20 per trip when an item could be mailed for $3 or $4. If time is not of the essence, items should be mailed instead of using a messenger. Calling several messenger services in the area and asking for quotes for deliveries in given areas will give a good estimate for the unit cost. Then project the number of deliveries per month.

e.g. 4 deliveries per month at $15 per delivery equates to - $15 X 4 = $60/month

Computer Related Costs - This is one of the more difficult area to estimate, because the category covers so many facets. It can include the purchase of personal computers, different computer usage rates for main frame and personal computers and other computer related costs. Are there special computer software packages that are required for your contract or project? If so, this cost could be included in this category. This is an area where assistance from an experienced professional is extremely helpful. You may wish to consult with representatives from the Office of Information Resources Management at Headquarters.

Miscellaneous ODCs - If this category is included you should have specific things in mind to include. Contractors include such things as temporary office help, special licenses and some surprises in this category. You should always identify what you are including in miscellaneous costs. There should never be excessive amounts in this category.

10. General and Administrative (G&A).

Once the pricing has been completed for direct labor, overhead, travel and ODCs, the applicable G&A rate should be applied. Check Section G in the contract for the appropriate bases and rates. If the contract has been in effect for any length of time the rates may have changed. Therefore, any amendments to the rates should be reviewed. The EPA Cost Policy and Rate Negotiation Branch at headquarters can provide the latest information on indirect rates for specific contractors.

11. Profit or Fee.

Since an IGCE is an estimate of the total cost to the Government, it should include profit or fee. Profit is associated with fixed price contracts and fee is associated with cost reimbursable type contracts. If the IGCE is for a contract already in place, the estimator should review the contract for any special fee provisions and apply the negotiated fee percentage to the total estimated costs.

The estimate of the profit/fee for a new procurement is an area where the CO can be particularly helpful. He/she can either give you a "normal" fee percentage to use or work with you in preparing an estimate based on EPA's Weighted Guidelines for profit/fee. When estimating fee on an award fee contract, take the conservative approach and include the maximum fee available.

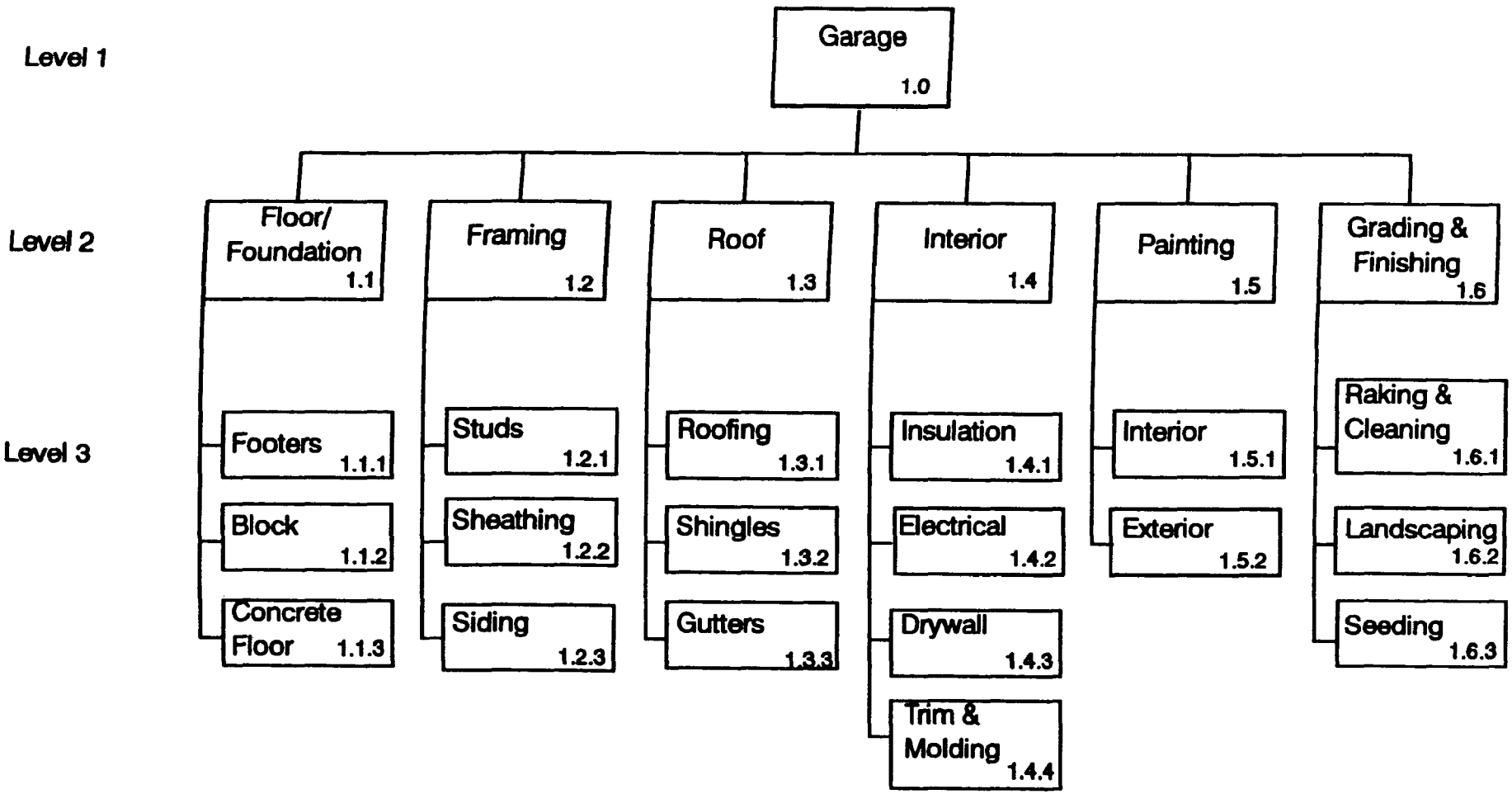
The time and effort expended and the details included in the IGCE will vary with the size and complexity of the project. Generally, the more details you include in your IGCE, the more useful it will be. Each program is different. Some items discussed in detail in this Guide may not pertain to all programs. For example, some EPA contracts contain only small dollar amounts for ODCs and other EPA contracts contain high dollar amounts of ODCs. This guidance will have to be adapted for the specific needs of each program. Remember, each program should know more about its contract needs than anyone else and is the most qualified to estimate the cost of the work required.

We have included examples of IGCEs utilizing information included in this guide. To the extent possible IGCEs should be estimated on a task or subtask level. We did not do this in the examples because it would make the guide to voluminous. The examples show all the information typed, but this is not required. Your IGCE may be handwritten.

We have also included blank forms which may be copied and used to prepare IGCEs. These are not standarized forms. Your office may already have existing IGCE forms, if not, the forms included in this guide may be used. The forms may be used for new procurements or WAs and DOs on existing contracts. For WAs and DOs substitute task or subtask for year. A limited number of forms on 5" disks are available. Please contact Cost Advisory and Financial Analysis Division if your office would like a copy of the disk.

APPENDIX A

SAMPLE WORK BREAKDOWN STRUCTURE (WBS)



Sample Work Breakdown Structure for a Garage

GARAGE

DIRECT LABOR EFFORT

TASKS & SUBTASKS	LABORERS	ELECTRICAN	CARPENTERS	BRICK LAYERS	CONCRETE FINISHERS	DRYWALL INSTALLERS	PAINTERS	TOTAL
1.1 FLOOR/FOUNDATION								
1.1.1 FOOTERS	12		6					18
1.1.2 BLOCK				10				10
1.1.3 CONCRETE FLOOR	12				12			24
1.2 FRAMING								
1.2.1 STUDS	24		50					74
1.2.2 SHEATHING			16					16
1.2.3 SIDING			16					16
1.3 ROOF								
1.3.1 ROOFING			16					16
1.3.2 SHINGLES			16					16
1.3.3 GUTTERS			6					6
1.4 INTERIOR								
1.4.1 INSULATION	6							6
1.4.2 ELECTRICAN		16						16
1.4.3 DRYWALL						32		32
1.4.4 TRIM			8					8
1.5 PAINTING								
1.5.1 INTERIOR							5	5
1.5.2 EXTERIOR							8	8
1.6 GRADING & FINISHING								
1.6.1 RAKE & CLEAN	16							16
1.6.2 LANDSCAPING	7							7
1.6.3 SEEDING	1							1
DIRECT LABOR HOURS	78	16	134	10	12	32	13	295
LABOR RATES	$15	$30	$25	$30	$20	$20	$20	
TOTAL DIRECT LABOR	$1,170	$480	$3,350	$300	$240	$640	$260	$6,440

APPENDIX B

SAMPLE IGCE
COST REIMBURSABLE
CONTRACT

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT _____RFP#009876 – A1_____
PREPARER ____J.DOE_____
DATE _X/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X___
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

SUMMARY COST ESTIMATE

COST REIMBURSABLE CONTRACTS

CATEGORY	YEAR 1	YEAR 2	YEAR 3	TOTAL
1. Direct Labor (WS–1)	*$631,150*	*$576,170*	*$493,318*	*$1,700,638*
2. Fringe Benefits (WS–2)	*$220,903*	*$201,660*	*$172,661*	*$595,224*
3. Total Direct Labor & Fringe Benefits (lines 1 &	*$852,053*	*$777,830*	*$665,979*	*$2,295,862*
4. Overhead (WS–2)	*$596,437*	*$544,481*	*$466,186*	*$1,607,104*
5. Total Travel (WS–3)	*$33,630*	*$34,975*	*$36,374*	*$104,979*
6. Total Other Direct Costs (WS–4)	*$253,256*	*$206,261*	*$193,558*	*$653,075*
7. Sub–Total (lines 3,4, 5 & 6)	*$1,735,376*	*$1,563,547*	*$1,362,097*	*$4,661,020*
8. G&A (WS–2)	*$260,306*	*$234,532*	*$204,315*	*$699,153*
9. Total Costs (lines 7 & 8)	*$1,995,682*	*$1,798,079*	*$1,566,412*	*$5,360,173*
10. Profit/Fee (WS–5)	*$175,620*	*$158,231*	*$137,844*	*$471,695*
11. Total Cost and Profit (lines 9 & 10)	*$2,171,302*	*$1,956,310*	*$1,704,256*	*$5,831,868*

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT ___RFP # 009876-A1_____
PREPARER ___J. DOE_____
DATE _ XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT__X___
WORK ASSIGNMENTS ____
DELIVERY ORDER ____
OTHER ____

DIRECT LABOR ESTIMATE WORKSHEET

COST REIMBURSABLE CONTRACTS

Labor Category	P/T Level	YEAR 1			YEAR 2			YEAR 3			TOTAL	
		Hours	Rate	Amount	Hours	Rate	Amount	Hours	Rate	Amount	Hours	Amount
PROJECT MANAGER	*P4*	*1,800*	*$55*	*$99,000*	*1,800*	*$57.20*	*$102,960*	*1,200*	*$59.49*	*$71,386*	*4,800*	*$273,346*
HYDROLOGIST	*P4*	*500*	*$45*	*$22,500*	*600*	*$46.80*	*$28,080*	*400*	*$48.67*	*$19,469*	*1,500*	*$70,049*
CHEMIST	*P4*	*200*	*$40*	*$8,000*	*200*	*$41.60*	*$8,320*	*200*	*$43.26*	*$8,653*	*600*	*$24,973*
ENVIRONMENTAL ENGINEER	*P4*	*500*	*$40*	*$20,000*	*500*	*$41.60*	*$20,800*	*400*	*$43.26*	*$17,306*	*1,400*	*$58,106*
SYSTEMS ANALYST	*P4*	*500*	*$35*	*$17,500*	*500*	*$36.40*	*$18,200*	*400*	*$37.86*	*$15,142*	*1,400*	*$50,842*
BIOLOGIST	*P3*	*2,400*	*$30*	*$72,000*	*2,400*	*$31.20*	*$74,880*	*2,400*	*$32.45*	*$77,875*	*7,200*	*$224,755*
CHEMIST	*P3*	*3,600*	*$33*	*$118,800*	*3,300*	*$34.32*	*$113,256*	*3,000*	*$35.69*	*$107,078*	*9,900*	*$339,134*
COMPUTER PROGRAMMER	*P3*	*2,000*	*$29*	*$58,000*	*1,500*	*$30.16*	*$45,240*	*1,000*	*$31.37*	*$31,366*	*4,500*	*$134,606*
SYSTEMS ANALYST	*P3*	*1,500*	*$28*	*$42,000*	*1,000*	*$29.12*	*$29,120*	*800*	*$30.28*	*$24,228*	*3,300*	*$95,348*
COMPUTER PROGRAMMER	*P2*	*900*	*$19*	*$17,100*	*500*	*$19.76*	*$9,880*	*300*	*$20.55*	*$6,165*	*1,700*	*$33,145*
ENVIRONMENTAL ENGINEER	*P2*	*1,500*	*$22*	*$33,000*	*800*	*$22.88*	*$18,304*	*500*	*$23.80*	*$11,898*	*2,800*	*$63,202*
COMPUTER PROGRAMMER	*P1*	*2,000*	*$15*	*$30,000*	*1,300*	*$15.60*	*$20,280*	*900*	*$16.22*	*$14,602*	*4,200*	*$64,882*
SYSTEMS ANALYST	*P1*	*500*	*$15*	*$7,500*	*300*	*$15.60*	*$4,680*	*200*	*$16.22*	*$3,245*	*1,000*	*$15,425*
LAB TECHNICAN	*T3*	*2,000*	*$14*	*$28,000*	*2,000*	*$14.56*	*$29,120*	*2,000*	*$15.14*	*$30,285*	*6,000*	*$87,405*
DRAFTSMAN	*T3*	*600*	*$15*	*$9,000*	*400*	*$15.60*	*$6,240*	*300*	*$16.22*	*$4,867*	*1,300*	*$20,107*
LAB TECHNICAN	*T2*	*2,000*	*$12*	*$24,000*	*2,000*	*$12.48*	*$24,960*	*2,000*	*$12.98*	*$25,958*	*6,000*	*$74,918*
TOTAL LOE HOURS		*22,500*		*$606,400*	*19,100*		*$554,320*	*16,000*		*$469,523*	*57,600*	*$1,630,243*
CLERICAL		*2,250*	*$11*	*$24,750*	*1,910*	*$11.44*	*$21,850*	*2,000*	*$11.90*	*$23,795*	*6,160*	*$70,396*
TOTAL LABOR HOURS		*24,750*		*$631,150*	*21,010*		*$576,170*	*18,000*		*$493,318*	*63,760*	*$1,700,638*

NOTES, ASSUMPTIONS AND COMPUTATIONS

LABOR CATEGORIES:

The work to be performed under this contract is similiar to work performed under contract 68-01-0000. We have added more hours for computer programmers and a systems analyst category to this contract because of the increased need to develop in-house software to analyze the extensive and specialized data expected to be collected under this contract. We also added a P4 Hydrologist based on specific problems encountered on a task in Region III that is excpected to continue under this contract. Selection of all the other labor categories are based on prior experience on contract 68-01-0000. This contract will provide support to Regions I, II, III, IV and V. We had various telephone conferences with each Region (POs, section chiefs, and branch chiefs) to get their views on the need for other labor categories or if their needs were being met with the current categories. Based on these discussions, we added hours for a P3 computer programmer and the systems analyst category at the P4, P3 and P1 levels. We also talked with technical personnel in the Applications Software Branch at OIRM for input on the skill level and educational requirements for the systems analyst hours.

**Notes pertaining to the various telephone conversations are contained in the program's back-up file for this IGCE.*

(Use additional pages if necessary)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

TYPE OF ACTION

SOLICITATION ___RFP # 009876-A1_____
PREPARER ____J. DOE_____
DATE _ XX/XX/9X_____

NEW CONTRACT ___X____
WORK ASSIGNMENT _____
DELIVERY ORDER ____
OTHER _____

DIRECT LABOR ESTIMATE WORKSHEET

COST REIMBURSABLE CONTRACTS

LABOR HOURS:

For the labor hours, we reviewed the current usage by Region and also had each Region submit their expected needs for the next 3 years under this contract. The Regions were able to break the effort down into tasks and in some cases to subtasks. This allowed us to determine (we think more accurately) the specific labor categories, skill levels and hours required to perform the work. We analyzed this data and used it as the basis for the hours for this contract. In the current contract, Projet Manager is 1,800 hrs. This should provide sufficient coverage to manage the effort, so no change was made, except to reduce it in year three due to total hours being reduced. This reduction for year three was agreed to be all Regions. The hours for the P4 Hydrologist are based on the expected needs for the Region III problem plus some extra hours in case this specific problem occurs in any other Region. We expect a heavy workload in programming and systems analysis during the first year and decreasing workloads in this area in years two and three. This is reflected in the number of hours we have included for computer programmers and system analysts for the entire three year period. We have a total of 7,400 hours in this area for year one and this decreases to 3,600 in year three. All other categories reflect for the most part what is being used on the current contract and the projected needs for each Region.

**All correspondence from the Regions and notes pertaining to any telephone conversation are contained in the programs back-up file for this IGCE.*

LABOR RATES:

The current contract is a cost reimbursable contract and the labor is shown as a lump sum with no breakdown of cost per category on the invoices. We went back to the Contracting Officer and got a copy of the Best and Final for the current contract to get an idea of what the rates by category should be and added 5% escalation to the current rates. For computer programmers and the system analysts, we asked our C.O. to find out what EPA is paying for these labor categories on the agency's ADP contracts. We got input from the Corps of Engineers on what they are currently being charged for a highly experienced hydrologists. We then called the Cost Advisory Branch at headquarters and compared our projected rates with rates currently being sumitted for review. We also received their input on the escalation for years two and three. They advised, based on current economic conditions, an escalation factor of between 3% and 5% be used for pricing the outyears. We used an average of 4% for years two and three. We included direct clerical hours in our cost estimate. Clerical hours are generally not part of the LOE hours in EPA contracts. Contractors are told in the RFP to add their best estimate for clerical hours if it is their accounting policy to direct charge clerical hours which can be specifically identified to a contract. It is our experience that most contractors direct charge clerical hours if they can specifically identify them to a contract. Based on experience on prior similar contracts, we have added a factor for direct clerical hours equivalent to 10% of the LOE hours for year one and two. For year three, we added a factor for direct clerical hours equal to 12.5% of the LOE hours. These additional hours in year three are for the increase in reports to be delivered at the end of the contract.

**Notes pertaining to all telephone conversations with OIRM, Cost Advisory Branch and the Corps of Engineers and worksheets computing our estimated rates are contained in the program's back-up file for the IGCE.*

SAMPLE WORKSHEET

(WS – 1) Continuation Page

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION___RFP # 009876 – A1_____
PREPARER __J. DOE_____
DATE __XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

INDIRECT COST RATES WORKSHEET

Estimating rates for computing indirect costs is different because the rates depend on how a contractor accounts for his costs and on what basis the indirect costs are allocated. For estimating purposes, we assumed the following:

1. *A Fringe benefit rate of 35% with total labor as the base. The current contract has a fringe benefit rate of 29%. However several other in–house contracts have fringe benefit rates ranging from 31% to 38%. We spoke with a representative of the Cost Policy and Rate Negotiation Branch and found social security expenses are increasing beginning January of next year. We made a roundtable judgement decision to use 35% for an estimated fringe benefit rate.*

2. *The Overhead rate for the current contract has fluctuated over the three year period of performance from 60% to 80%. Other contracts within our program office have overhead rates ranging from 50% to 120%. We made a roundtable judgemental decision to use the average rate from the current contract. The basis of allocation is total direct labor and fringe benefits.*

3. *G&A on the current contract has been in the 13% to 15% range for 3 years. Other contracts in our program office have G&A rates ranging from 5% to 45%. We made a judgemental decision to use for estimating purposes the 15% from the current contract for the current year with an allocation base of total cost exclusive of G&A expenses.*

These are our best estimates and material differences in rates could be proposed by contractors based on their accounting systems.

For Estimating purposes, use the following:		*Application Base for this contract*
Fringe Benefits	*35%*	*Direct Labor*
Overhead	*70%*	*Direct labor and fringe*
G&A (General and Administrative)	*15%*	*Total estimated costs exclusive of G&A expenses*

SAMPLE WORKSHEET

(WS–2)

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION __RFP # 009876 – A1____
PREPARER __J. DOE_____
DATE __XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X___
WORK ASSIGNMENT ____
DELIVERY ORDERS _____
OTHER _____

WORKSHEET FOR TRAVEL COSTS

TRAVEL	YEAR 1	YEAR 2	YEAR 3	TOTAL
Airfare	*$13,050*	*$13,572*	*$14,115*	*$40,737*
Per Diem	*$16,080*	*$16,723*	*$17,392*	*$50,195*
Car Rental				
Mileage				
Ground Transportation	*$4,500*	*$4,680*	*$4,867*	*$14,047*
Other (explain)				
*				
*				
*				
*				
*				
TOTAL TRAVEL	*$33,630*	*$34,975*	*$36,374*	*$104,979*

NOTES, ASSUMPTIONS AND COMPUTATIONS

Based on prior experience on similar requirements, the roundtable discussions of Dec. 2, 1992, with all branch chiefs and on the specific travel requirements for travel on page 5 of the Statement of Work, the following assumptions were used for estimating travel amounts:

1. 15 Roundtrips per year from various locations around the country to Washington, DC. These trips will be for information gathering purposes and for working meetings with EPA personnel. For estimating purposes, Seattle, Chicago, Dallas, Atlanta and Boston are the origination cities and we have priced three trips from each city.
2. Some trips will require two or more persons and some will require only one. For estimating purposes we have used two persons per trip and each trip has a duration of four days.
3. The destinations for all trips are Washington, DC. Public transportation is available; therefore, there should be no need for car rentals.

Roundtrips to Washington, DC from:

Atlanta	$525 x 3 trips x 2 persons/trip =	$3,150
Boston	$250 x 3 trips x 2 persons/trip =	1,500
Chicago	$350 x 3 trips x 2 persons/trip =	2,100
Dallas	$525 x 3 trips x 2 persons/trip =	3,150
Seattle	$525 x 3 trips x 2 persons/trip =	3,150
TOTAL		$13,050

4. Estimated per diems are for Washington, DC at the current government rate of $134.
   15 trips x 4 days/trip x 2 person/trip x $134 = $16,080

(Use additional pages if necessary)

WS–3

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION__RFP #009876-A1_____
PREPARER __J. DOE_____
DATE ___XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET – TRAVEL

5. *For estimating purposes we are including $150 per traveler per trip for ground transportation, mileage of personal vehicle to airport and parking at airport. Hotels are available close to EPA Headquarters so that taxi fares, if used, will minimal and Metro can be used.*

   15 trips x 2 persons/trip x $150 = *$4,500*

6. *For estimating purposes, we have added escalation of 4% per year for years 2 and 3 based on discussions with the Washington Cost Advisory Branch.*

Contiunation page (WS-3)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION___ RFP # 009876 – A1____
PREPARER ____J. DOE____
DATE __XX/XX/9X____

TYPE OF ACTION

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDER ____
OTHER ____

OTHER DIRECT COST ESTIMATE

OTHER DIRECT COSTS	YEAR 1	YEAR 2	YEAR 3	TOTAL
COURIER/MESSENGER	*$936*	*$973*	*$1,012*	*$2,922*
COMPUTER RELATED COSTS	*$174,600*	*$124,459*	*$108,484*	*$407,543*
MATERIAL/SUPPLIES	*$41,000*	*$42,640*	*$44,346*	*$127,986*
POSTAGE/FEDERAL EXPRESS	*$5,460*	*$5,678*	*$5,906*	*$17,044*
REPORTS	*$18,360*	*$19,094*	*$19,858*	*$57,313*
REPRODUCTION	*$1,200*	*$1,248*	*$1,298*	*$3,746*
TELEPHONE	*$11,700*	*$12,168*	*$12,655*	*$36,523*
*				
*				
*				
*				
*				
*				
*				
TOTAL ODCs	*$253,256*	*$206,261*	*$193,558*	*$653,076*

NOTES, ASSUMPTIONS AND COMPUTATIONS

COURIER/MESSENGER

Call to three local couriers disclosed the following:

Quoted prices for courier service between EPA office and contractor's local office;

Courier Co. A – $15
Courier Co. B – $18
Courier Co. C – $20
Average –$17.67 (rounded to $18)

On prior contracts the contractor has used courier service for almost every item whether it was a priority or not. Most of the time the items could be sent by regular mail or carried by personnel from the contractor coming in for meetings with the project officer or the Contracting Officer. Our data base shows on prior contracts courier deliveries averaging three times a week. We encourage the contractor to use the regular mail to the extent possible. There should be no need for courier service more than once a week.

Therefore, for each year of the contract, our estimate for courier service is computed as follows:

52 weeks x 1 delivery/week x $18/delivery = $936
Year two with escalation of 4% $973
Year three with escalation of 4% $1,012

(Use additional pages if necessary)

WS–4

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

TYPE OF ACTION

SOLICITATION___RFP # 009876 – A1_____
PREPARER __J. DOE_____
DATE __XX/XX/9X_____

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET – OTHER DIRECT COSTS

COMPUTER RELATED COSTS

The estimated computer related cost is based on historical usage and on current projected increases for programming and systems analysis for year one plus adjustments for escalation of 4% per year. An analysis of historical data (three years of data on the current contract) disclosed an average usage of one hour of computer time for every five hours of direct labor incurred. This does not mean there is a direct relationship between direct labor incurred and computer usage. However, for estimating purposes, it provides a standard measurement for projecting hours of usage. Most of the computer related costs have been and are expected to continue to be for personal computer (PC) and mainframe usage, usually charged at an hourly rate. On the current contract, the usage has been evenly & equitably distributed between personal computer (PCs) and mainframe usage. There will also be specific software programs required in order to be compatible with the EPA program software. For estimating purposes, we are dividing the hours equally between personal computer (PC) and mainframe usage. For estimating purposes we are using one hour of computer usage for every five hours of LOE plus an additional 1,000 hours for year one for the increased programming and systems analysis projected for year one. We have estimated the purchase of ten software programs for year one and included $500 each year for years two and three for software updates. The hourly rates are based on the current contract with a 4% escalation factor each year including year one because by the time this contract is awarded, the current rates will be over a year old. We estimated an average of $300/software program based on current market rates for year one. Our computations are as follows;

	PC	MAINFRAME
Computer Rates	$10.00/hr.	$50.00/hr.
add escalation of 4%	x 1.04	x 1.04
Year One Rates	$10.40	$52.00
add escalation of 4%	x 1.04	x 1.04
Year Two Rates	$10.82	$54.08
add escalation of 4%	x 1.04	x 1.04
Year Two Rates	$11.25	$56.24

Continuation page (WS – 4)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION___RFP # 009876 – A1_____
PREPARER __J. DOE_____
DATE __XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X_____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET – OTHER DIRECT COSTS

COMPUTER RELATED COSTS – continued		
Year One		
22,500/LOE/5=	*4,500 Based on historical data*	
	1,000 Hours based on additional needs	
	5,500 Total hours	
	2,750 personal computer (PC) hours	
	2,750 mainframe hours	
2,750 hrs. x $10.40/hr. for PC usage =		*$28,600*
2.750 hrs. x $52.00/hr. for mainframe usage =		*$143,000*
Software purchases		
10 programs @ $300/program =		*$3,000*
Total Year One Estimate		***$174,600***
Year Two		
19,100/LOE/5=	*3,820 Based on historical data*	
	1,910 personal computer (PC) hours	
	1,910 mainframe hours	
1,910 hrs. x $10.82/hr. for PC usage =		*$20,666*
1,910hrs. x $54.08/hr. for mainframe usage =		*$103,293*
Software updates		*$500*
Total Year Two Estimate		***$124,459***
Year Three		
16,000/LOE/5=	*3,200 Based on historical data*	
	1,600 personal computer (PC) hours	
	1,600 mainframe hours	
1,910 hrs. x $10.82/hr. for PC usage =		*$18,000*
1,910hrs. x $54.08/hr. for mainframe usage =		*$89,984*
Software updates		*$500*
Total Year Three Estimates		***$108,484***
TOTAL COMPUTER RELATED COSTS		
Year One	*$174,600*	
Year Two	*$124,459*	
Year Three	*$108,484*	
TOTAL	***$407,543***	

Continuation page (WS–4)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION___RFP # 009876 – A1_____
PREPARER __J. DOE_____
DATE __XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET – OTHER DIRECT COSTS

MATERIAL/SUPPLIES

Based on prior similar contracts, there are some specific supplies needed to perform the contract. Examples are specific reference books, expendable lab supplies and office supplies. We are basing our estimate on prior utilization of material and supplies with an additional increment for more lab supplies since the scope of work on this procurement includes an increased requirement for lab work. The amount incurred for the last five years has been fairly consistent with differences due to increased cost rather than increased quantities. Therefore, we are using the data for the most current year and adding escalation and an increment for increased lab supplies.

Current year cost	*$25,000*
escalation at 4%	*$1,000*
Lab increment	*$15,000*
TOTAL – Year One	***$41,000***
Escaltion: Year Two– 4%	***$42,640***
Escaltion: Year Three – 4%	***$44,346***
TOTAL	***$127,986***

POSTAGE/FEDERAL EXPRESS

Postage used for mailing letters and small packages has been running approximately $30/month on current contracts. There is no projected increase to postage. Federal Express or other overnight delivery makes up the bulk of the costs for this category of ODCs. The current rate on the open market ranges from $13 to $21 per package. We have been experiencing aroun 20 overnight deliveries per month on the current contract. We reviewed the need for such overnight packages and most of them have been for documents that required immediate attention. Therefore, we don't see any decrease in the numbers. In fact, due to the increase in lab work, the number will increase. For estimating purposes we are projecting 25 packages/month at an average rate of $17/pkg.

Year one costs:	*postage – 12 months x $30 =*	$360
	Overnight pkgs. – 12mo. x $17 x 25 pkg/mc	$5,100
YEAR One estimate		***$5,460***
YEAR Two estimate: escalation at 4%		***$5,678***
YEAR Three estimate: escalation at 4%		***$5,906***
TOTAL		***$17,044***

We did not include any escalation for year one costs because we used an average of current rates and most of the packages will be small and in the $14 – $15 range. We think postage costs can and will remain stable during year one at approximately $30/month.

Continuation page (WS–4)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION__RFP # W001234-D1
PREPARER __J. SMITH_____
DATE __XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET – OTHER DIRECT COSTS

REPORTS

Monthly reports and annual reports are requirements for this contract. Our past experience has indicated an estimate of so much per page provides the best indication of cost. This per page unit cost includes special bindings and covers, word processing costs and copying the reports. The total number of reports required by the Statement of Work per month is ten including all copies At the end of each year an additional ten reports, including copies are required. Reports on similar contracts averaged 50 pages per report at $4.50 per page. These reports have been sufficient to meet our needs. On this contract we anticipate an increase in the number of pages due to additional areas which have to be addressed as required by the SOW. These reports are extremely important and we want to be sure there are sufficient dollars in the contract to cover the cost. Therefore, we have increased our estimated cost per page to $5 to account for increases due to inflation and for any unexcpected reports we may require.

Year 1 Estimated Costs:				
10 reports/month x 50 pages x 12 =		*6,000 pages*		
10 additional reports x 50 pages =		*500 pages*		
	Total pages	***6,500 pages***	**x $5.00**	**$32,500**
Year 2 Estimated Costs:	***with escalation @ 4%***			**$33,800**
Year 3 Estimated Costs:	***with escalation @ 4%***			**$35,152**

REPRODUCTION

For IGCE estimating purposes we have used $.10 per page and have estimated 1,000 pages per month. This is based on the current prices we are paying and prices on the open market.

Our computed amount is as follows: *1,000 pages x $.10 = $100 month*

Year 1: 12 months x $100	***$1,200***
Year 2: with escalation @ 4%	***$1,248***
Year 3: with escalation @ 4%	***$1,298***
TOTAL	***$3,746***

Continuation page (WS-4)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION___RFP # 009876 – A1_____
PREPARER __J. DOE_____
DATE __XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X___
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET – OTHER DIRECT COSTS

TELEPHONE

For IGCE estimating purposes we are basing our estimate on the number of long distance phone calls required to perform the contract at an acceptable level. Based on experience we have found the more verbal communications there are between the program and the contractor, the less mistakes we have. On the current contract we are averaging two long distance call a day with an average duration of 20 minutes each. With the increased requirements on this procurement we expect phone calls to increase to three calls a day of 30 minutes duration. We have experienced an average of $.50 per minute on the current contract. The phone company indicated they did not expect to increase the rates for at least a year. Therefore, our computed amounts for telephone are as follows:

(52 x 5 = 260) 260 day/yr. x 3 calls x 30 minutes/call = 23,600 minutes/year

Year 1: 23,400 minutes x $.50/min. =	***$11,700***
Year 2: escalation @ 4%	***$12,168***
Year 3: escalation @ 4%	***$12,655***
TOTAL	***$36,523***

MISCELLANEOUS

We have not included any amount for miscellaneous. We believe we have covered the necessary costs. There are no specific items that we can think of that would be included here. If a contractor proposes an amount for this element of cost, we will review it and make a determination of its necessity to this contract.

Continuation page (WS–4)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE TYPE OF ACTION

SOLICITATION__RFP #009876 – A1_____
PREPARER ___J. DOE_____
DATE __XX/XX/9X_____

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

PROFIT/FEE WORKSHEET

We requested assistance from the Contracting Officer for estimating profit/fee. She recommended using the EPA weighted guidelines method for determining our estimated fee. We met with the Contracting Officer and provided input on the importance and necessity of each element of cost and she prepared a weighted guideline analysis for the fee. The weighted guidelines method disclosed a fee of 8.8%. We think that is a fair and acceptable fee percentage. We have included the computations and assumptions with the Independent Government Cost Estimate.

Since this is a LOE contract, direct labor is the most important factor for desired performance. The weighted guidelines allows from 8% to 15% to be applied to direct labor. We assigned 15% to P4 labor because the expertise and level of competence required at this level is the highest for all the labor. 14% was assigned to the P3 labor. The required expertise is not as high as P4 but the effort to be expended by the P3 labor represents 43% of the total effort. The effort for P2, P1, technical and clerical effort is of lesser importance and the expertise required is at a lower level than the P4 and P3. We assigned a 10% factor to P2 and P1 labor and an 8% factor to the technical and clerical labor. After applying the percentages to the appropriate labor dollars, we computed the weighted percentages of 12.96% for direct labor. For fee estimating purposes, we included the fringe benefit dollars with direct labor dollars.

TRAVEL AND ODC: We combined travel and other direct costs (ODCs) for fee computation purposes. The weighted guidelines allows a fee range for travel and ODCs of 1% to 3%. Since G&A is also applied to travel and ODCs, we felt 1% was a reasonable fee factor.

INDIRECT COST RATES – OVERHEAD AND G&A: The weighted guidelines allow a range of 6% to 8% for overhead and 5% to 8% for G&A. There is nothing out of the ordinary for indirects on this procurement. We used the average percentage of 7.5% for overhead and 6.5% for G&A.

(WS – 5)

SAMPLE WORKSHEET

WEIGHTED GUIDELINES

PROFIT/FEE OBJECTIVE | 1. CONTRACTOR: IGCE | 2. RFP/CONTRACT NO. 009876-A1

3. COST INPUT TO TOTAL PERFORMANCE

COST CATEGORY		GOV'T COST OBJECTIVE (a)	WEIGHT RANGES (b)	ASSIGNED WEIGHT (c)	WEIGHTED FEE Col.(a)*Col.(c) (d)
DIRECT MATERIALS	PURCHASES		1% TO 4%		$0
	SUBCONTRACTS		1% TO 5%		$0
EQUIPMENT			1% TO 2%		$0
ENGINEERING	DIRECT LABOR	$2,295,862	8% TO 15%	12.96%	$297,544
	OVERHEAD	$1,607,104	6% TO 9%	7.50%	$120,533
MANUFACTURING	DIRECT LABOR		5% TO 9%		$0
	OVERHEAD		4% TO 7%		$0
CONSULTANTS			2% TO 5%		
OTHER DIRECT COSTS		$758,054	1% TO 3%	1.00%	$7,581
					$0
					$0
GENERAL & ADMINISTRATIVE		$699,153	5% TO 8%	6.50%	$45,445
TOTAL		$5,360,173	XXXXXXXXXX	XXXXXXXXXXX	$471,103
4. COMPOSITE PROFIT ON COST INPUT TO TOTAL PERFORMANCE [Col.(d)/Col.(a)]					8.79%
5. COST RISK		XXXXXXXXXX	0% TO 6%		0.00%
6. PERFORMANCE		XXXXXXXXXX	-2% TO +2%		0.00%
7. SELECTED FACTORS		XXXXXXXXXX			0.00%
8. LESS: NOT-FOR-PROFIT PERCENTAGE					
TOTAL PROFIT/FEE OBJECTIVES (Lines 4 thru 8)					8.79%

No cost risk for contractors-cost reimbursable contract
No information on prior performance
Rounded to 8.8%

PREPARED BY (Name & Title)
Mary Smith, Contracting Officer

SIGNATURE Mary Smith

DATE June 1, 1994

APPENDIX C

SAMPLE IGCE
FIXED RATE INDEFINITE QUANTITY CONTRACT

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION___RFP # W001234-D1_____
PREPARER __J. SMITH_____
DATE ___XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X___
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

SUMMARY COST ESTIMATE

FIXED RATE / INDEFINITE QUANTITY CONTRACTS

CATEGORY	YEAR 1	YEAR 2	YEAR 3	TOTAL
1. Direct labor (WS – 1,2 & 5)	*$1,771,670*	*$1,842,537*	*$1,916,238*	*$5,530,445*
2. Total Travel (WS-3)	*$11,342*	*$11,795*	*$12,268*	*$35,405*
3. Total Other Direct Costs (WS-4)	*$91,930*	*$90,327*	*$93,861*	*$276,118*
4. G&A on travel and ODCs (if applicable) (WS – 2)	*$10,327*	*$10,212*	*$10,613*	*$31,152*
5. Total Costs (lines 1,2,3 & 4)	*$1,885,269*	*$1,954,871*	*$2,032,980*	*$5,873,120*

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION ___RFP # W001234-D1_____
PREPARER _____J. SMITH_____
DATE __XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X___
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

DIRECT LABOR ESTIMATE WORKSHEET

SCHEDULE OF LOADED FIXED RATES

Labor Category	Unloaded Hourly Rate	Fringe @ 30.00%	Overhead @ 100.00%	Subtotal	G&A @ 10.00%	Total Costs	Profit @ 10.00%	Loaded Hourly Rate	Estimated Hours/year	CONTRACT COSTS Year 1	Year 2	Year 3	TOTAL
P-4													
Program Manager	$55.00	$16.50	$71.50	$143.00	$14.30	$157.30	$15.73	$173.03	1,200	$207,636	$215,941	$224,579	$648,157
Site Manager/Leve III	$45.00	$13.50	$58.50	$117.00	$11.70	$128.70	$12.87	$141.57	1,000	$141,570	$147,233	$153,122	$441,925
Sr. Computer Secialist	$31.00	$9.30	$40.30	$80.60	$8.06	$88.66	$8.87	$97.53	900	$87,773	$91,284	$94,936	$273,993
Sr. LANS Specialist	$33.00	$9.90	$42.90	$85.80	$8.58	$94.38	$9.44	$103.82	900	$93,436	$97,174	$101,061	$291,670
Sr. Systems Analyst	$37.00	$11.10	$48.10	$96.20	$9.62	$105.82	$10.58	$116.40	800	$93,122	$96.846	$100,720	$290,688
TOTAL									4,800	$623,537	$648,479	$674,418	$1,946,434
P-3													
Asst. Program Manager	$35.00	$10.50	$45.50	$91.00	$9.10	$100.10	$10.01	$110.11	1,000	$110,110	$114,514	$119,095	$343,719
Site Manager/Level II	$29.00	$8.70	$37.70	$75.40	$7.54	$82.94	$8.29	$91.23	1,000	$91,234	$94,883	$98,679	$284,796
Minicomputer specialist	$28.00	$8.40	$36.40	$72.80	$7.28	$80.08	$8.01	$88.09	2,500	$220,220	$229,029	$238,190	$687,439
Microcomputer specialist	$28.00	$8.40	$36.40	$72.80	$7.28	$80.08	$8.01	$88.09	1,000	$88,088	$91,612	$95,276	$274,976
Programmer/Analyst	$25.00	$7.50	$32.50	$65.00	$6.50	$71.50	$7.15	$78.65	1,700	$133,705	$139,053	$144,615	$417,374
TOTAL									7,200	$643,357	$669,091	$695,855	$2,008,303
P-2													
Site Manager/Level I	$25.00	$7.50	$32.50	$65.00	$6.50	$71.50	$7.15	$78.65	800	$62,920	$65,437	$68,054	$196,411
Technical Writer	$23.00	$6.90	$29.90	$59.80	$5.98	$65.78	$6.58	$72.36	2,500	$180,895	$188,131	$195,656	$564,682
Sr. Data Control Clerk	$18.00	$5.40	$23.40	$46.80	$4.68	$51.48	$5.15	$56.63	1,200	$67,954	$70,672	$73,499	$212,124
TOTAL									4,500	$311,769	$324,239	$337,209	$973,217
T-1													
Data Input Technician	$8.00	$2.40	$10.40	$20.80	$2.08	$22.88	$2.29	$25.17	2,200	$55,370	$57,584	$59,888	$172,842
Jr. Equipment Technician	$9.50	$2.85	$12.35	$24.70	$2.47	$27.17	$2.72	$29.89	1,500	$44,831	$46,624	$48,489	$139,943
Jr. Computer Operator	$7.50	$2.25	$9.75	$19.50	$1.95	$21.45	$2.15	$23.60	1,000	$23,595	$24,539	$25,520	$73,654
TOTAL									4,700	$123,795	$128,747	$133,897	$386,439
TOTAL LOE									21,200	$1,702,458	$1,770,556	$1,841,378	$5,314,393
Clerical	$11.00	$3.30	$14.30	$28.60	$2.86	$31.46	$3.15	$34.61	2,000	$69,212	$71,980	$74,860	$216,052
TOTAL DIRECT LABOR									23,200	$1,771,670	$1,842,537	$1,916,238	$5,530,445

NOTES, ASSUMPTIONS AND COMPUTATIONS

LABOR CATEGORIES:

The work to be performed under this contract is almost identical to the work performed under contract 68-01-2222. We have added the categories and hours for a P4 Sr. LANS Specialist and a P2 Technical Writer. All other categories are the same as the categories under contract 68-01-2222. The Sr. LANS Specialist was added to provide support for the various LANS systems used and needed by the program. The P2 Technical Writer was added to assist the program in writing clearer specifications on specific delivery orders.

(Use additional pages if necessary)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

TYPE OF ACTION

SOLICITATION____RFP # W001234-D1_____
PREPARER _____J. SMITH_____
DATE _____XX/XX/9X_____
CATEGORY__FIXED LOADED HOURLY RATES____

NEW CONTRACT __X___
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

DIRECT LABOR ESTIMATE WORKSHEET

LABOR HOURS:

For the labor hours, we reviewed the current usage on contract 68-01-2222 and determined the current hours were sufficient for the program needs. At this point in time, there is no projected increase in our workload except for the work to be performed by the Sr. LANS Specialist and the Technical Writer. We provided a questionnaire to the Branch Chief and project officers which utilize this contract and received their input on the number of hours needed for the Sr. LANS Specilaist and the Technical Writer and their input on current usage on the other labor categories. They identified the work these categories will perform into specific subtasks needed for the next three years under this contract. We reviewed their estimates, including their assumptions and used their recommended hours for each category.

We added clerical labor to our estimate. The RFP did not include a specific cartegory of hours for clerical. The contractor's were instructed to add loaded clerical hours to the RFP hours if it is their accounting policy to direct charge clerical labor when it can be specifically identified to a contract. Based on prior experience on contract 68-01-2222, we included 2000 hours for direct clerical labor in our estimate.

**All correspondence from the Branch Chief and project officers and notes pertaining to any telephone conversations are contained in the program's back-up file for this IGCE.*

LABOR RATES:

The current contract is a fixed rate/indefinite quantity contract and the labor is shown as a fixed rate for each labor category for each year. This fixed rate includes labor, indirects and profit and is called a loaded rate. In order to compute our estimate for loaded rates, we utilized published average survey rates for the computer industry for the Washington area (most work will be performed there) for the labor categories in this procurement. We added percentages for fringe benefits, overhead, G&A and fee.

We worked with the Contracting Officer and the Cost Policy and Rate Negotiation Branch to get some ranges for the indirect rates. We realize each company is different and their rates depend on their specific accounting system. The indirect rates used for estimating purposes are average rates from the ranges provided. We included a 10% fee factor for each category for estimating purposes. We used this percentage to ensure we did not under estimate costs. After we completed our computations, we compared our estimated rates to the rates in the current contract. We found some rates were higher and some lower, but overall were reasonable. We then added escalation of 3% for year one, 4% for years two and three. Our estimated escalation factors were included after discussions with the Washington Cost Advisory Branch.

**All workpapers showing the various computations and comparisons we performed and all notes pertaining to all telephone conversations with the Contracting Officer, Cost Policy and Rate Negotiation and Washington Cost Advisory Branches are contained in the program's back-up file for this IGCE.*

(WS – 1) Continuation Page

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION___RFP #W001234-D1_____
PREPARER ___J. SMITH_____
DATE __XX/XX/9X_____
CATEGORY___FIXED LOADED HOURLY RATES_____

TYPE OF ACTION

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

INDIRECT COST RATES WORKSHEET

We talked with the Contracting Officer and the Rate Negotiation Branch at headquarters and got some current rates for companies likely to bid on this contract (i.e. capable of performing the work). We performed a straight average of the rates provided. Once we have computed loaded rates for each labor category, we will compare them to the current contract rates and make any adjustments we feel are necessary.

	Fringe	Overhead	G&A
Company A	28%	110%	9%
Company B	35%	93%	14%
Company C	29%	101%	8%
Company D	25%	103%	8%
Company E	33%	91%	11%
AVERAGE	***30%***	***100%***	***10%***

SAMPLE WORKSHEET

(WS-2)

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION__RFP# W001234-D1_____
PREPARER ___J. SMITH_____
DATE ___XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

WORKSHEET FOR TRAVEL COSTS

TRAVEL	YEAR 1	YEAR 2	YEAR 3	TOTAL
Airfare	*$3,870*	*$4,025*	*$4,186*	*$12,081*
Per Diem	*$3,312*	*$3,444*	*$3,582*	*$10,339*
Car Rental	*$1,800*	*$1,872*	*$1,947*	*$5,619*
Mileage	*$1,820*	*$1,893*	*$1,969*	*$5,681*
Ground Transportation	*$540*	*$562*	*$584*	*$1,686*
Other (explain)				
*				
*				
*				
*				
*				
TOTAL TRAVEL	*$11,342*	*$11,796*	*$12,268*	*$35,405*

NOTES, ASSUMPTIONS AND COMPUTATIONS

Most of the work on this contract will be performed in the Washington area. Therefore, most of the travel costs will be for local travel. On the current contract, there has been the need to travel to the Program office in RTP approximately once a month for a two day visit. On this contract with the addition of the technical writer to assist the program with some of the written technical descriptions, there will be a need for the technical writer to meet with program officials. Based on discussions with the Branch and Section Chiefs who will use this contract, we are projecting six, two day trips per year for the technical writer. For local travel, we assumed a maximum of 25 miles one way distance from the EPA Headquarters offices, two trips per week for meetings, or to deliver emergency reports and used the current mileage rate Government workers are reimbursed when using privately owned cars. For years two and three, we have escalated year one total travel by 4% for each year. The escalation factor is based on discussions with Washington Cost Advisory Branch.

Computations are as follows;

Local travel

Two trips per week – 50 miles maximum roundtrip
Parking @$5.00/trip
Two trips/week x 52 weeks = 104 trips x $5/trip parking = $520 for parking
Mileage @$.25/mile
Two trips/week x 52 weeks x 50 miles/trip = 5,200 miles/year = $1,300/year for mileage

Mileage =	*$1,300*
Parking =	*$520*
Total Local travel	*$1,820*

(Use additional pages if necessary)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION___RFP #W001234-D1_____
PREPARER __J. SMITH_____
DATE ___XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET – TRAVEL

RTP Trips		
18 trips total – two days each trip		
Airfair $215 – 18 trips x $215 =		$3,870
Perdiem $92/day – 18 trips x two days x $92/day =		$3,312
Car Rental $50/day – 18 trips x two days x $50/day =		$1,800
Parking & mileage $15/day – 18 trips x two days x $15/day =		$540
Total RTP Travel		**$9,522**
Total Year One Travel – Local	$1,820	
Total Year One Travel – RTP	$9, 522	
Total Year 1	**$11,342**	
add escalation of 4% for Year 2	**$11,796**	
add escalation of 4% for Year 3	**$12,268**	

Contiunation page (WS-3)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION ___RFP #W001234-D1_____
PREPARER ____J. SMITH_____
DATE __XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

OTHER DIRECT COST ESTIMATE

OTHER DIRECT COSTS	YEAR 1	YEAR 2	YEAR 3	TOTAL
COURIER/MESSENGER	*$2,080*	*$2,163*	*$2,250*	*$6,493*
COMPUTER RELATED COSTS	*$41,650*	*$38,036*	*$39,479*	*$119,165*
MATERIAL/SUPPLIES	*$600*	*$624*	*$649*	*$1,873*
POSTAGE/FEDERAL EXPRESS	*$900*	*$936*	*$973*	*$2,809*
REPORTS	*$32,500*	*$33,800*	*$35,152*	*$101,452*
REPRODUCTION	*$1,200*	*$1,248*	*$1,298*	*$3,746*
TELEPHONE	*$13,000*	*$13,520*	*$14,061*	*$40,581*
*				
*				
*				
*				
*				
*				
*				
TOTAL ODCs	*$91,930*	*$90,327*	*$93,862*	*$276,119*

NOTES, ASSUMPTIONS AND COMPUTATIONS

COURIER/MESSENGER

From our historical data, we determined we were paying an average of $18 per trip for courier service and there was an average of three trips per week. We reviewed what was being delivered by courier and determined some items being delivered were routine reports or follow-ups of meetings that could be delivered by regular mail or delivered by people coming for regularly scheduled meetings. Two trips per week are more than sufficient to serve the needs of the program.

We checked the Washington Post for courier advertising and found rates of $15/trip to $30/trip.

We called three courier services and got the following quotes:

Company A: $15/trip – 5 mile radius; $30/trip – 5 miles and beyond

Company B: $20/trip in metro area

Company C: $21/trip in metro area

Based on the above information, we are using $20/trip for estimating purposes and 4% escalation for years two and three.

Computations

2 trips/week x 52 weeks x $20/trip =	***$2,080 Year One***
4% escalation	***$2,163 Year Two***
4% escalation	***$2,250 Year Three***
Total for 3 years	***$6,493***

(Use additional pages if necessary)

WS-4

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION__RFP # W001234-D1____
PREPARER __J. SMITH____
DATE __XX/XX/9X____

TYPE OF ACTION

NEW CONTRACT __X___
WORK ASSIGNMENT ____
DELIVERY ORDERS ____
OTHER ____

IGCE CONTINUATION WORKSHEET – OTHER DIRECT COSTS

COMPUTER RELATED COSTS		
This contract requires extensive use of computers. EPA provides some PCs as government furnished property and some of the work is performed using various LANS and the mainframe. Our projected cost for computer related costs are for costs the contractor will incur for contractor owned equipment. Our review of the workload on the current contract disclosed 80% of the computer related hours were for personal computer (PC) usage and the remainder for mainframe usage and additional software to provide compatability with EPA programs. The program office branch chief projected a 10% increase in computer usage time on this contract due to the addition of more LANS at EPA and usage by the technical writer. The program is currently reviewing the need to provide more government PCs to this contract. However, a decision on this will not be made for at least a year. For estimating purposes we have utilized the current usage hours plus 10% for PCs and mainframe.		
PCs		
Current average usage hours =	*1,200 per month*	
Projected in-house increase of 10%	*120*	
Total projected PC usage	*1,320 hours*	
Mainframe		
Current average usage hours =	*300 per month*	
Projected in-house increase of 10%	*30*	
Total current mainframe usage	*330 hours*	
The PC usage rate under the current contract is $11/hr. and the mainframe rate is $55/hr. We looked at two other contracts in our program that have PC and Mainframe usage and did a straight average of the rates for each.		
	PC	***Mainframe***
current contract	*$11/hour*	*$55/hour*
contract B	*$15/hour*	*$60/hour*
contract C	*$10/hour*	*$55/hour*
Average	***36/3 = $12/hr.***	***170/3 = $57/hr.***
Because the average rates are higher than the current contract rates, we decided to use them for estimating purposes and to add escalation of 4% for years two and three.		

Continuation page (WS-4)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION__RFP # W001234-D1_____
PREPARER __J. SMITH
DATE __XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET – OTHER DIRECT COSTS

COMPUTER RELATED COSTS – continued		
For software, the program needs the flexibility to work with new software programs that come on the market. They are aware of some new programming in process that could enhance their work. To cover current needs and possible new software needs we are estimating 20 software programs at an average cost of $350 for year one. For years two and three, we are estimating $2,000 per year for updating software.		
Year One Estimate		
PCs: $12/hour x 1,320 hours =	*$15,840*	
Mainframe: $57/hour x 330 hours =	*$18,810*	
subtotal	*$34,650*	
Software: 20 programs x $350 each =	*$7,000*	
Total Year One	***$41,650***	
Year Two and Three Estimate		
PC year one rate x 1.04 = year two rate x 1.04 = year three rate		
$12 x 1.04 =	*$12.48 x 1.04 =*	*$12.98*
Mainframe year one rate x 1.04 = year two rate x 1.04 = year three rate		
$57 x 1.04 =	*$59.28 x 1.04 =*	*$61.65*
Year Two Estimate		
PCs: $12.48/hour x 1,320 hours =	*$16,474*	
Mainframe: $59.28/hour x 330 hours =	*$19,562*	
subtotal	*$36,036*	
Software updates	*$2,000*	
Total Year Two	***$38,036***	
Year Three Estimate		
PCs: $12.98/hour x 1,320 hours =	*$17,134*	
Mainframe: $61.65/hour x 330 hours =	*$20,345*	
subtotal	*$37,478*	
Software updates	*$2,000*	
Total Year Three	***$39,478***	
GRAND TOTAL	***$119,164***	

Continuation page (WS-4)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION__RFP # W001234-D1____
PREPARER __J. SMITH____
DATE __XX/XX/9X____

TYPE OF ACTION

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET – OTHER DIRECT COSTS

MATERIAL/SUPPLIES

This category of cost is for graphic supplies, some office supplies and specific publications required for this contract. This has been a minimal cost in the past and there is no forseeable reason for it to increase a great deal in the future. For the past 3 years on the current contract it has averaged approximately $50/month. We are using this average for year one with escalation of 4% for years 2 and 3.

Year One:	***$600***	*($50 x 12)*
escalation	*1.04*	
Year Two	***$624***	
escalation	*1.04*	
Year Three	***$649***	
TOTAL	***$1,873***	

POSTAGE/OVERNIGHT DELIVERY

Postage on the current contract is currently running approximately $20/month and overnight delivery $50/month. With the decrease in courier service recommended, the mailing cost should increase by abourt $5/month. Overnight delivery is expected to remain at the same level. We have included escalation of 4% for years two and three.

Year One:	
Postage: $25/month x 12 =	*$300*
Overnight delivery: $50/month x 12 =	*$600*
Total	***$900***
Year Two: with 4% escalation	***$936***
Year Three: with 4% escalation	***$973***
TOTAL	***$2,809***

Continuation page (WS-4)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION___RFP # 009876 – A1_____
PREPARER __J. DOE_____
DATE __XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET – OTHER DIRECT COSTS

REPORTS

Monthly reports and annual reports are requirements on this contract. Our past experiences has indicated an estimate of so much per page provides the best indication of cost. This per page unit cost includes special binding and covers, word processing cost and copying the reports.

The total number of reports required by the Statement of Work per month is eight including all copies. At the end of each year an additional six reports, including copies are required. Reports on similar contracts averaged 40 pages per report at $3.50 per page. These reports have been sufficient to meet our needs. On this contract we anticipate an increase in the number of pages due to additional areas which have to be addressed as required by the SOW. We estimate an increase of five pages per report. These reports are extremely important and we want to be sure there are sufficient dollars in the contract to cover the cost. Therefore, we have increased our estimated cost per page to $4 to account for increases due to inflation and for any unexpected reports we may require.

Year One Estimated Costs:		
8 reports/month x 45 pages x 12 =	*4,320 pages*	
6 additional reports x 45 pages =	*270 pages*	
Total pages	*4,590 x$4.00 =*	**$18,360**
Year Two estimated costs: escalation @4%		**$19,094**
Year Three estimated costs: escalation @4%		**$19,858**

REPRODUCTION

For IGCE estimating purposes we have used $.10 per page and have estimated 1,000 pages per month. This is based on the current prices we are paying and prices on the open market.

our computed amount is as follows: *1,000 pages x $.10 = $100/month*

Year 1: 12 months x $100 =	***$1,200***
Year 2: escalation @ 4%	***$1,248***
Year 3: escalation @ 4%	***$1,298***
TOTAL	***$3,746***

Continuation page (WS–4)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION__RFP # W001234-D1_____
PREPARER __J. SMITH_____
DATE __XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X___
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET – OTHER DIRECT COSTS

TELEPHONE

For IGCE estimating purposes we are basing our estimate on the number of long distance phone calls required to perform the contract at an acceptable level. Based on experience we have found the more verbal communications there are between the program and the contractor, the less mistakes we have. On the current contract we are averaging ten long distance call a day with an average duration of 10 minutes each. We have experienced an average of $.50 per minute on the current contract. The phone company indicated they did not expect to increase the rate for at least a year.

Therefore, our computed amount for telephone are as follows:

(52 x 5 – 260)	*260 days/yr. x 10 calls/day x 10 minutes/call =*	26,000 minutes/year

Year 1: 26,000 minutes x $.50 =	***$13,000***
Year 2: with escalation @ 4%	***$13,520***
Year 3: with escalation @ 4%	***$14,061***
TOTAL	***$40,581***

MISCELLANEOUS

We have not included any amount for miscellaneous. We believe we have covered the necessary costs. There are no specific items that we can think of that would be included here. If a contractor proposes an amount for this element of cost, we will review it and make a determination of its necessity to this contract.

Continuation page (WS-4)

SAMPLE WORKSHEET

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION___RFP #W001234-D1____
PREPARER ___J. SMITH_____
DATE __XX/XX/9X_____

TYPE OF ACTION

NEW CONTRACT __X___
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

PROFIT WORKSHEET

We talked to the contracting officer regarding profit. She recommended we take the conservative approach and use a 10% profit factor to provide better assurance that we don't under estimate our costs. We have taken the contracting officer's recommedation and used a 10% profit factor for all categories.

The RFP is allowing for G&A on travel and other direct costs, but states there will be no profit paid on travel and other direct costs for this procurement. Therefore, we did not include any amounts for profit on the travel and other direct costs.

SAMPLE WORKSHEET

(WS-5)

APPENDIX D

IGCE FORMS
COST REIMBURSABLE
CONTRACT

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT _____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT _____
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

SUMMARY COST ESTIMATE

COST REIMBURSABLE CONTRACTS

CATEGORY	TASK 1	TASK 2	TASK 3	TOTAL
1. Direct Labor (WS–1)	$	$	$	$
2. Fringe Benefits (WS–2)	$	$	$	$
3. Total Direct Labor & Fringe Benefits (lines 1 & 2)	$	$	$	$
4. Overhead (WS–2)	$	$	$	$
5. Total Travel (WS–3)	$	$	$	$
6. Total Other Direct Costs (WS–4)	$	$	$	$
7. Sub–Total (lines 3,4, 5 & 6)	$	$	$	$
8. G&A (WS–2)	$	$	$	$
9. Total Costs (lines 7 & 8)	$	$	$	$
10. Profit/Fee (WS–5)	$	$	$	$
11. Total Cost and Profit (lines 9 & 10)	$	$	$	$

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT _____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT ____
WORK ASSIGNMENTS ____
DELIVERY ORDER ____
OTHER ____

DIRECT LABOR ESTIMATE WORKSHEET

COST REIMBURSABLE CONTRACTS

Labor Category	P/T Level	YEAR 1			YEAR 2			YEAR 3			TOTAL	
		Hours	Rate	Amount	Hours	Rate	Amount	Hours	Rate	Amount	Hours	Amount
			$	$		$	$		$	$		$
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
			$			$			$			
TOTAL				$			$			$		$

NOTES, ASSUMPTIONS AND COMPUTATIONS

(Use additional pages if necessary)

INDEPENDENT GOVERNMENT COST ESTIMATE

TYPE OF ACTION

SOLICITATION/CONTRACT_____

PREPARER_____

DATE_____

NEW CONTRACT _____

WORK ASSIGNMENT _____

DELIVERY ORDER _____

OTHER _____

DIRECT LABOR ESTIMATE WORKSHEET

(WS – 1) Continuation Page

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT _____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT _____
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

INDIRECT COST RATES WORKSHEET

(WS-2)

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT _____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT _____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

WORKSHEET FOR TRAVEL COSTS

TRAVEL	YEAR 1	YEAR 2	YEAR 3	TOTAL
Airfare	$	$	$	$
Per Diem				
Car Rental				
Mileage				
Ground Transportation				
Other (explain)				
*				
*				
*				
*				
*				
TOTAL TRAVEL	$	$	$	$

NOTES, ASSUMPTIONS AND COMPUTATIONS

(Use additional pages if necessary)

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT_____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT _____
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

OTHER DIRECT COST ESTIMATE

OTHER DIRECT COSTS	YEAR 1	YEAR 2	YEAR 3	TOTAL
COURIER/MESSENGER	$	$	$	$
COMPUTER				
MATERIAL/SUPPLIES				
POSTAGE/FEDERAL EXPRESS				
REPORTS				
REPRODUCTION				
TELEPHONE				
MISCELLANEOUS				
*				
*				
*				
*				
*				
*				
TOTAL ODCs	$	$	$	$

NOTES, ASSUMPTIONS AND COMPUTATIONS

WS-4

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT _____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT _____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET

Contiunation page

INDEPENDENT GOVERNMENT COST ESTIM.TYPE OF ACTION

SOLICITATION/CONTRACT _____ NEW CONTRACT _____
PREPARER _____ WORK ASSIGNMENT _____
DATE _____ DELIVERY ORDER _____
OTHER _____

PROFIT/FEE WORKSHEET

APPENDIX E

IGCE FORMS
FIXED RATE INDEFINITE QUANTITY CONTRACT

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT _____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT _____
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

SUMMARY COST ESTIMATE

FIXED RATE / INDEFINITE QUANTITY CONTRACTS

CATEGORY	YEAR 1	YEAR 2	YEAR 3	TOTAL
1. Direct Labor (WS – 1,2 & 5)	$	$	$	$
2. Total Travel (WS–3)	$	$	$	$
3. Total Other Direct Costs (WS–4)	$	$	$	$
4. G&A on travel and ODCs (if applicable) (WS – 2)	$	$	$	$
5. Total Costs (lines 1,2,3 & 4)	$	$	$	$

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION _____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT ____
WORK ASSIGNMENT ____
DELIVERY ORDER ____
OTHER ____

DIRECT LABOR ESTIMATE WORKSHEET

SCHEDULE OF LOADED FIXED RATES

Labor Category	Unloaded Hourly Rate	Fringe @	Overhead @	Subtotal	G&A @	Total Costs	Profit @	Loaded Hourly Rate	Estimated Hours/year	CONTRACT COSTS Task 1	Task 2	Task 3	TOTAL
P–4													
TOTAL													
P–3													
TOTAL													
P–2													
TOTAL													
P–1													
TOTAL													
T–4													
TOTAL													
T–3													
TOTAL													
T–2													
TOTAL													
TOTAL LOE													
Clerical													
TOTAL DIRECT LABOR													

NOTES, ASSUMPTIONS AND COMPUTATIONS

(Use additional pages if necessary)

INDEPENDENT GOVERNMENT COST ESTIMATE

TYPE OF ACTION

SOLICITATION/CONTRACT_____

PREPARER_____

DATE_____

NEW CONTRACT _____

WORK ASSIGNMENT _____

DELIVERY ORDER _____

OTHER _____

DIRECT LABOR ESTIMATE WORKSHEET

(WS – 1) Continuation Page

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT _____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT _____
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

INDIRECT COST RATES WORKSHEET

(WS–2)

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT _____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT _____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

WORKSHEET FOR TRAVEL COSTS

TRAVEL	YEAR 1	YEAR 2	YEAR 3	TOTAL
Airfare	$	$	$	$
Per Diem				
Car Rental				
Mileage				
Ground Transportation				
Other (explain)				
*				
*				
*				
*				
*				
TOTAL TRAVEL	$	$	$	$

NOTES, ASSUMPTIONS AND COMPUTATIONS

(Use additional pages if necessary)

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT_____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT _____
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

OTHER DIRECT COST ESTIMATE

OTHER DIRECT COSTS	YEAR 1	YEAR 2	YEAR 3	TOTAL
COURIER/MESSENGER	$	$	$	$
COMPUTER				
MATERIAL/SUPPLIES				
POSTAGE/FEDERAL EXPRESS				
REPORTS				
REPRODUCTION				
TELEPHONE				
MISCELLANEOUS				
*				
*				
*				
*				
*				
*				
TOTAL ODCs	$	$	$	$

NOTES, ASSUMPTIONS AND COMPUTATIONS

WS-4

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT _____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT _____
WORK ASSIGNMENT _____
DELIVERY ORDERS _____
OTHER _____

IGCE CONTINUATION WORKSHEET

Contiunation page

INDEPENDENT GOVERNMENT COST ESTIMATE

SOLICITATION/CONTRACT _____
PREPARER _____
DATE _____

TYPE OF ACTION

NEW CONTRACT _____
WORK ASSIGNMENT _____
DELIVERY ORDER _____
OTHER _____

PROFIT WORKSHEET

(WS-5)