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Office of Solid Waste and Emergency Response



**Superfund Technical
Assistance Grant (TAG)
Handbook:
Procurement—Using TAG
Funds**

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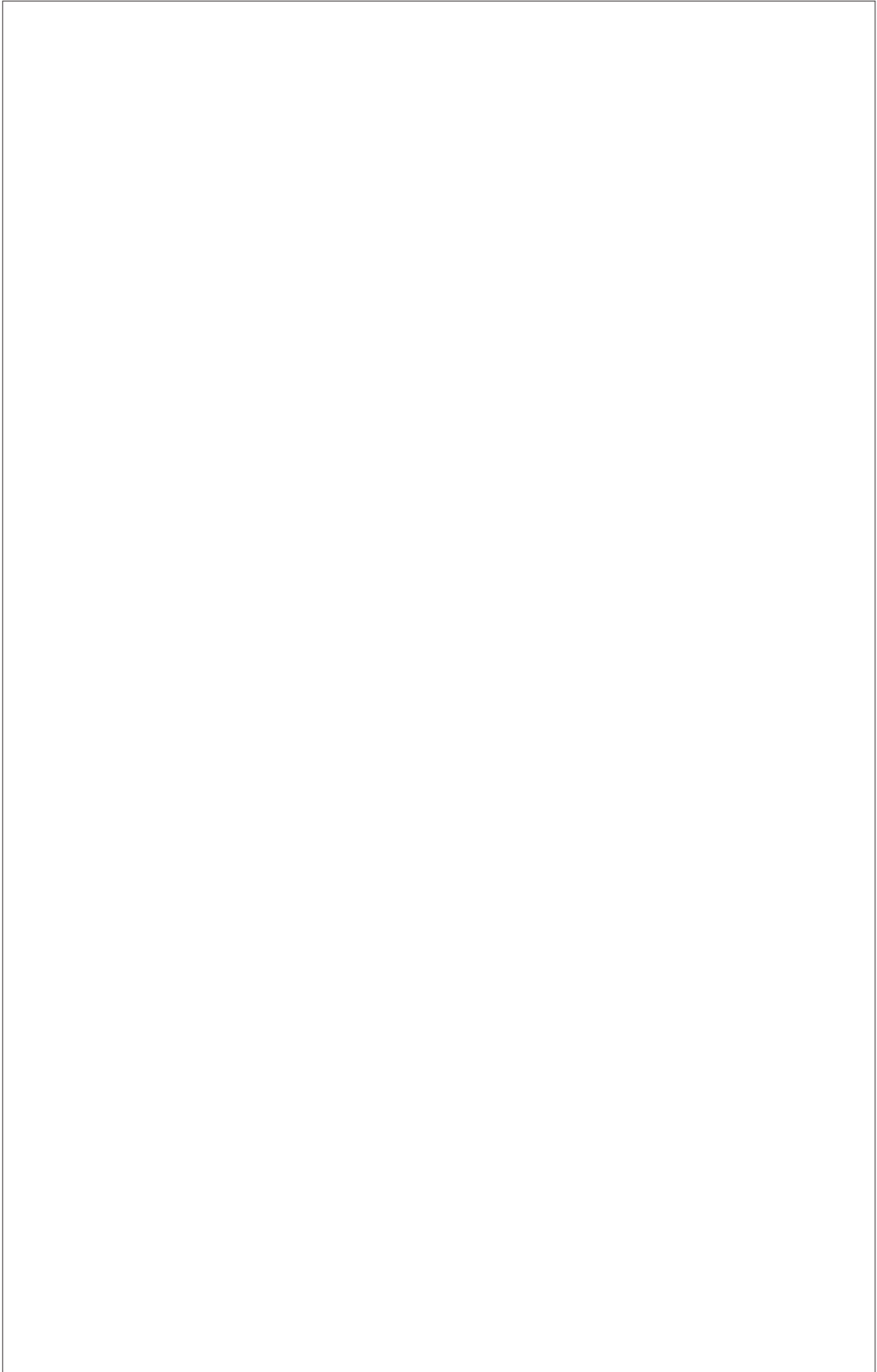
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CONTENTS

BASIC REQUIREMENTS	1
Identifying Potential Contractors	2
Procurement Procedures	5
Determining Acceptable Costs	6
Developing the Contract	7
Recordkeeping	9
DOs AND DON'Ts	11
COMMONLY ASKED QUESTIONS	13
CHECKLISTS	17
STEP-BY-STEP INSTRUCTIONS AND SAMPLE FORMS	21



BASIC REQUIREMENTS FOR USING TAG FUNDS

The term “procurement” refers to the expenditure of funds by your group. There are certain procedures that you must follow when spending grant funds. While the bulk of Technical Assistance Grant (TAG) funds usually is used to hire technical advisors, TAG funds also may be used to hire grant administrators and to obtain supplies, equipment, and other approved items. For the purposes of this booklet, the term “contractor” refers to any people that your group pays for services or goods. Federal regulations governing the selection of technical advisors and other products or services are designed to ensure that your group conducts all selection activities in a manner that ensures maximum open and free competition. This section paraphrases key provisions of the regulations, or procurement guidelines, which outline sets of procedures that your group should follow. Your Regional TAG Coordinator can provide a copy of the text of the regulations.

As you will read later in this booklet, procurement procedures vary, depending on the dollar amount of the contract being awarded. **However, you have to do the following in all cases:**

- Determine that the proposed costs for services or goods are reasonable.
- Make sure that candidates are not on the master list of suspended or debarred contractors. (This list, which is published four times per year in the *Federal Register*, is available from your Regional TAG Coordinator.)
- Review potential contractors’ financial and business relationships to ensure that no conflict of interest exists. (A full discussion of conflicts of interest is presented on page 4.)
- Make positive efforts to seek out and utilize small and minority-owned businesses.
- Maintain records of your group’s selection activities, including your efforts to use small and minority-owned businesses.

Although EPA may provide advice and guidance on the selection process and is required to review contracts worth over \$1,000, EPA is not a party to TAG contracts. Your group will be responsible for ensuring that your contractors fulfill all the terms of your contracts and comply with applicable state and federal regulations. Contact your Regional TAG Coordinator if you have any questions.

You will spend most of your TAG funds on:

- Hiring technical advisors.
- Hiring grant administrators.
- Obtaining supplies, equipment, and other approved items.

IDENTIFYING POTENTIAL CONTRACTORS

The following discussion explains required and suggested qualifications of applicants, suggests possible sources of contractors, and notes the importance of avoiding conflicts of interest.

Qualifications

—Technical Advisors:

Before selecting a technical advisor, you should determine the types of expertise you are likely to need to interpret information about the Superfund site in your community. Groups' needs are likely to vary depending on site characteristics and the specific concerns of the group. Also, you may want different types of information at different points in the Superfund cleanup process.

As a result, your group may seek individuals with several areas of expertise to evaluate site information over the life of the project. To obtain the skills needed, your group may select more than one technical advisor or a single individual with knowledge of several subjects.

Areas of technical expertise might include:

- chemistry
- engineering
- toxicology
- epidemiology
- hydrology
- soil science
- limnology
- meteorology

Any technical advisor you select must have the following qualifications:

- A demonstrated knowledge of hazardous or toxic waste issues.
- Academic training in a relevant field.
- The ability to translate technical information into terms understandable by the public.
- The technical qualifications, financial resources, and experience to successfully carry out the required tasks.
- A satisfactory performance record for completing work.
- Adequate accounting or auditing procedures to control funds properly.
- A demonstrated compliance or willingness to comply with civil rights and equal opportunity laws, and other related statutory requirements outlined in 40 CFR Part 30.

Your technical advisor(s) also should have demonstrated writing skills and experience working on hazardous or toxic waste problems, making technical presentations, and working with community groups. If your community has particular needs, *e.g.*, foreign language, you may wish to specify this as a required skill.

—**Grant Administrators:**

Some groups choose to hire a grant administrator to help with the tasks involved in managing a TAG. These may range from doing bookkeeping to completing and filing reports with EPA. (The publication *Superfund Technical Assistance Grant (TAG) Handbook: Applying for Your Grant* has a more complete list.)

Grant administrators should have qualifications that include:
<ul style="list-style-type: none">• Basic accounting skills.• Good organizational skills.

Where to Look

There are many places to look for potential contractors. The process of identifying possible candidates can be time consuming, so you should begin as early as possible in the grant process. Many of the organizations listed below are good sources of low-cost, high-quality assistance or may be able to identify candidates who fit the particular needs of your group:

- College and university departments of science, engineering, and public health.
- Local hospitals and medical facilities.
- Local or state health departments.
- Local chapters of professional or technical societies.
- Consulting firms and other businesses that specialize in scientific, technical, engineering, and environmental services.

Your Regional TAG Coordinator also may be able to provide additional assistance on where to look for contractors.

Using Small Businesses and Those Owned by Minorities and Women

As a recipient of TAG funds, your group must make positive efforts to use contractors representing small (SBEs), minority-owned (MBEs), and women-owned business enterprises (WBEs). Your Regional TAG Coordinator may be able to suggest contacts who can help you locate SBE, MBE, and WBE contractor candidates.

A “small business” is defined as “not dominant in its field of operation” and has annual revenues (over the last three years) of under \$3.5 million. For firms in business less than three years, see Part 13 of the *Code of Federal Regulations* (CFR), section 121.402.

A minority-owned business is one that is at least one of the following:

- Certified as socially and economically disadvantaged by the Small Business Administration (SBA).
- Certified as a minority business enterprise by a state or federal agency.

- An independent business concern that is at least 51 percent owned and controlled by minority group members.

For these purposes, a minority group member is defined as an individual who is a citizen of the United States and one of the following:

- African American.
- Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America).
- Native American (American Indian, Eskimo, Aleut, native Hawaiian).
- Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, or the Indian subcontinent).

A woman-owned business is one that is at least one of the following:

- Certified as such by a state or federal agency.
- An independent business concern which is at least 51 percent owned by a woman or women who also control and operate it.

To ensure that you use small businesses in rural areas whenever possible, you must comply with the following requirements:

- Place qualified small businesses in rural areas on your mailing list for publicizing work that needs to be done.
 - Ask small businesses in rural areas to submit proposals whenever they are possible sources of the services required.
 - Divide total project requirements, when economically feasible, into smaller tasks to permit maximum participation by small businesses in rural areas.
 - Establish delivery schedules that encourage small businesses in rural areas to participate.
- Use the services of the SBA and Minority Business Development Agency of the U.S. Department of Commerce, as appropriate.
- Require the technical advisor to take the above steps as well if he/she subcontracts with other professionals to provide some of the services your group needs.

Your Regional TAG Coordinator or SBA contact can help you determine whether a candidate works for a small business.

Conflict of Interest Issues

Groups must be confident of the objectivity, as well as the expertise, of potential contractors. In choosing your contractor(s), you need to be aware of potential conflicting loyalties or obligations they might have.

For example, a contractor who has worked for the Potentially Responsible Party (PRP) at a site might have a conflict between his/her loyalties to that past employer (the PRP) and his/her current employer (the group with a TAG). Someone who is working for an organization related to the contamination at the site or working with the government or another firm in cleaning up the site is not eligible to receive TAG funding.

EPA's policy is to prevent personal or organizational conflicts of interest, or the appearance of such conflicts, when awarding contracts. (If a candidate identifies a potential conflict of interest, contact your Regional TAG Coordinator.) If a candidate has a significant conflict of interest problem that cannot be resolved, you must eliminate him/her from consideration.

In addition, you cannot solicit or accept gratuities, favors, or anything of monetary value from potential contractors. Individual members of your group cannot have financial or other types of interest in your contractor's firm. If you are in doubt on this issue, contact your Regional TAG Coordinator.

PROCUREMENT PROCEDURES

There are two basic approaches for selecting a contractor in the TAG Program—the **competitive** procurement method and the **noncompetitive** procurement method.

Competitive Procurement

The requirements for competitive procurement vary according to the value of the purchase or contract award. In general:

- For contracts valued at \$1,000 or less, you must determine only that the price is reasonable. No oral or written solicitations of bids are necessary. Most product purchases, such as office supplies, will fall in this category.
- For contracts valued at more than \$1,000 but less than \$25,000, your group must solicit quotes from two or more qualified sources (provide documentation of this in your files).
- For contracts valued at at least \$25,000 but not more than \$50,000, the group must solicit written bids from three or more sources. After receiving the bids, your group must evaluate them, decide on the winning bid, and inform all bidders of the decision.
- For contracts valued at over \$50,000, your group must follow the procurement rules outlined in 40 CFR Part 33.

**Most procurements
made with TAG
funds are
competitive.**

You must ensure adequate competition when selecting your contractor(s). Before contacting an adequate number of prospective candidates (as outlined above), you must identify precisely what you expect from them. You must give them a written description of your requirements and the criteria that you will be using to evaluate the bids—this is called the “solicitation,” and is described more thoroughly on page 22. You then will need to carefully compare the relative merits of the bids that are submitted before making a selection. In general, you can determine if the costs quoted by candidates are reasonable by comparing their cost estimates with your own independent estimate of what the work should cost. (Your TAG Coordinator can help you perform this comparison.) If you choose to award a contract to anyone other than the candidate who quotes the lowest price, you must supply a written justification for the selection in your files, explaining why the proposed costs are acceptable.

Noncompetitive Procurement

As the phrase “noncompetitive procurement” suggests, this method does not involve competition in the procurement process. Instead, selection is based on a justification of why an individual is the only viable source of the services you need. The noncompetitive procurement method is allowed for TAG purposes when there is only one qualified candidate, or if a solicitation effort yields only one bidder. As a general rule, however, you should use the competitive procurement method to ensure adequate competition and reasonable costs—even if you already had a volunteer contractor before receiving your TAG. You must get the Award Official’s prior written approval before awarding a noncompetitive contract or using this method to purchase goods worth over \$1,000.

DETERMINING ACCEPTABLE COSTS

You will have to analyze the costs proposed by potential contractors to ensure that they are acceptable under federal regulations pertaining to the TAG Program. To be acceptable, costs must be:

- **Allowable:** falling within the types of activities approved by EPA in the grant agreement.
- **Allocable:** incurred specifically to achieve one or more of your project objectives.
- **Reasonable:** generally recognized as ordinary and necessary for the operation of the grant or the performance of your project.

Acceptable costs also must be associated with eligible activities. (See the publication *Superfund Technical Assistance Grant (TAG) Handbook: Applying for Your Grant*

Contractor rates should be comparable to those charged in your area by similar professionals.

for a discussion of eligible activities and page 27 of this booklet for detailed guidelines on analyzing costs.) For example, you may expect technical advisors' hourly rates to fall between \$70 and \$120 per hour. Grant administrators' rates should fall between \$8 and \$12 per hour for a bookkeeper and between \$20 and \$30 for a full administrator. If you are interested in a particular candidate, but have questions about his/her proposed costs, you should contact your Regional TAG Coordinator for help and then negotiate with the applicant until your requirements and federal regulations are met.

DEVELOPING THE CONTRACT

The contract is a tool you can use to monitor performance. As a first step in developing a contract, your group may want to contact your Regional TAG Coordinator or Regional Project Manager for a list of upcoming activities at the Superfund site in your community. This will help you identify the specific tasks you are likely to want a contractor to perform. Knowing these tasks will help you refine the Statement of Work in your application and use it as the basis of your contract. A sample contract starts on page 34.

Before awarding any contract valued at over \$1,000, **you must inform EPA of the proposed contract and you must provide EPA with the opportunity to review your selection process and the contract.** The purpose of this review is to ensure that your group will get the full benefit of the contractor's expertise and that the contract is in compliance with all applicable federal regulations. EPA will usually complete this review within 30 days.

**Remember to inform
EPA of any proposed
contract.**

Types of Contracts

Typically, you will use either a "labor-hour" contract or a "fixed-price" contract.

- Under a "labor-hour" contract, you agree to pay the contractor by the hour for his/her time. You would not know the exact amount of funds to be spent over the budget period at the time the contract is signed. Your group would need to establish a method of payment and a maximum range for spending in the initial contract.
- Under a "fixed-price" contract, the contractor makes an upfront commitment to do certain set of tasks for an agreed-upon price.

A fixed-price contract may provide you with the best sense of how grant funds will be used. However, since specific tasks and the required level of effort may not be clearly defined at the time that you award the contract, you may prefer the flexibility of a labor-hour contract.

EPA pays you back (“reimburses” you) after you have paid for supplies or for contractor bills. Or, since you only are required to have been billed for the goods and services to be reimbursed by EPA, you may prefer to wait until you receive the reimbursement check before you actually pay the contractor. Your contractor should bill you on a quarterly basis (or monthly if costs are greater than \$500) for costs incurred for services authorized by the grant agreement. Your group then should submit to EPA a “Request for Reimbursement.” The procedure is described in detail in the publication *Superfund Technical Assistance Grant (TAG) Handbook: Managing Your Grant.*”

Required Elements

All contracts with technical advisors must describe, at a minimum:

- The nature, scope, and extent of work to be performed.
- The time frame for performance.
- The total cost of the contract.
- Payment provisions.
- Certain required contract clauses (shown in the Sample Contract beginning on page 34).

Note: Before you sign the contract, you must check to make sure that your candidate does not appear on EPA’s master list of suspended or debarred contractors. If the contract is for \$25,000 or more, the contractor must certify that he/she has not been debarred (see pages 1 and 32).

Changing a Contract

If, after work is underway, it appears likely that costs will exceed the ceiling in the contract, or if the scope of work changes, you and your contractor(s) must negotiate a “change order.” If funds are added, you will need to conduct a cost analysis. The “Step-by-Step Instructions and Sample Forms” section of this booklet includes procedures for conducting a cost analysis. If the change order will cause you to exceed your budget for the budget period, you must ask for and obtain an amendment to the grant before EPA will agree to cover the additional costs (see the publication *Superfund Technical Assistance Grants (TAG) Handbook: Managing Your Grant*). Contact your Regional TAG Coordinator for instructions on completing a change order.

Renewing a Contract

Once a TAG is awarded, EPA will obligate funds for one budget period, which lasts up to three years. To ensure that you have funds available to pay your contractor, you

It’s a good idea to include an option to extend the contract in your agreement.

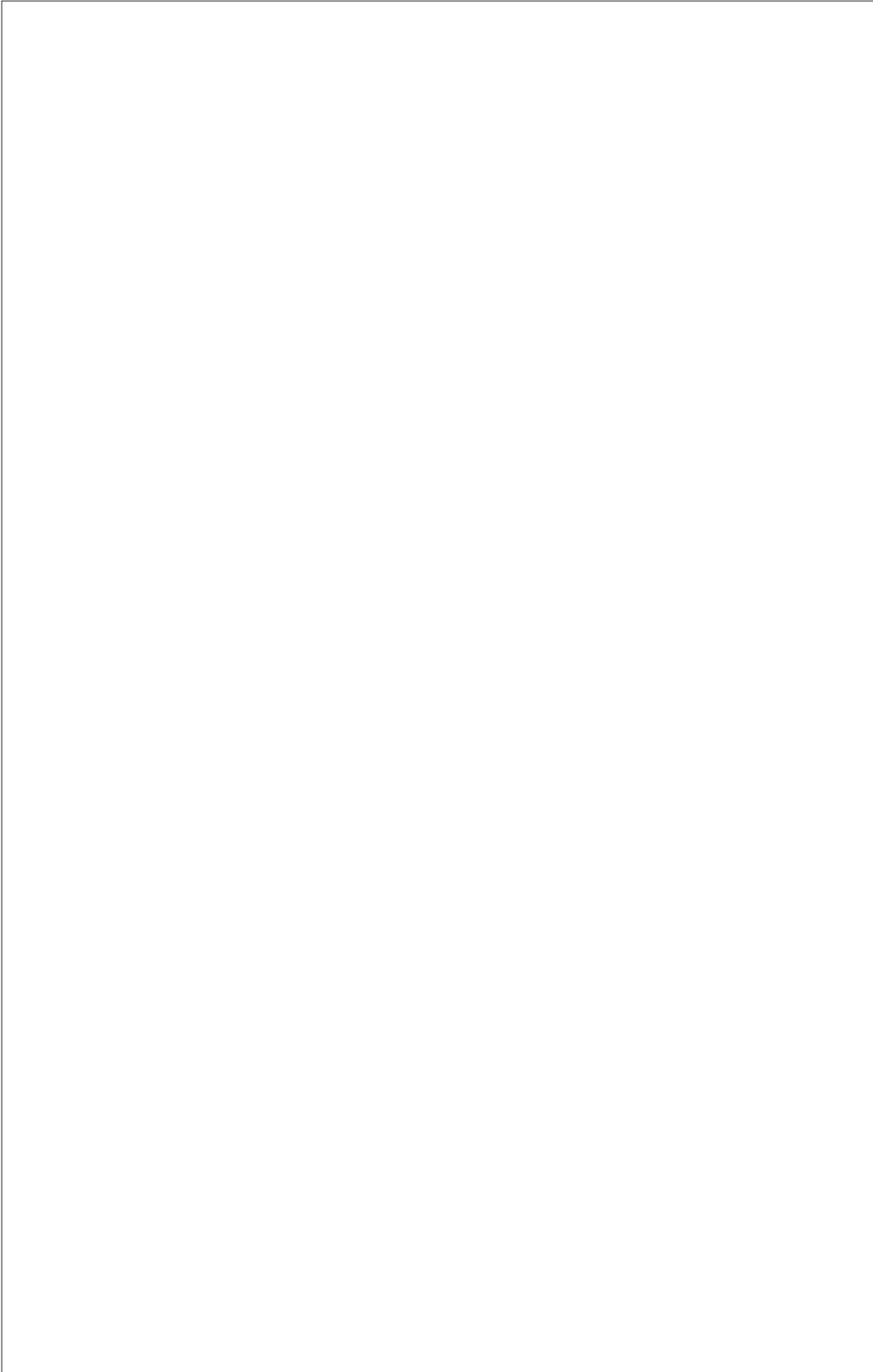
should award contracts only for the length of the budget period in your grant. Since your group may get funding for additional budget periods and want to continue working with a contractor familiar with the group and the site, it is a good idea to include an option to extend the contract for additional one- to three-year contract periods.

Terminating a Contract

Terminating a contract means ending it before its scheduled completion date. Either you or your technical advisor(s) can terminate the contract(s)—in whole or in part—if the other party fails to fulfill obligations under the contract(s) through no fault of the terminating party. Although your contract may require you to pay a penalty for doing so, you may also terminate a contract in whole or in part for your convenience. Contact your Regional TAG Coordinator for details on the procedures to follow.

RECORDKEEPING

You must keep written records of each step taken by your group to select your technical advisor(s) and any other contractors and maintain them in a central file. For example, you will need to document your cost analysis and cost negotiations. These records must be available for EPA review or audit upon request.



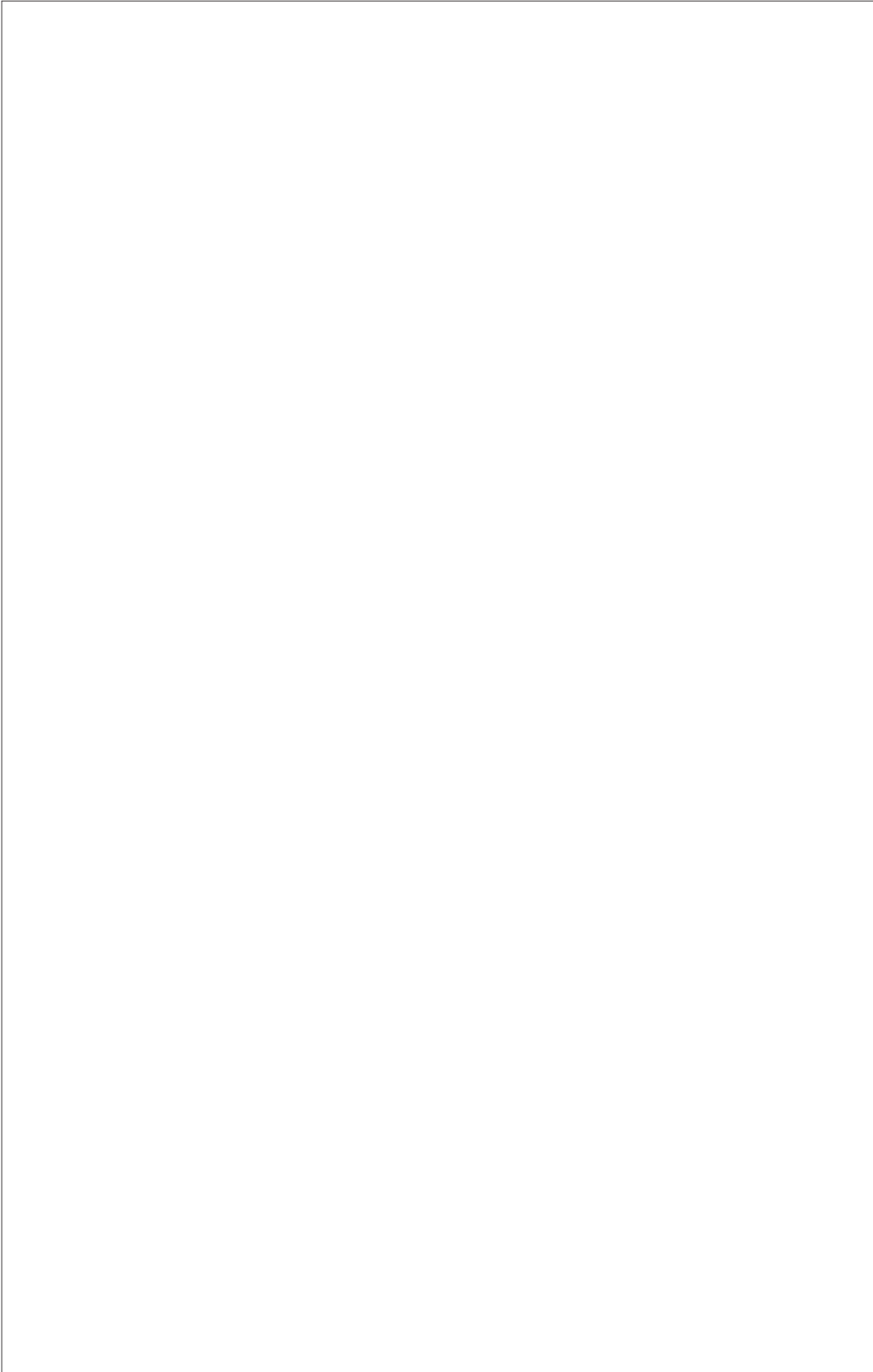
PROCUREMENT DOs AND DON'Ts

DOs

- Do take the time to determine the type(s) of expertise your contractor(s) should have before you seek technical assistance.
- Do start identifying possible contractors early in the TAG process.
- Do develop a solicitation that describes the services you need, the timetable for critical tasks, a delivery schedule, evaluation criteria, project hours, and deadline and location for submitting proposals.
- Do make a sincere effort to use small (including small businesses in rural areas), minority-owned, and women-owned businesses. Remember to document this effort in your files.
- Do include in your contract all the required clauses specified in the Sample Contract (see page 34).
- Do be sure to give your EPA Regional Office an opportunity to review the contract before you sign it.
- Do keep detailed records of the procurement process.
- Do safeguard confidential business information (such as rates and fees) submitted by contractors during the procurement process.

DON'Ts

- Don't choose a technical advisor who has a significant conflict of interest that cannot be resolved.
- Don't select a contractor who is on the master list of suspended or debarred contractors.
- Don't divide a contract award into smaller parts just to avoid the procurement requirements for a certain contract value.



COMMONLY ASKED QUESTIONS ABOUT PROCURING CONTRACTORS

May We Select More Than One Technical Advisor?

Yes. If you require technical expertise in more than one discipline (such as engineering, hydrology, and epidemiology), you may award separate contracts to more than one unrelated individual or firm. For example, you might award a \$20,000 contract to a technical advisor with engineering expertise, \$10,000 to a hydrologist, and \$10,000 to an epidemiologist.

You are not allowed to divide a contract into smaller amounts solely to fall within the dollar limit for any of the competitive selection method categories. However, if you decide that obtaining services from several sources better suits your needs than awarding one large contract and you can demonstrate sound business reasons for using this approach, you may find it simpler to award separate contracts. An example of a reasonable justification for awarding two or more smaller contracts might be that you need a greater variety of expertise than a single firm or individual can provide.

Where Can We Find Potential Technical Advisors?

Most public libraries have reference books such as *Ulrich's International Periodicals Directory*, which lists the names and addresses of professional journals, trade magazines, and newspapers. In addition, you may send public notices or written notifications to interested persons, firms, professional organizations, or local newspapers.

Good reference sources for locating interested organizations and individuals include the *Encyclopedia of Associations* (for listings of trade and professional groups), *The Directory of Consultants and Consulting Organizations*, your Chamber of Commerce, and the telephone book. Notices may also be sent to colleges, universities, and environmental groups. In addition, see the following question.

How Can We Locate Small, Minority-Owned, And Women-Owned Businesses?

To identify potential candidates associated with SBEs, MBEs, and WBEs, you should use resources such as your state's minority business office, the SBA, the Federal Minority Business Development Agency, and EPA's Office of Small and Disadvantaged Business Utilization (703-305-7777).

Minority Business Development Centers are operated by the U.S. Department of Commerce, the SBA Small Business Development Centers, and SBA itself. These people can help you identify minority firms.

(Your Regional TAG Coordinator can provide information on local offices of these organizations.)

Additionally, you are encouraged to send a public notice soliciting proposals to small and minority business associations, professional societies, and media targeted to these groups. You are required to report to EPA on your use of minority businesses (discussed in the publication *Superfund Technical Assistance Grant (TAG) Handbook: Managing Your Grant*).

What Types Of Information Must Potential Contractors Provide To Address Conflict Of Interest Concerns?

You must require each potential technical advisor on any contract to provide with his/her bid or proposal:

- Information on his/her financial and business relationships with PRPs at the site, their companies, subsidiaries, affiliates, subcontractors, current clients, and attorneys and agents.
- Certification that, to the best of his/her knowledge and belief, he/she has disclosed such information or no such information exists.
- A statement that he/she shall disclose immediately any such information discovered after submission of his/her bid or proposal or after the contract award.

Who Is Excluded From Consideration As A Technical Advisor?

You must exclude from consideration as a potential advisor any contractors that helped develop or draft your solicitation or contract for your TAG project.

In addition, in an effort to avoid any conflict of interest problems, EPA contractors and subcontractors may not apply for positions as technical advisors to the groups at the same NPL site for which they are doing or have done work for the federal or state government or any other entity, since they then would be reviewing their own work.

How Can A Grant Administrator Help Our Group?

A grant administrator is useful in performing a variety of program tasks that the members of your group may not have the expertise to accomplish. These tasks may include recordkeeping and the preparation of contracts, reports, and other documents.

Can A Member Of The Group Become The Grant Administrator?

Yes. The grant administrator should, of course, have the skills appropriate to the tasks that the group requires. As long as your group follows the procurement guidelines in selecting the grant administrator, participation in the group in general and even in the preparation of the TAG application does not disqualify any candidate. To avoid a conflict of interest, however, the grant administrator cannot be involved in the

selection process for this contract, including participation in the preparation of the solicitation.

Is There A Particular Procedure For Evaluating Technical Advisors' Proposals?

There is no required procedure. You may use whatever approach you wish. One approach to ensuring a fair review of proposals is to appoint three to five members of your group to a "selection panel." (By involving an odd number of people, you can avoid arriving at a deadlock.) Panel members independently evaluate the proposals according to the selection criteria outlined in the solicitation, and then discuss their evaluations with each other. If there is a large difference in panel members' ratings, they discuss how they arrived at their ratings and re-evaluate their ratings. These discussions continue until they can arrive at a consensus.

Are There Types Of Activities That Members And Employees Of Groups Must Avoid During The Selection Process?

Yes. Your group officers, your technical advisor(s), and any group employee must avoid any action that might result in, or create the appearance of, improper behavior (such as using their official positions for private gain or giving preferential treatment to someone). An official or employee of your group may not help select your technical advisor(s) if any of the following persons or organizations has a financial interest in the contract with the technical advisor(s):

- The official or employee.
- A member of the official's or employee's immediate family.
- A partner of the official or employee.
- An organization (other than a public agency) in which the official or employee serves as an officer, director, trustee, partner, or employee.
- Any person or organization with whom the official or employee is negotiating or has any arrangement concerning potential employment.

What Types Of Selection Records Do We Need To Keep In Our Files?

You must have a complete written record of the following on file:

- The basis for your screening and selection of the technical advisor(s).
- A written justification of the selection method used by your group.
- A written justification of any specification or requirement that does not encourage maximum free and open competition.
- A written justification of the type of contract used (for example, labor-hour or fixed-price).
- Actual proposals submitted by all potential technical advisors.
- The basis of the award cost, including any cost analysis and documentation of the issues negotiated and results of the negotiations.

- The reasons for your rejection of any proposals.

In addition, potential contractors must submit to you their cost or pricing data in support of their proposal and provide you with supportive documentation. They may use the form entitled "Proposed Costs for Technical Assistance" (in the pull-out "Blank Documents" section of this booklet) or any similar form. Your group must keep this information on file so that your EPA Regional Office can review the procurement process before the contract is awarded.

Can A Grant Administrator Give Direction To The Technical Advisor?

No. It would be inappropriate for one contractor to give technical direction to another contractor. A typical contract specifies the person(s) from whom a contractor may receive direction. In most cases, the technical advisor (and grant administrator, if applicable) receives direction from the TAG Project Manager, acting on behalf of the TAG group.

Does The Grant Administrator Have Signature Authority?

No. As a contractor, the grant administrator can manage, but cannot oversee, the contract. The TAG Project Manager is designated as the person with signature authority.

CHECKLISTS FOR PROCURING A CONTRACTOR

COMPETITIVE SELECTION METHOD

(Appropriate for purchases and contracts of \$1,000 or less)

- Identify your specific needs in a technical advisor, grant administrator, other service, or product.
- Identify potential contractors.
- Discuss with each candidate the kinds of services you expect to need.
- Discuss with the candidates any potential conflicts of interest and eliminate any candidate with actual and significant conflicts of interest that cannot be resolved.
- Check with your Regional TAG Coordinator to be sure candidates are not on the master list of suspended or debarred contractors.
- Determine that the proposed costs are reasonable.
- Negotiate with the candidates, if you wish, and select the best candidate.
- Document for the files your reasons for selecting one candidate over the others. If he/she did not submit the lowest quote, explain why the successful candidate's proposed costs are acceptable.

CHECKLISTS, cont.

COMPETITIVE SELECTION METHOD

(Appropriate for purchases and contracts over \$1,000 and up to \$50,000)

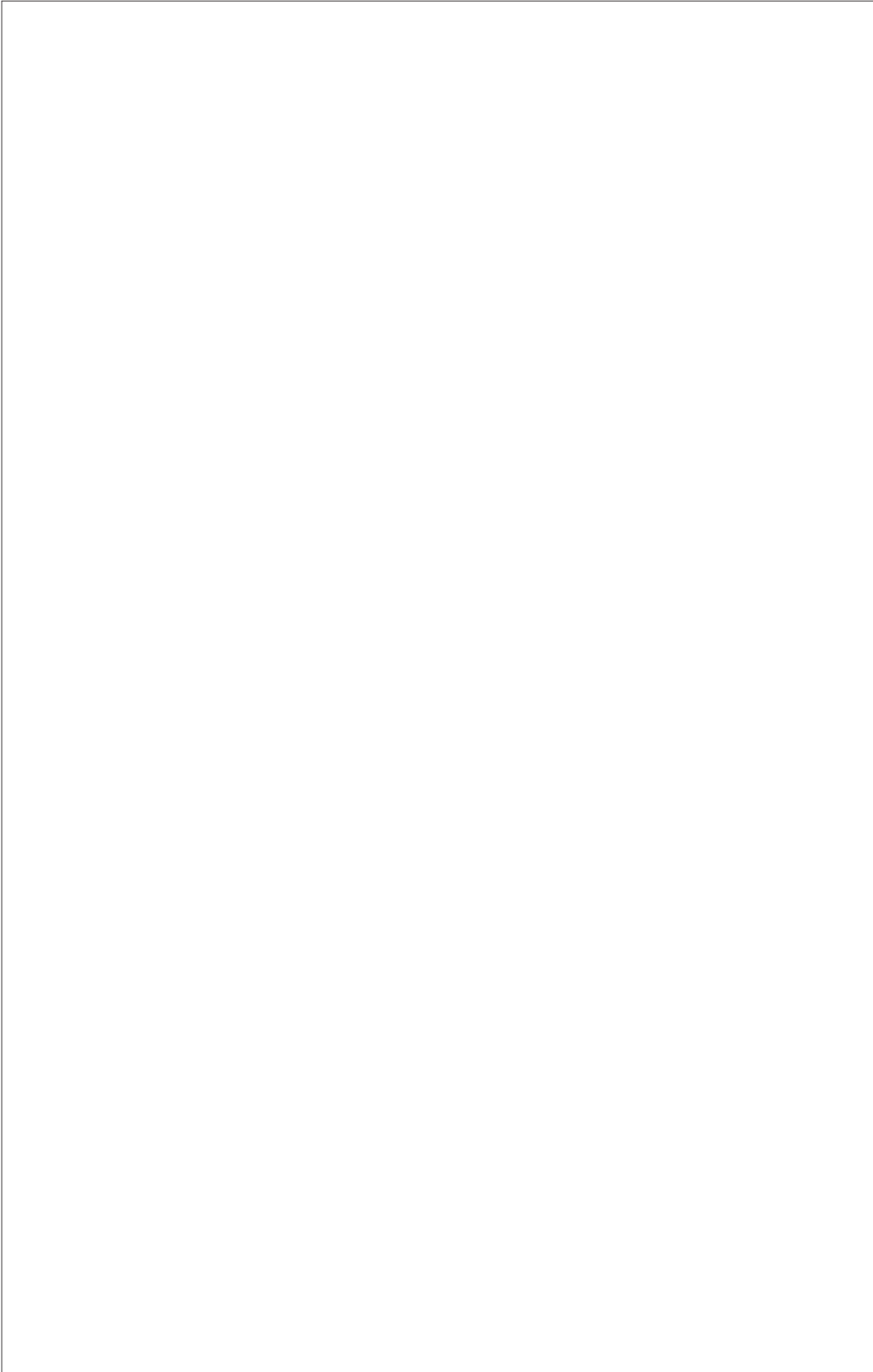
- Identify your specific needs in a contractor.
- Solicit oral or written quotes.
 - If the contract is worth more than \$1,000 but less than \$25,000, solicit quotes from two or more qualified sources.
 - If the contract is worth from \$25,000 to \$50,000, solicit written proposals from three or more qualified sources.
- Evaluate all proposals.
 - Obtain all cost data from applicants on the form entitled "Proposed Costs for Technical Assistance" or its equivalent and perform a cost analysis.
 - Require all potential advisors to provide a conflict of interest or disclosure statement.
 - Eliminate any candidates who are listed on the master list of suspended or debarred contractors or who have actual and significant conflicts of interest that cannot be resolved.
 - Negotiate with technical advisor candidates and select your technical advisor(s).
 - Prepare a written summary for the file of all negotiations.
 - Document for the files the reasons for selecting the successful proposal and the reasons for rejecting others.
- Prepare the contract.
- Provide EPA an opportunity to review your selection process and the contract.
- Have the technical advisor complete a Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700-49) if the contract is for \$25,000 or more.
- Sign the contract.

CHECKLISTS, cont.

NONCOMPETITIVE PROCUREMENT METHOD

(Appropriate when there is **only one qualified candidate**)

- Identify your specific needs in a contractor.
- Contact your Regional TAG Coordinator to discuss the possibility of using this method.
- If EPA indicates this method may be appropriate, prepare and submit to EPA a request to use the noncompetitive procurement method, outlining the reasons for selecting it.
- If EPA approves the request in writing, discuss with the potential contractor the kinds of services you need and EPA's requirements.
- Ask the candidate to give you an oral or written quote for performing the services you need.
- Discuss with the candidate any potential conflicts of interest and eliminate the candidate if actual and significant conflicts of interest cannot be resolved.
- Check with your EPA Regional Office to be sure the candidate is not on the master list of suspended or debarred contractors.
- Negotiate with the candidate if you wish.
- Document for the files why the candidate's proposed costs are acceptable.
- Prepare the contract.
- Provide EPA an opportunity to review your selection process and the contract.
- Have the contractor complete a Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700-49) if the contract is for \$25,000 or more.
- Sign the contract.



STEP-BY-STEP INSTRUCTIONS AND SAMPLE FORMS FOR PROCURING CONTRACTORS

The following section provides step-by-step instructions for selecting your contractor(s). Because two types of selection methods exist, there are two sets of instructions in this section. Instructions for using the competitive selection method begin on the next page. With the exception of the cost analysis, you are not required to use these particular procedures, but they provide a reliable approach for meeting the requirement of maximum competition. In the unlikely event that there is only one qualified candidate, you may qualify to use the noncompetitive selection method outlined on page 29.

The sample completed forms (beginning on page 30) illustrate the types of products you will need to generate as part of the selection process. The following sample forms and documents are included:

- Solicitation.
- Proposed Costs for Technical Assistance.
- Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700-49).
- Sample Contract.

You will find blank copies of the “Proposed Costs” and “Certification” forms in the pull-out “Blank Documents” section of this booklet.

COMPETITIVE SELECTION METHOD

Each step in the procurement process is outlined in general terms below, followed by specific requirements corresponding to the dollar value of the contract or purchase. Your group may not divide a contract into several smaller contracts just to avoid the dollar value that triggers a more complex set of requirements.

STEP 1. Identify Your Specific Needs

To ensure that your contractor provides the information needed, and to make the best use of your TAG, your group should develop a written description of the areas of expertise and skills that the successful candidate would have.

STEP 2. Identify Potential Technical Advisors

There are many possible sources of technical advisors with the skills you need. These include colleges, universities, and professional societies. (You might look under “Environmental” and “Engineering” in the phone book or a university directory.) Your Regional TAG Coordinator may be able to suggest organizations that can help you find small, minority-owned, and women-owned businesses. Remember to document your efforts.

STEP 3. Prepare a Solicitation

Your group should solicit proposals from potential advisors using a solicitation describing the services required. Potential candidates would submit proposals identifying in general terms the technical approaches they would use to accomplish the tasks described in the solicitation. You can negotiate with potential advisors to determine specific services to be provided. If you will use initial proposals as the basis for selection, make this clear in the solicitation. Your solicitation should include:

- A complete description of the services required, including the purpose, objectives, and scope of work.
- A schedule for performing tasks that are time critical (as related to the cleanup timetable at the site).
- All proposal evaluation criteria and the relative importance of each.
- Total projected hours for the project.
- The deadline and location for submitting proposals.
- The qualifications listed on page 2.

Under EPA regulations, potential technical advisors cannot be involved in drafting these specifications.

The solicitation that follows provides one possible scoring system for evaluating proposals. The scoring system you use should reflect the type of technical assistance relevant to the site and should be prioritized and weighted accordingly. Your scoring system must be outlined in the solicitation and you must maintain scoring sheets or other evaluation forms in your project files. The sample solicitation is written for a technical advisor position, but could be tailored for any type of service provider.

SOLICITATION

The Woodtown Landfill Coalition is soliciting proposals for a technical advisor to provide assistance in the review and analysis of remedial activities undertaken by the U.S. Environmental Protection Agency (EPA) at the Woodtown Landfill Superfund site. Members of the Coalition include approximately 105 affected individuals in the Smithtown-Woodtown areas of Litchfield County, Connecticut. The technical advisor will assist Coalition members in interpreting documents generated throughout the Superfund process at the Woodtown Landfill site. The advisor also will help members review site data and data-gathering techniques. Technical assistance will ensure that Coalition members are thoroughly informed about all aspects of site cleanup activities, which will enable them to participate more effectively in EPA's decision-making process.

The scope of work will require one or more technical advisors to perform the following tasks during an initial three-year contractual period (with options for additional years), beginning just prior to the start of the Remedial Investigation (RI):

1. Review of technical documents generated during the remedial investigation/feasibility study (RI/FS), remedial design (RD), and remedial action (RA). These documents will include the RI work plan, sampling plan, quality assurance/quality control plan, RI report, risk assessment, health assessment, draft FS, record of decision, pre-final and final engineering design, and final inspection report.
2. Attendance at RI/FS meetings.
3. Preparation of summary memos and reports.
4. Review of the Coalition's written comments to be submitted during the public comment period on the draft FS.
5. Presentations to Coalition members and others.

The Coalition will use a phased approach in contracting for this work. Contract No. 1 involves work related to the RI/FS.

Those wishing to be considered should submit a proposal that includes a general description of the candidates' approach for conducting this work, a resume, and a detailed cost estimate. The technical advisor must have verifiable credentials and must provide the Coalition with a list of previous clients and information on any past, current, or anticipated business or financial relationships with any potentially responsible party at the site, its parent companies, subsidiaries, affiliates, subcontractors, and current clients. The successful candidate will have:

- Technical qualifications in the areas of health and risk assessment.
- Expertise to perform the scope of work, including expertise in the health sciences, toxicology, hydrogeology, and engineering, or explain how they will obtain this expertise.
- Experience with clients who do not possess extensive technical backgrounds.
- Adequate financial resources and accounting procedures in place to manage the tasks required and account for expenditures.
- Demonstrated knowledge of CERCLA and other relevant statutes.

Each proposal received will be evaluated on the following criteria, which are weighted based on the Coalition's priorities:

- 20% Past relevant experience.
- 10% Knowledge of EPA procedures and reporting requirements.
- 20% Price.
- 25% Relevant expertise (*i.e.*, health sciences, engineering), both academic and demonstrated.
- 25% Ability to provide written and oral translations of technical documents and data in terms understandable to lay persons.

The Coalition will evaluate proposals by assigning a score (on a scale of 1 - 5) to each criterion. The weighted scores will be added for a total score. The highest possible total score is 500. The goal of the selection criteria is to obtain the best proposal at a reasonable cost.

The group has the option to renew the contract after the initial three-year period for additional one- to three-year contract periods as long as the cleanup continues. Contract renewal will be based on satisfaction with the technical advisor's previous performance and availability of funds. A total of approximately 635 hours of work is estimated for the technical advisor during the entire site cleanup; the distribution of these hours is dependent upon the pace at which site cleanup proceeds.

One labor-hour contract will be awarded to the best qualified applicant within a competitive price range. The Coalition will negotiate to obtain the best final offer. Candidates will be informed of the Coalition's decision to reject or accept a proposal. The deadline for submitting proposals to the Coalition is 5 p.m., July 10, 1993. Qualified firms or individuals are encouraged to respond to this solicitation. All submissions should be sent to:

Pat Jones, Executive Director
Woodtown Landfill Coalition
Main Street
Woodtown, CT 06798

COMPETITIVE SELECTION METHOD, cont.

STEP 4. Publicize Your Need for Technical Assistance

You will need to publicize your request for technical assistance and the availability of your solicitation. You must obtain as many proposals as you can. You can do this by publishing a notice in a local newspaper and calling potential candidates. You also should send the notice to small, minority-, and women-owned business contacts, and you must send it to small businesses in rural areas of your community. Remember to document these efforts.

STEP 5. Send out Solicitation and Other Information

You must make the solicitation available to candidates upon request. You must provide candidates a copy of the form entitled "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" if the contract is valued at over \$25,000, and obtain their completed form.

STEP 6. Obtain Quotes for the Cost of Services Required

After locating several candidates, contact and discuss with each the kind of services you expect to need. Obtain from each a description of his/her expertise and experience and a quote for the total cost of services. Make sure to document the quote information, even if oral, in your files. The advisor must meet the requirements described on page 2.

The requirements for this step vary according to the value of the award:

- **More than \$1,000 but not more than \$25,000:** You need to obtain two quotes (written or oral) from qualified candidates.
- **More than \$25,000 but not more than \$50,000:** You must supply the candidates with a Statement of Work and the criteria that will be used in evaluating the bids. You must get three written quotes.
- **Over \$50,000:** Refer to 40 CFR, Part 33.

STEP 7. Evaluate the Proposals

You should develop your own estimates for costs associated with each of the services to be performed, and determine a total project budget.

You must evaluate all proposals using the criteria stated in your solicitation (see page 25). This includes determining if the applicants have the ability and resources to provide the required assistance. Applicants may display their estimated costs on the form entitled "Proposed Costs for Technical Assistance" (see page 30) or in any similar format.

If the contract is valued at over \$25,000, you must conduct a cost analysis to determine that the proposed costs are reasonable. To do this, use your own cost estimates and the information submitted by the applicants to review the cost of each component of the proposed budgets.

The Cost Analysis

The cost analysis has two general steps: first, determining whether a contractor's costs are allowable, allocable, and reasonable; and second, determining an appropriate amount of profit for the technical advisor. Each of these steps is discussed below. Feel free to ask your Regional TAG Coordinator for help in conducting your cost analysis.

I. Assessing Costs

Review the direct labor costs and examine the number of hours, experience level, and hourly rates of staff assigned to perform the various tasks of your project to make sure that they are necessary and reasonable.

The indirect costs (overhead expenses such as fringe benefits and office rental) may be displayed as one or several figures. Usually, this figure is a rate or fraction that is multiplied by the direct labor costs for your project. Contact your Regional TAG Coordinator if you have questions about whether these costs are allowable.

In reviewing the travel and per diem (daily food and lodging) costs, remember that hotel and meal costs can only be charged when trips require an overnight stay. Furthermore, the meal and lodging expenses can only be charged at the rate the government pays its own employees, which the Regional TAG Coordinator can help you determine.

TAGs typically require little or no equipment, materials, or supplies. If any equipment costing over \$5,000 is listed, contact your Regional TAG Coordinator.

If the technical advisor selects another contractor to assist him/her with your project, this cost should be indicated in a subcontract costs category. Note that any subcontractors working on subcontracts over \$25,000 must provide the technical advisor with the "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49).

II. Determining Profit

In general, the more risk the technical advisor assumes in performing your project, the higher the rate of profit that is acceptable. (Under "fixed-price" contracts involving complex tasks, the technical advisor would assume considerably more risk than under the "cost reimbursement" type of contract usually used in the TAG Program.) In setting an amount, the profit must be shown as a dollar figure and not as a percentage of total costs.

Be sure to keep a written record of your cost analysis on file for your own reference and for audit purposes.

COMPETITIVE SELECTION METHOD, cont.

STEP 8. Negotiate with Applicants

Under competitive selection, the first step is to narrow down the pool of applicants under consideration to those with the best proposals. You may make a choice at this point, or you may negotiate the details of costs and services to be delivered to identify the best offer.

If you conduct negotiations with several applicants, you must provide an equal opportunity for all applicants with similar cost estimates to revise their proposals based on your negotiations. Earlier scores should not be used in evaluating the revised proposals. While negotiations are taking place, the identity of other applicants and information from their proposals must be kept confidential.

STEP 9. Select Your Technical Advisor(s)

You may want to discuss the terms and conditions with the candidates to be sure that they meet your needs and TAG Program requirements. When you are satisfied, select the best qualified candidate based on the proposal that best meets your established criteria. Once you select the technical advisor(s), you must promptly notify in writing all unsuccessful candidates.

STEP 10. Document Your Selection Criteria

Document in your files why you chose one candidate over another. If the successful candidate did not submit the lowest quote, explain why you selected him/her and why the proposed costs were reasonable.

STEP 11. Prepare the Contract

Remember to include the required clauses contained in the sample contract and provide EPA the opportunity to review the selection process and the contract.

STEP 12. Award the Contract

Notify both the successful and unsuccessful candidates of the award. Remember to carefully document the process you used to award the contract. Your documentation must explain the procedures you used to select a contractor, the reason for any conditions that limited maximum free and open competition, and reasons why you selected a particular contractor. It must also include written justification for rejecting any or all proposals. In addition, you must conduct a written analysis of the cost of the contract and include that analysis in your records.

NONCOMPETITIVE PROCUREMENT METHOD

(Where there is only one qualified candidate)

This situation will be rare and most often will occur when you have attempted to use the competitive procurement method, with only one response. (In this case, Step 1 will have been completed.)

STEP 1. Identify Your Specific Needs

Your group should develop a written description of the specific areas of expertise and skills that the successful candidate should have.

STEP 2. Contact the Regional TAG Coordinator

Because this method of selecting a technical advisor is to be used only in unusual circumstances, you should not use it until you have discussed it with your Regional TAG Coordinator.

STEP 3. Submit a Request to Use Noncompetitive Procurement

If EPA agrees that this method may be appropriate, prepare and submit to your EPA Regional Office a memorandum explaining why your group wishes to use the noncompetitive selection method. You will need to justify to EPA why the candidate you have identified is the only viable source of the services you need.

STEP 4. Ask the Candidate for a Quote

After the EPA Award Official has approved in writing your request to use the noncompetitive selection method, contact and discuss with your candidate the particular services you need. Obtain a written quote for the total cost of services that the advisor will provide.

STEP 5. Evaluate the Quote and Negotiate with the Candidate

You should negotiate with the candidate to obtain terms and conditions that meet your needs and TAG Program requirements. Make certain that the proposed costs are reasonable for the services being performed by the candidate by comparing the quote with your own or other professional estimates of what the services should cost.

STEP 6. Document Why You Chose this Candidate

Document in your files why this was the only acceptable candidate.

STEP 7. Award the Contract

Be sure to include the required clauses included in the sample contract (see page 34). Provide your EPA Regional Office with an opportunity to review your selection process and the contract before awarding the contract. If the award is for \$25,000 or more, the candidate must complete the "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" before you sign a contract.

PROPOSED COSTS FOR TECHNICAL ASSISTANCE

The “Proposed Costs for Technical Assistance” form is not a required form. Candidates responding to a solicitation may use any format in presenting their costs and charges. If you wish, you may copy the blank version of this form, provided in the “Blank Documents” section of this booklet, and include it with the solicitation and any other information that you send to prospective contractors.

PROPOSED COSTS FOR TECHNICAL ASSISTANCE

PART A: IDENTIFYING DATA			
NAME OF CONTRACTOR Professor Jan Carter	DATE OF PROPOSAL 10/25/94		
ADDRESS OF CONTRACTOR Walnut Street Woodtown, CT 06798	TELEPHONE NUMBER 203 ### ####		
GRANT RECEIPT Woodtown Landfill Coalition			
PART B: COSTS (Proposed costs must conform with applicable Federal cost principles)			
1. DIRECT LABOR	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST
Scientist	130	\$76.00	\$9880.00
DIRECT LABOR SUBTOTAL			\$9880.00
2. INDIRECT COSTS	RATE	TOTAL DIRECT LABOR COST	ESTIMATED COST
Overhead (Benefits and office space)	.52	\$9880.00	\$5137.00
INDIRECT COST SUBTOTAL			\$5137.00
3. TRAVEL			ESTIMATED COST
A) TRANSPORTATION 500 miles at \$.25 per mile (To second coalition meetings and RI public hearings)			\$125.00
B) PER DIEM (FOOD) AND MEALS \$100 per diem (1 and 1/2 days travel)			\$150.00
TRAVEL SUBTOTAL			\$275.00
4. EQUIPMENT, MATERIALS AND SUPPLIES			ESTIMATED COST
Telephona			\$200.00
Postage			\$0.00
Copying (\$.05 per copy)			\$10.00
EQUIPMENT, MATERIALS AND SUPPLIES SUBTOTAL			\$210.00
5. SUBCONTRACTS AND OTHER COSTS			ESTIMATED COST
SUBCONTRACTS AND OTHER COSTS SUBTOTAL			\$
PART C: SUMMARY			
TOTAL COST		\$	15,672.00
PROFIT		\$	0
TOTAL PRICE		\$	15,672.00
I certify that, to the best of my knowledge and belief, the cost information summarized herein is complete, current, and accurate as of 10/25/94 (date). I further certify that I have the financial management capability to fully and accurately account for the financial transactions required to execute this project. I understand that the subcontractment price may be subject to downward renegotiation or recoupment if the above cost information is determined through an audit not to have been complete, current or accurate as of the date above.			
SIGNATURE OF CONTRACTOR <i>Jan Carter</i>		DATE 10/25/94	

802077-3

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The candidate contractor(s) and their proposed subcontractor(s) must submit this form for contracts involving \$25,000 or more.

Instructions for Contractors and Their Subcontractors

- *Enter your name and title, as they appear on your proposal.*
- *You must sign and date the second line.*
- *If you cannot sign this certification, check the box and attach an explanation of why you cannot.*



EPA Project Control Number

United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Jan Carter, Technical Advisor

Signature of Authorized Representative

Date

Jan Carter

10/25/94

I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)

SAMPLE CONTRACT

Note: Before awarding any contract, you must inform EPA of any proposed contracts between you and your contractor(s) and you must provide EPA with the opportunity to review your selection process and the contract.

All contracts with technical advisors must describe, at a minimum:

- The nature, scope, and extent of work to be performed.
- The timeframe for performance.
- The total cost of the contract.
- Payment provisions.
- Required contract clauses. The text of these required clauses is included in this sample contract. You may use different language as long as it conveys exactly the same messages as these clauses. Your Regional TAG Coordinator can help if you are unsure.

The sample contract that follows is an example of a “labor-hour” contract, under which the group agrees to pay the technical advisor by the hour for his/her time. The contract spells out the maximum range of payment for hourly and direct costs, as well as a schedule and method of payment.

Technical Advisor Contract

This contract is entered into this 20th day of July, 1994, by and between the Woodtown Landfill Coalition and [Contractor] of [Business Address] (hereafter referred to as "contractor").

I. SCOPE OF CONTRACT

The contractor agrees to perform the following services:

A. Purpose:

The Woodtown Landfill Coalition is entering into this contract with [contractor], who will provide the services of technical advisor and assist in the review and analysis of remedial activities at the Woodtown Landfill Superfund site. Members of the Coalition include approximately 105 citizens in the Smithtown-Woodtown areas of Litchfield County, Connecticut. The technical advisor will assist Coalition members in interpreting documents generated throughout the Superfund process at the Woodtown Landfill site. The advisor also will help members review site data and data-gathering techniques. Through this technical assistance, the contractor will ensure that Coalition members are thoroughly informed about all aspects of site cleanup activities, which will enable them to participate more effectively in EPA's decision-making process.

B. Contractual Period and General Statement of Duties:

This contract will cover an initial three-year period. This contract may be renewed, at the option of the Woodtown Landfill Coalition, after the initial contract period for additional one- to three-year contract periods as long as the cleanup continues, but it is not to exceed ten years. If the Woodtown Landfill Coalition desires to exercise its option to extend the contract, it shall provide written notice to the contractor no later than 90 days prior to the expiration of the present term.

The contractor will perform the following tasks during the initial contractual period, beginning just prior to the start of the remedial investigation (RI) at the Woodtown Landfill Superfund site:

1. Review of technical documents generated during the RI. These documents will include the RI work plan, sampling plan, quality assurance/quality control plan, RI report, and risk assessment.
2. Attendance at EPA's RI kickoff meeting.
3. Preparation of summary memoranda and reports.
4. Preparation of questions and review of Coalition comments/questions for the public meeting on the RI kickoff.
5. Presentations to Coalition members and others.

C. Specific Contractor Tasks:

Remedial Investigation

Time allocation: 134 hours, including one trip

- a. The contractor's first task will be to review the RI work plan, sampling plan, and quality assurance and quality control plan. The Coalition wants to ensure that adequate sampling is carried out and gauge the need for testing in areas not included in the RI work plan. No environmental measurements are to be taken by the contractor. Special attention shall be given to how EPA plans to investigate the migration of contamination from the Woodtown Landfill site into the Rolling River. From the evaluation, the contractor shall prepare a memorandum for the Coalition's leadership so that this information can be relayed to the membership via the newsletter. EPA will place the memorandum and newsletter in the information repository for the site.
- b. The contractor shall attend a proposed meeting scheduled for the start of the RI in Woodtown, Connecticut, between EPA staff and residents. The contractor shall prepare questions and review Coalition questions to be asked of EPA regarding sampling plans, particularly in regard to the Rolling River.
- c. Upon completion of the RI report, the contractor shall help the Coalition review the results. The contractor also shall review the risk assessment (when available). The contractor shall prepare memoranda on both these documents as well as an overall RI evaluation report. The contractor shall make the information available to the Coalition membership, via the newsletter, and to EPA, which may place memoranda, reports, and newsletters in the information repository.
- d. The contractor will analyze the health assessment thoroughly to ensure that public health is being considered adequately and will prepare a summary report on the potential health risks posed by the site and how EPA proposes to address these risks. The contractor shall make the information available to the Coalition membership via the newsletter.
- e. The contractor will complete a detailed analysis of the proposed remedies in the draft feasibility study and then brief the Coalition on its contents. Additionally, the contractor will prepare a written report to aid the Coalition's preparation of public comments. This report will provide the contractor's recommendations regarding the proposed cleanup measures. The contractor will attend the public meeting to be held in Woodtown during the public comment period. The contractor's primary responsibility will be to serve as a resource to the Coalition's spokespersons at the meeting, interpreting technical information and asking clarifying questions.

D. Progress Reports:

The contractor shall submit the following reports:

1. **Progress reports:** The contractor shall submit monthly progress reports to the Woodtown Landfill Coalition. These reports shall be submitted within fifteen (15) days of the end of each calendar month. These reports shall, at a minimum, contain the following information summarizing the activities undertaken to date by the contractor:
 - a. Hours worked, categorized by the Scope of Work tasks;
 - b. Dollars spent by task and total dollars spent for the reporting period;
 - c. A description of activities;
 - d. A copy of any written materials prepared during the reporting period; and
 - e. An identification of any outstanding Coalition concerns about the site that have not been addressed.
2. **Final Report:** Within 60 days of the end of the contract, the contractor shall prepare and submit to the Woodtown Landfill Coalition, for its review and approval, a final report that shall detail all activities undertaken under the contract and evaluate their effectiveness in meeting the purpose of the contract. The Woodtown Landfill Coalition shall review the final report and may require revisions. Upon receipt of the Woodtown Landfill Coalition revisions, the contractor shall incorporate any revisions necessary and resubmit the final report within 15 days.

E. Technical Direction and Acceptance:

The Woodtown Landfill Coalition appoints Pat Jones, Executive Director, as the overall manager for this contract. She is the only person authorized by the Woodtown Landfill Coalition to amend this contract, negotiate changes, receive reports, and accept any other deliverables. The contractor must not incur costs at the direction of anyone else; otherwise the Woodtown Landfill Coalition shall not be liable for these costs.

II. PAYMENT

- A. The Woodtown Landfill Coalition shall compensate the contractor for the services outlined in this contract at a rate of seventy-six dollars per labor hour (\$76 per labor hour), which shall include overhead, general and administrative costs, and any allowed fee or profit.
- B. Reimbursement for Other Direct Costs, not to exceed six hundred and forty dollars (\$640), shall be at the following rates:
 1. Telephone expenses at cost
 2. Postage at cost

- | | |
|---|---------------------|
| 3. Stationery | at cost |
| 4. Secretarial | at cost |
| 5. Copying, printing | at cost |
| 6. Other expenses (graphics, for example) | at cost |
| 7. Lodging and Per Diem expense
(charged at the government rate) | up to \$100 per day |
| 8. Other travel expenses | at cost |

Travel rates shall be limited to approved federal reimbursement rates. (These rates can be found in 41 CFR 301-304.)

- C. Overall maximum payment for the contract, including any reimbursement authorized in (A) and (B) above, shall not exceed:

Seventeen Thousand Dollars
(amount in words)

(\$17,000)
(amount in numbers)

Payment shall be made on a basis in accordance with provision III (A) of this contract.

- D. In no event shall the contractor be reimbursed for holidays, sick days, or time other than that actually spent providing the services.

III. METHOD OF PAYMENT

A. Standard Invoice System:

Monthly, the contractor shall submit time sheets and corresponding invoices to: Pat Jones, Executive Director, Woodtown Landfill Coalition, for services performed during the calendar month that ended. Time sheets must indicate the hours charged on a daily basis (even if zero) and indicate travel expenses corresponding to the days the charges were incurred. Invoices must clearly show the total hours charged for the month, rate and total cost, and specify the total charge for that month for each of the "Other Direct Cost" categories specified in provision II (B) of this contract. If the invoices are approved, Woodtown Landfill Coalition agrees to make responsible efforts to process payments promptly in accordance with the provisions of 40 CFR Part 33.

The Woodtown Landfill Coalition is limited under the Technical Assistance Grant (TAG) Program to reimbursement on a quarterly basis for total costs under \$500 and on a monthly basis if costs exceed \$500. Thus, contractor payment is also subject to this payment schedule.

B. Final Invoice

The Woodtown Landfill Coalition retains the right to withhold up to 10% of the total contract value pending closeout of this contract. Final payment shall be made in accordance with Article V.9.

IV. FUNDING AND FISCAL APPROPRIATIONS

Obligations for expenditures by EPA for TAGs will be approved for entire budget periods. The obligation of the Woodtown Landfill Coalition to renew this contract may be subject to the availability of EPA appropriations.

V. GENERAL CLAUSES

1. Supersession

The Woodtown Landfill Coalition and the contractor agree that this and other appropriate clauses in 40 CFR 33.1030 apply to that work eligible for EPA assistance to be performed under this contract and that these clauses supersede any conflicting provisions of this contract.

2. Privity of Contract

This contract is expected to be funded in part with funds from the U.S. EPA. Neither the United States nor any of its departments, agencies, or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to regulations contained in 40 CFR Part 33 in effect on the date of the assistance award for this project.

3. Termination

- (a) This contract may be terminated in whole or in part, in writing, by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- (b) This contract may be terminated in whole or in part, in writing, by the Woodtown Landfill Coalition for its convenience, provided that the contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- (c) If termination for default is effected by the Woodtown Landfill Coalition, an equitable adjustment in the price provided for in this contract shall be made, but (1) no amount shall be allowed for anticipated profit on unper-

formed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the Woodtown Landfill Coalition because of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the Woodtown Landfill Coalition, the equitable adjustment shall include a reasonable profit for services or other work performed.

The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination.

- (d) Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Woodtown Landfill Coalition all data, drawings, specifications, reports, estimates, summaries, and other information and materials as may have been accumulated by the contractor in performing this contract, whether completed or in process.
- (e) Upon termination under paragraphs (a) or (b) above, the Woodtown Landfill Coalition may take over the work and may award another party a contract to complete the work under this contract.
- (f) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the recipient. In such event, adjustment of the contract price shall be made as provided in paragraph (c) of this clause.

4. Remedies

Unless otherwise provided in this contract, all claims, counter-claims, disputes, and other matters in question between the Woodtown Landfill Coalition and the contractor arising out of, or relating to, this contract or the breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the Woodtown Landfill Coalition is located.

5. Audit - Access to Records

- (a) The contractor shall maintain books, records, documents, and other evidence directly pertinent to performance on EPA funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied and 40 CFR Part 30 in effect on the date of execution of this contract.

The contractor also shall maintain the financial information and data used in the preparation or support of the cost submission required under 40 CFR 33.290 for any negotiated contract or change order and a copy of the cost summary submitted to the recipient. The U.S. Environmental Protection Agency, the Comptroller General of the United States, the U.S. Department of Labor, the Woodtown Landfill Coalition, and (the state) or any of their authorized representatives shall have access to all such books, records, documents, and other evidence for the purpose of inspection, audit, and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

- (b) If this is a formally advertised, competitively awarded, fixed-price contract, the contractor agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the contractor agrees to make paragraphs (a) through (f) applicable to all contracts it awards in excess of \$25,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.
- (c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).
- (d) The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).
- (e) Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records and at a reasonable time for as long as the records are maintained.
- (f) This right of access clause applies to financial records pertaining to all contracts (except formally advertised, competitively awarded, fixed-price contracts) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition, this right of access applies to all records pertaining to all contracts, contract change orders, and contract amendments:
 - (1) To the extent the records pertain directly to contract performance.
 - (2) If there is any indication that fraud, gross abuse, or corrupt practices may be involved.
 - (3) If the contract is terminated for default or for convenience.

6. Covenant Against Contingent Fees

The contractor assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this assurance, the Woodtown Landfill Coalition shall have the right to annul this agreement without liability, or at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, or brokerage or contingent fee.

7. Gratuities

- (a) If the Woodtown Landfill Coalition finds after a notice and hearing that the contractor or any of the contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee, or agent of the Woodtown Landfill Coalition, the state, or EPA in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this contract, the Woodtown Landfill Coalition may, by written notice to the contractor, terminate this contract. The Woodtown Landfill Coalition also may pursue other rights and remedies that the law or this contract provides. However, the existence of the facts on which the Woodtown Landfill Coalition bases such findings shall be an issue and may be reviewed in proceedings under the Remedies clause of this contract.
- (b) In the event this contract is terminated as provided in paragraph (a), the Woodtown Landfill Coalition may pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the Woodtown Landfill Coalition) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

8. Responsibility of the Contractor

- (a) The contractor is responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports or other services furnished by the contractor under his/her contract. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the reports and other services.
- (b) The contractor shall perform the professional services necessary to accomplish the work specified in this contract in accordance with this

contract and applicable EPA requirements in effect on the date of execution of the assistance agreement for this project.

- (c) The Woodtown Landfill Coalition's or EPA's approval of reports and incidental work or materials furnished hereunder shall not in any way relieve the contractor of responsibility for the technical adequacy of his/her work. Neither the Woodtown Landfill Coalition's nor EPA's review, approval, acceptance, or payment of any of the services shall be construed as a waiver of any rights under this contract or of any cause for action arising out of the performance of this contract.
- (d) The contractor shall be, and shall remain, liable in accordance with applicable law for all damages to the Coalition or EPA caused by the contractor's negligent performance of any of the services furnished under this contract, except for errors, omissions or other deficiencies to the extent attributable to the Coalition, Coalition-furnished data, or any third party. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control.
- (e) The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this contract or state law and in no way diminish any other rights that the Coalition may have against the contractor for faulty materials, equipment, or work.

9. Final Payment

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, the contractor shall execute and deliver to the Woodtown Landfill Coalition a release from any future claims against the Woodtown Landfill Coalition arising under this contract, except claims that are specifically exempted by the contractor to be set forth in the release. Unless otherwise provided in this contract, by state law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the Woodtown Landfill Coalition's claims against the contractor under this contract.

10. Organizational Conflict of Interest

An organizational conflict of interest exists when the nature of the proposed work may result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

- (a) The contractor warrants, to the best of his/her knowledge and belief, that either there are no relevant facts or circumstances that could give rise to an organizational conflict of interest, or that the contractor has disclosed all such relevant information.

- (b) Prior to the commencement of any work, the contractor agrees either to notify the Woodtown Landfill Coalition that, to the best of his/her knowledge and belief, no actual, apparent, or potential organizational conflict of interest exists or to identify to the Woodtown Landfill Coalition any actual, apparent, or potential organizational conflict of interest.
- (c) The contractor agrees that if an actual, apparent, or potential organizational conflict of interest is identified during performance, he/she will immediately make a full disclosure in writing to the Woodtown Landfill Coalition. This disclosure shall include a description of actions that the contractor has taken or proposes to take after consultation with the Woodtown Landfill Coalition to avoid, mitigate, or neutralize the actual, apparent, or potential organizational conflict of interest. The contractor shall continue performance until notified by the Woodtown Landfill Coalition of any contrary action to be taken.
- (d) The contractor expressly agrees to immediately notify the Woodtown Landfill Coalition by telephone and by letter should he/she enter into any other agreement or contract that would create an actual or potential conflict of interest or violation of the Procurement Integrity Act of 1988. The Woodtown Landfill Coalition may terminate this Agreement for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the contractor was aware, or should have been aware, of a potential organizational conflict after award and did not disclose or misrepresented relevant information to the Woodtown Landfill Coalition, the Woodtown Landfill Coalition may terminate this Agreement for default or pursue such other remedies as may be permitted by law.
- (e) The contractor further agrees to insert into any such subcontract or consulting agreement hereunder provisions that shall conform substantially to the language of this Agreement.

11. Personal Conflict of Interest

- (a) In addition to the requirements of Article 10, the following provisions with regard to employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee or the duration of this contract.
- (b) The contractor agrees to immediately notify the Woodtown Landfill Coalition of any actual, apparent, or potential personal conflict of interest with regard to any employee, subcontractor employee, or consultant working on or having access to information concerning this contract. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of the employee, subcontractor employee, or consultant in performing the work.

- (c) The contractor agrees to notify the Woodtown Landfill Coalition prior to incurring costs for that employee's work where an employee may have a personal conflict of interest. In the event that the personal conflict of interest does not become known until after performance on this contract has begun, the contractor shall immediately notify the Woodtown Landfill Coalition of the personal conflict of interest. The contractor shall continue performance of this subcontract until notified by the Woodtown Landfill Coalition of the appropriate action to be taken.
- (d) The contractor agrees to insert into each subcontract or consulting agreement that he/she enters language that shall conform substantially to this agreement.

12. Independent Contractor

The services provided by the contractor are on a professional basis as an independent contractor, determining his/her own manner of performing the work, and shall not be considered an employee of the Woodtown Landfill Coalition within the meaning or the application of any federal, state or local laws or regulations governing Unemployment Insurance, Social Security benefits, Workmen's Compensation, Industrial Accident, Labor, or Taxes. It is likewise understood that the contractor shall not be considered an employee within the meaning or application of the Woodtown Landfill Coalition employee fringe benefit programs for the purposes of vacations, holidays, health benefits, or Employee Retirement Plan. The contractor expressly acknowledges that he/she shall hold the Woodtown Landfill Coalition harmless from any claims by third parties that may be asserted against him/her and deriving in any way from his/her travels, presence or other activities connected with this Agreement.

13. Ineligible Activities Prohibited

The services to be provided by the contractor under this contract shall not include any of the following activities:

Serving as a TAG technical advisor at the same site for which the contractor is doing work for the federal or state government or any other entity.

Assisting an attorney in preparing a legal action or preparing for and serving as an expert witness at any legal proceeding.

Partisan political activity, including lobbying for any issue or cause, or to further the election or defeat of any candidate for public office.

Generation of new primary data such as well drilling and testing, including split sampling.

Reopening final EPA decisions or conducting disputes with EPA.

14. Preparation and Distribution of Informational Materials

The contractor shall not, without prior review and approval by the Woodtown Landfill Coalition, disclose or release informational materials to the general public, other governmental agencies, businesses, or other legal entities.

15. Record Retention

All records required under this contract shall be maintained by the contractor during performance on EPA-assisted work under this contract. Such records must clearly detail acquisitions, work progress, reports, expenditures, and commitments indicating their relationship to established costs and schedules. These records shall be retained for at least ten years from close-out of the contract, unless audit, litigation, cost recovery, and/or any disputes are initiated before the end of the ten-year retention period. Prior written approval shall be obtained from the Woodtown Landfill Coalition before any records may be destroyed after the record retention period.

BLANK DOCUMENTS NEEDED FOR PROCURING CONTRACTORS

In this section, you will find a copy of the following forms:

- Proposed Costs for Technical Assistance.
- Certification Regarding Debarment, Suspension, and other Responsibility Matters (EPA Form 5700-49).

Two other documents used in the procurement process, the “Solicitation” and “Contract,” can be found on pages 24 and 35, respectively, of the “Step-by-Step Instructions and Sample Forms” section. While specific elements of these documents are required, there are no forms associated with them.

PROPOSED COSTS FOR TECHNICAL ASSISTANCE

PART A: IDENTIFYING DATA					
NAME OF CONTRACTOR			DATE OF PROPOSAL		
ADDRESS OF CONTRACTOR			TELEPHONE NUMBER		
			ASSISTANCE IDENTIFICATION NUMBER		
GRANT RECEIPT					
PART B: COSTS <i>(Proposed costs must conform with applicable Federal cost principles)</i>					
1.	DIRECT LABOR	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	
DIRECT LABOR SUBTOTAL					1
2.	INDIRECT COSTS	RATE	TOTAL DIRECT LABOR COST	ESTIMATED COST	
INDIRECT COST SUBTOTAL					2
3.	TRAVEL			ESTIMATED COST	
	A) TRANSPORTATION				
	B) PER DIEM (LODGING AND MEALS)				
TRAVEL SUBTOTAL					3
4.	EQUIPMENT, MATERIALS AND SUPPLIES			ESTIMATED COST	
EQUIPMENT, MATERIALS AND SUPPLIES SUBTOTAL					4
5.	SUBCONTRACTS AND OTHER COSTS			ESTIMATED COST	
SUBCONTRACTS AND OTHER COSTS SUBTOTAL					5
PART C: SUMMARY					
TOTAL COST				\$	
PROFIT				\$	
TOTAL PRICE				\$	
<p>I certify that, to the best of my knowledge and belief, the cost information summarized herein is complete, current, and accurate as of _____ (date). I further certify that I have the financial management capability to fully and accurately account for the financial transactions required to execute this project. I understand that the subagreement price may be subject to downward renegotiation or rescission if the above cost information is determined through an audit not to have been complete, current or accurate as of the date above.</p>					
SIGNATURE OF CONTRACTOR				DATE	



EPA Project Control Number

United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.