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EPA

Project Management AND THE Procurement Process

Project Management AND THE Procurement Process

A Seminar Workshop for Project Officers and Other Technical Personnel

U.S. Environmental Protection Agency
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TABLE OF CONTENTS

		Page
INTRODUCTION		1
	Purpose	1
	Objective	1
	Scope of the Seminar Workshop	2
	Workshop Format, Content and Scheduling	2
	Post-Seminar Workshop Critique	2
	Information Baselines	2
	About This Handbook	3
	Participant Preparation and Daily Schedule	3
TOPIC I.	THE EPA MISSION-ORIENTED PLANNING AND REPORTING SYSTEM	5
I.	EPA Formal Planning and Reporting System (FPRS): The Big Picture	5
II.	Current EPA Concerns	9
III.	Organization and Responsibilities	10
CHARTS:	Office of Planning and Management	11
	The Procurement Organization	12
	Responsibilities in the Procurement Process	14
INTRODUCTION TO LEARNING THROUGH LISTENING		15
VIGNETTE NO. 1: CHITCHAT . . . 'BOUT THIS AND THAT . . .		16
CHART:	The EPA Procurement and Contracting Environment (For Competitively Solicited Procurements)	18
TOPIC II.	THE EPA PROCUREMENT AND CONTRACTING ENVIRONMENT: FORM AND FUNCTION	19
I.	The Essential Questions of an Effective Procurement Process	19
II.	Relating the Essential Questions to Pre-Award Planning and Post-Award Performance Phases	19
CHARTS:	The Procurement Process Optimum Leadtimes	
	New Competitive Requirements	20
	New Sole Source Requirements	21

TOPIC III. THE PROCUREMENT REQUEST RATIONALE: TRIGGER FOR BUYING 23

I. The Procurement Request/Requisition (EPA Forms 1900-8 and 1900-8A) 23

II. The Procurement Request Rationale 24

III. Isolating Two Elements of the Procurement Request Rationale: Statements of Work and Evaluation Criteria 26

CHART: Statement of Work Preparation (One Approach Through Building Blocks) 28

VIGNETTE NO. 2: OVERHEARD OVER COFFEE 31

TOPIC III. THE PROCUREMENT REQUEST RATIONALE: TRIGGER FOR BUYING (cont'd) 33

IV. Cost Estimate: Independent and Other 33

VIGNETTE NO. 3: WOULD YOU TAKE ISSUE OR AGREE WITH . . . 35

TOPIC IV. CONTRACT TYPE SELECTION: DEALING WITH RISK AND REALISM 37

I. The Nature of Contracts 37

II. Cost Risk and Cost Realism 37

III. Contract Types: An Overview of Fundamentals 37

CHART: Procurement Methods & Contract Types 39

TOPIC V. THE COMPETITIVE AND NONCOMPETITIVE ENVIRONMENTS FOR RESEARCH, STUDY, AND INVESTIGATIVE EFFORTS 41

I. The Competitive Environment 41

II. The Noncompetitive Environment 42

III. Identification of Interested and Capable Sources 44

IV. Unsolicited Proposals: Treatment, Assessment, and Disposition 44

COMPTROLLER GENERAL DECISION B-183487, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL NO. 3347, AFL-CIO 47

COMPTROLLER GENERAL DECISION B-166506, ENVIRONMENTAL PROTECTION AGENCY SOLE SOURCE PROCUREMENTS 51

TOPIC VI. REQUESTS FOR PROPOSALS, SOURCE EVALUATION AND ASSESSMENT, THE CONDUCT OF NEGOTIATIONS AND TREATMENT OF UNSUCCESSFUL OFFERORS: MAJOR CONSIDERATIONS IN THE AWARD-MAKING PROCESS 55

I. The Solicitation Process 55

II. Project/Technical Personnel Impact on the Solicitation and Award-Making Process 56

COMPTROLLER GENERAL DECISION B-174589, ENVIROTRONICS 59

VIGNETTE NO. 4: KEEPING IN TOUCH . . . MEANS SO MUCH 65

III. Treatment of Unsuccessful Offerors 70

COMPTROLLER GENERAL DECISION B-188542, ROCKWELL INTERNATIONAL CORPORATION 72

ECOSYSTEMS, INC., TREATMENT OF LATE PROPOSALS 75

TOPIC VII. PERFORMANCE ARENA POSTULATES, ORIENTATION CONFERENCES, AND PROGRESSING SYSTEMS AND SURVEILLANCE 79

I. Some Contract Performance Arena Postulates 79

II. Post-Award Orientation Conferences 80

III. Progressing Systems and Surveillance 81

IV. Technical Administration and Technical Direction: Understanding the Difference 82

TOPIC VIII. CONTRACT MODIFICATIONS, HANDLING CASES OF UNSATISFACTORY PERFORMANCE, AND CONTRACT COMPLETION AND CLOSEOUT 83

I. The Contract Modifications Environment 83

CHART: LANGUAGE OF CONTRACT MODIFICATIONS 85

II. Handling Cases of Unsatisfactory Performance 88

III. Fundamental Actions of Contract Completion and Closeout 88

VIGNETTE NO. 5: BUY NOW . . . PAY LATER 91

VIGNETTE NO. 6: WHO'S TO ACT . . . AFTER THE FACT? 93

SEMINAR WORKSHOP GUIDE

INTRODUCTION

Purpose

Conducted over a 3-day period, this 21-hour seminar workshop is presented mainly to Project Officers and other technical personnel. Its purpose is twofold:

- To examine the structured roles and responsibilities of technical and procurement personnel through which program management and the procurement process satisfy EPA requirements and needs.
- To provide information and examples illustrating the necessary interface of the technical and procurement communities in order to meet EPA's mission and get the job done.

Objective

Within the stated purpose, our principal objective is to help improve the procurement process by:

- Clarifying the relationship between the Project Officer and the Contracting Officer through the sharing of information, experience, and on-the-job perspectives.
- Enhancing the Project Officer's understanding of how project actions affect the procurement process.
- Providing information and examples that identify the tools and techniques available to the Project Officer for managing contracts.
- Illustrating how an understanding of and proper use of the procurement process can benefit performance and result in shorter lead times.

Few environments have as great a need for mutual understanding and cooperation among EPA personnel as the one that exists for the purpose of satisfying technical requirements through the contracting process. This seminar workshop is designed to enhance such understanding and cooperation.

Scope of the Seminar Workshop

At the outset of this workshop, a few words of caution are in order. First, while most EPA funds are expended through the placement of grants, this workshop is limited to satisfaction of requirements through the process of contracting. Second, the EPA project and procurement processes involve a series of deliberate events, activities and decisions that collectively translate requirements into contracts. EPA's requirements range from the very simple to the highly complex, and this implies an equally wide range of project and procurement management options. Not all of these, of course, can be treated in a 21-hour program.

It takes years of education, training, and experience to develop excellence in scientific, engineering and technical management. The same is true in business management. This being the case, what can one expect from a 21-hour program? In part, the answer depends on one's background and experience. For the uninitiated, the program provides helpful insights into the technical/procurement interface. For the more experienced practitioner, the program provides a medium for understanding and dealing with many of the regulatory details and structural requirements that are basic to satisfying EPA's project needs through its procurement process.

Workshop Format, Content, and Scheduling

A workshop is a brief, intensive program for a relatively small group of people in a given field that emphasizes participation in problem-solving efforts. The format, content, and scheduling of the seminar are structured to stress participation in problem-solving and to relate program information to the "real" world. Workshop media have been designed to encourage seminar participants to grapple with everyday problems, as well as to understand the EPA project management and procurement processes.

Post-Seminar Workshop Critique

At the conclusion of the program, participants will be given time to complete the workshop critique form included in this handbook. Thoughtful attention to its completion will help others in determining how well the seminar responded to participant needs and achieved its objectives.

Information Baselines

Materials for this seminar workshop were prepared from the following:

- EPA Procurement Regulations (EPPR), implementing and supplementing the Federal Procurement Regulations, (FPR); Second Edition, 1964, with most recent revisions thereto.

- EPA Contracts Management Manual, July 2, 1974, with Transmittals through Number 28, dated February 15, 1980.

- EPA Procurement Information Notices.
- EPA Operating Planning Manual.
- EPA Guide for Contract Project Officers, April 1980.

About This Handbook

This handbook contains all the materials required for participants to follow the classroom presentations and participate in discussions, case studies and workshop exercises. Visual aids, scripts for audio exercises, and case studies are integrated within the topical presentation. Certain key references have been included within the reference material section, which follows the course outline. A critique form is included as the last page of the handbook.

Participant Preparation and Daily Schedule

A preparation assignment for each day will be made in class. Daily schedules provide for seven hours of classroom time, at hours suited to specific sessions and locations. Outside reading will be kept to the minimum needed to cover the materials, but adequate materials are provided for those who wish to study in greater depth.

TOPIC I. THE EPA MISSION-ORIENTED PLANNING AND REPORTING SYSTEM: AN OVERVIEW*

THE EPA FORMAL PLANNING AND REPORTING SYSTEM

A system through which major directions and goals of Agency programs are determined, enunciated, and serviced via specified procedures for program planning and budget execution.

FPRS BASIC COMPONENTS:

1. STRATEGIES
2. PREVIEW
3. BUDGET FORMULATION
4. OPERATING PLANS (PROGRAM PLANS)
5. FORMAL REPORTING AND PROGRESS ASSESSMENT
6. ADMINISTRATIVE FUND AND POSITIONS CONTROL
7. PROGRAM EVALUATIONS

CONTRACT PLANNING REQUIREMENTS

- CONTRACT CONSOLIDATION
- DISTRIBUTING PROCUREMENT ACTIONS MORE EVENLY
- INCREASING COMPETITIVE PROCUREMENTS
- UTILIZING OTHER CONTRACTING IMPROVEMENTS -
- IDENTIFYING OPPORTUNITIES FOR SMALL BUSINESS, MINORITY, AND 8(a) FIRMS

I. EPA FORMAL PLANNING AND REPORTING SYSTEM (FPRS): THE BIG PICTURE

A. The FPRS Framework

1. Determines and enunciates the major directions and goals of the EPA program

2. System features are designed to serve

   a. Administrator and Deputy Administrator requirements in major decisionmaking and followup

   b. Requirements for management of EPA's decentralized structure

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*This topic was developed from portions of the EPA Operating Planning Manual, February 10, 1976, as revised through Transmittal Number 4, December 28, 1976. This manual is an extremely comprehensive articulation of the EPA Formal Planning and Reporting System (FPRS) and includes discussion of the entire planning cycle, particularly the Preview and Budget Formulation process.

c. Necessary resource control requirements

d. Regional requirements

B. FPRS Basic Components

1. Strategies: description and evaluation of long-term (two to five years) objectives of each EPA program in terms of substantive environmental problems it is trying to address

2. Preview: annual review of EPA strategies, objectives, priorities, and problem areas prior to formulation of budget submission to the Office of Management and Budget (OMB)

3. Budget Formulation: translation of EPA-developed objectives from the Preview into specific budget proposals to be submitted to OMB

4. Operating Plans (Program Plans): detailed annual outline for attaining specific accomplishments within available resources

5. Formal Reporting and Progress Assessment: the EPA mechanism by which status of outputs and activity indicators specified in the approved operating plan is transmitted to Headquarters

6. Administrative Fund and Positions Control: Advices of Allowances are EPA's principal mechanism for control of resources in approved operating plans

7. Program Evaluations: conducted in key areas during a year, they provide for determining efficiency and effectiveness of programs

C. Operating Planning Manual Instructions Applicability

1. All Allowance Holders

2. All Responsible Planning and Implementation Offices (RPIOs)

D. FPRS Basic Component No. 4 (Operating/Programs Plan Requirements)

1. Among the nine overall requirements, No. 8 is for Contract Planning.

2. From EPA Operating Planning Manual, Chapter 6, paragraph 2.h., A Means to Achieve Shorter Lead-Times:

"Contract Planning Requirements

a. A contract planning and review system has been instituted to enable the Contracts Management Division of the Office of Administration to assist RPIOs in:

- Taking advantage of opportunities for contract consolidation, thereby reducing the number of contracts required;

- Distributing procurement actions more evenly throughout the year in order to reduce unobligated balances which are either lost to the Agency or carried over to the next fiscal year;

- Increasing the use of competitive, rather than sole source, procurements which may result in more favorable contract negotiations;

- Utilizing other contracting improvements.

b. Each RPIO must submit contract planning data for each allowance holder. For the Office of Research and Development, separate contracting planning packages should be submitted for each responsibility center. This is necessary to adequately account for the large amount of funds represented by a single allowance holder.

c. Contract planning data is required only for those contract actions administered by the CMD and those contracts involving prior year carryover funds as well as current year funds.

d. OPM develops an Agency-wide contract plan based on planning data from each allowance holder.

e. The contract plans portion of the program plan submission consists of:

   - A time-phased summary of commitments planned by each allowance holder for each quarter of the upcoming budget year.

   - A descriptive data sheet for each planned contract of $100,000 or more.

f. The contract plans will be phased according to the projected quarter of the fiscal year in which the funds will be recorded as commitments in the CMD's computer system (i.e., the point in time when the complete package of procurement documentation is received in CMD).

g. Although contract plans are based upon commitments, it should be recognized that one of the objectives of this endeavor is to improve the rate of contract obligations. Therefore, contract plans should be formulated with an awareness that procurement actions have an average lead time of 120 days from commitment

to obligation for noncompetitive procurements and an average lead time of 145 days for competitive procurements. Therefore, under the fiscal year of October 1-September 30, all planned procurement requests should be received by CMD by May 18, 1976*. Only emergency requirements (e.g., those in support of court ordered deadlines) should be submitted to CMD after the cutoff dates for obligation during the current fiscal year. Any commitments planned for the fourth quarter of the fiscal year will have little, if any, chance of being obligated by the end of the fiscal year. Therefore, these procurement actions should cite FY 1977 funds. This is particularly significant for the Agency and Regional Management and Enforcement Appropriations, which are appropriated for one year only. Fourth quarter commitments in these appropriations will be examined closely, and recommendations for reallocations made if there is no assurance that they will be obligated. Careful contract planning is also needed for the R&D, Energy R&D, and Abatement and Control Appropriations, where the amounts of carryover are scrutinized even though the funds are appropriated for more than one year.

h. A separate data sheet is to be prepared for each planned contract when the total cost of the procurement, including all options and funding increments in FY 1977 and subsequent years, is anticipated to equal or exceed $100,000*. For example, an allowance holder may plan to commit $75,000 in FY 1977 for the basic contract and $25,000 in FY 1978 to exercise an option on the contract; or a funding increment of $90,000 may be planned for commitment in FY 1977 as the first of three funding increments in a multiyear contract with a total cost of $250,000. In each of these cases, a data sheet is needed, even though each commitment in FY 1977 is less than $100,000, because the total contract is anticipated to equal or exceed $100,000.

i. In cases where more than one allowance holder will be issuing funds for a procurement action where the total cost equals or exceeds $100,000, a lead office should be determined by the offices involved. The lead allowance holder should submit a data sheet which will identify all the sources of funding, amounts, and commitment plan for each participant.

j. Quarterly updates of contract plans are also required."

*Specific dates cited in this topic relate to FY 1977. Similar dates are used for subsequent fiscal years.

II. CURRENT EPA CONCERNS

A. Two-Year Funding

1. Applies to abatement control and R&D

2. Two years to obligate

3. Need to change patterns in EPA procurement previously geared to "no year" money

4. Opportunity for creative use of options in contracting

B. Mission Contracting (PIN 76-38, May 21, 1976)

1. Definition: (A concept-not a contract type)

   "Mission contracting means the consolidation of programmatic requirements of a specific EPA organizational element(s) into one contract to be performed in support of the mission of that organizations' element(s)."

2. Examples:

   a. Consolidation of several similar requirements into a single SOW

   b. Multiyear contract for long range continuing requirement

   c. Single contract can be awarded for a comprehensive project or mission

3. Pricing arrangement is open

4. Expected advantages to EPA

   a. Fewer contract awards of higher dollar value

   b. Reduced documentation and decreased gross leadtime

   c. Quick response to program requirements

   d. Flexibility of work direction within SOW

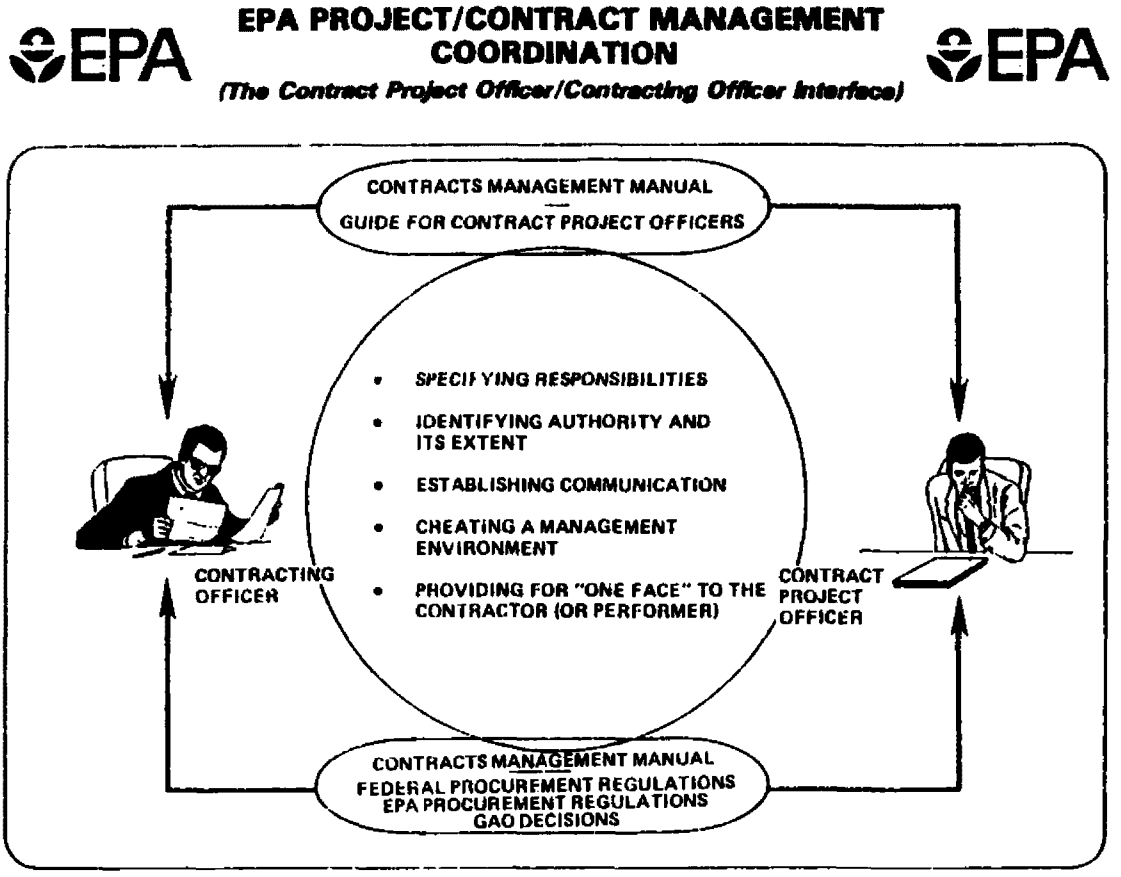
   e. Increased competition at higher dollar threshold

   f. More even work flow by the contractor and responsible procurement office

5. Responsibility of Contract Operations Office

   "Responsible for considering mission contracting as a first priority approach to procurement of the Agency's requirements...designated representatives to act in a liaison capacity with each program office...."

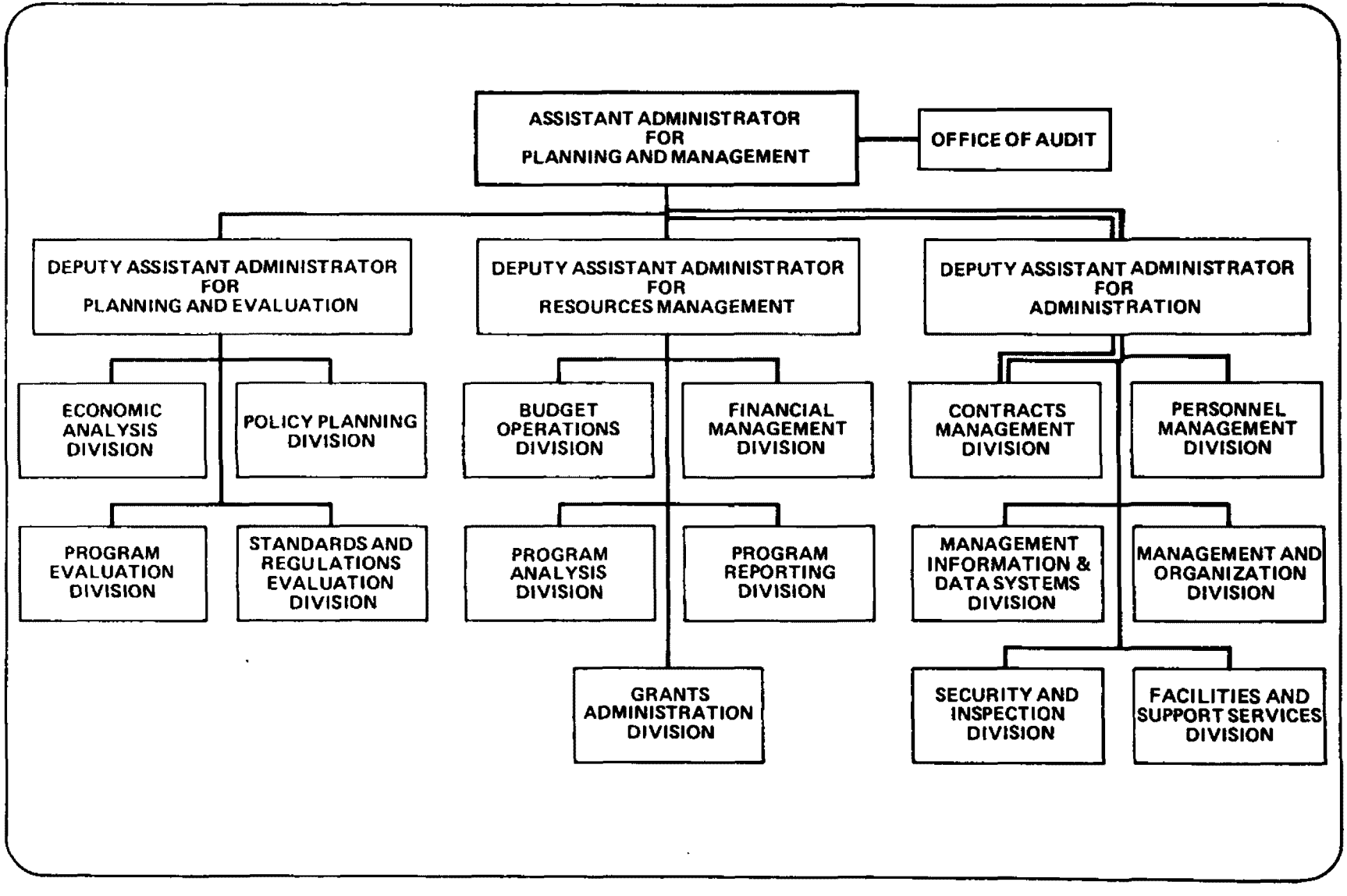
III. ORGANIZATION AND RESPONSIBILITIES



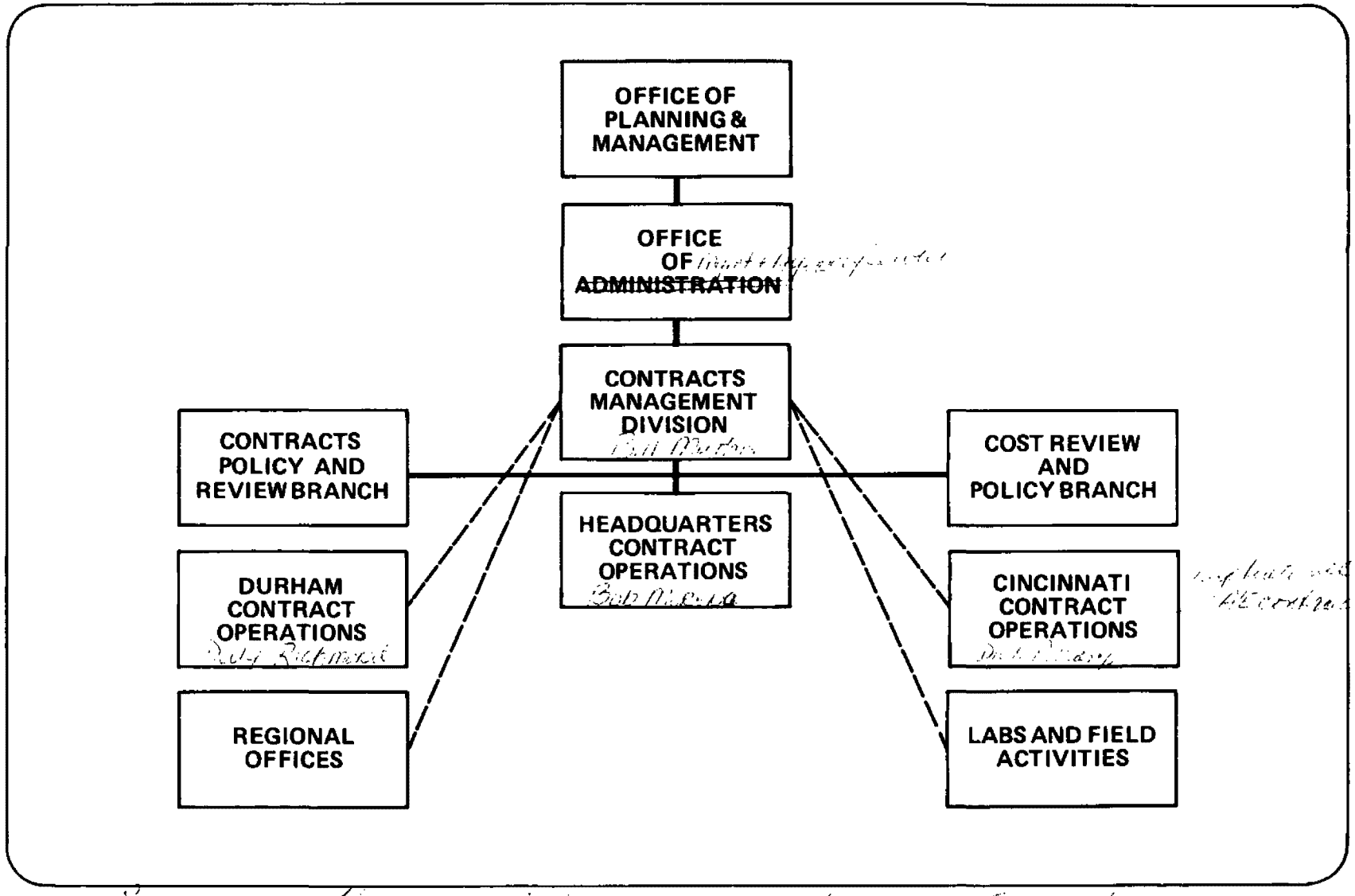
A. The Contracts Management Division (CMD), (From EPA Organization and Functions Manual, Chapter 3)

1. "Contracts Management Division. The Contracts Management Division, under the supervision of a Director, develops, conducts, and coordinates the Agency contracts management program, including the provision of advisory financial analysis of grant applications. Develops Agency procurement policies and regulations in implementation of the Federal Procurement Regulations. Conducts Headquarters programs for contract placement, modification, post award administration, and termination, including advertising, location of sources, negotiation, award, in-process monitoring, and termination settlement. Provides technical guidance to all field contracting operations; and conducts a contracts management technical review and internal evaluation program. Provides cost and price analysis services to Headquarters and field contracting operations. Coordinates action on contract proposals with the Grants Administration Division with respect to those proposals which have common elements of both grants and contracts. Represents the Agency on contracts management matters with other Federal

OFFICE OF PLANNING AND MANAGEMENT



THE PROCUREMENT ORGANIZATION



agencies and industry. Develops policies and procedures implementing the provisions of Executive Order 11625 of October 13, 1971, "Prescribing Additional Arrangement for Developing and Coordinating a National Program for Minority Business Enterprise." Furnishes information, assistance, and reports to the Department of Commerce. Coordinates with the Grants Administration Division in the furtherance of the objectives of the Order. Provides technical assistance to components of the Agency's field establishment responsible for carrying out related activities."

2. Contracting Officer Responsibilities

   a. Contracting Officer Defined (FPR 1-1.207)

      " 'Contracting Officer' means an official designated to enter into or administer contracts and make related determinations and findings."

   b. Responsibilities and authorities

      (FPR 1-1.401) "The head of the procuring activity is responsible for the procurement of personal property and nonpersonal services (including construction) to the full extent that responsibility has been assigned to his activity."

      (FPR 1-1.402) "Contracting officers are authorized to enter into and administer contracts for personal property and nonpersonal services (including construction) on behalf of the Government and make related findings and determinations within the limitations of the authority delegated to them."

      Subject to meeting all applicable requirements of the law, Executive Orders and regulations, including those of EPA.

B. Project Officer Responsibilities

   1. In early planning

   2. In preparation of the Procurement Request

   3. In evaluation and source selection

   4. In administration of the contract

   5. In contract closeout

C. The Necessity for Cooperative Efforts by Both Contracting Officers and Project Officers

RESPONSIBILITIES IN THE PROCUREMENT PROCESS

FUNCTION	RESPONSIBLE OFFICES WITHIN EPA: PROJECT OFFICE	CONTRACTS OFFICE	OTHER OFFICES
PRESOLICITATION			
Advance planning	Develops program plan	Advises as to procurement process	
Submission of purchase request	Decision to buy	Adequacy of PR package	
Obtaining sources	Recommends & evaluates sources	Establishes source list	
Sole source determination	Prepares justification	Final decision	
Request for Proposals	Develops technical aspects	Responsible for RFP contents and release	
SOLICITATION AND EVALUATION			
Discussions with contractor(s)	Advisory to contracts offices	Responsible for all contacts	
Technical evaluation	Total responsibility		
Business evaluation		Total responsibility	Audit-advisory over $100K (fixed price) Audit-advisory over $250K (cost reimbursement)
Determination of competitive range	Advisory	Final decision	
NEGOTIATIONS AND AWARD			
Discussions with contractor(s)	Participant	Responsible for conduct	
Selection of contractor	Advisory	Final decision	
Contract preparation and award	Scope of work and other technical aspects	Final contract document	General Counsel may be advisory
CONTRACT ADMINISTRATION			
Technical direction	Within defined limits		
Contract changes and extensions	Initiates to contracts office	Total responsibility	
Monitoring performance	Technical performance	Business performance	
Patents	Advisory to General Counsel	Coordinates requests	General Counsel prepares Agency's position
Acceptance of final product	Varies with product	Varies with product	
Payment of vouchers	Reviews & certifies	Reviews & certifies final voucher	Financial Management schedules for payment
Property administration	Advises and recommends	Final decisions	Property--records, disposition & other services
Administrative closeout	Evaluates technical performance	Total responsibility	Audit & General Counsel advisory

INTRODUCTION TO LEARNING THROUGH LISTENING

You are about to experience a series of audiotape exercises that deal with buyer-seller relationships and some aspects of the Federal procurement management process. In all, there are six vignettes. They afford the listener an opportunity to respond at the end of each vignette, or in some cases at predetermined points within them.

What is required in terms of responses, and when, has been identified throughout the audiotape. After a response has been requested, the tape will be stopped and discussion will be held. Spontaneity of response—just saying whatever may come to mind—is important. Remember this as you listen to each vignette and follow its words on the provided script.

While this series of exercises may be utilized as an instructional or learning medium at one sitting, it may also be utilized throughout a program to complement and reinforce specific areas of course or workshop content. In most instances, the latter use is employed. So listen carefully, hear well, and seize the opportunity to participate.

How often do we hear someone but fail to really "listen" to what they have to say? Chances are a good deal of the time. If seeing is one ingredient of believing, then hearing—that special sense by which we receive noises and tones as stimuli—is another. But "listening," the ability to hear with thoughtful attention, is a third and critical factor, and doesn't necessarily go hand in glove with the other two. These audiotape exercises provide an opportunity for us to listen as well as to hear.

After finished [illegible]

VIGNETTE NO. 1: CHITCHAT . . . 'BOUT THIS AND THAT

The following punchlines by Dick Stillings of Acme Industries, Inc., were recorded while he was conversing with his friend of many years, Harold Halloran of the engineering section of a Government agency project office. Assume you are Harold as Dick says to you:

Dick: "...And furthermore, Harold, I don't care what you people put in those RFPs about technical competency as the prime driver. You and I both know...when all is said and done that the law requires you to go to the lowest bidder."

- How would you respond to that?

****

Dick: "Yeah, I know all about competition. And then some! We're in it all the time. But just like motherhood, it's dangerous. Why? Because once you switch it on pal, you can't control it! Go competitive...and you can count on every Tom, Dick, and Harry on the block coming in with a proposal. Then what do you do, buddy?"

- And how would you respond this time?

****

Dick: "It'll take how long for you people to get this requirement on the street? I've been telling you for years...the Government's procurement process is fundamentally nonresponsive to need. As a guy who makes it where the rubber hits the road, I'll never understand the length of time things take.

If it were my business, I'd never run it this way!"

- And what would you say to that?

****

Dick: "Harold, we've been through this one a hundred times. I can't provide all the details before the job begins. After all, we're dealing with a research and study effort. If we knew what you were looking for, there would be no point to go through an investigative effort. But this thing is filled with unknowns! Let's get the job underway first. There's plenty of time later to worry about the details."

- *How would you respond this time?*

****

Need decide on cost & requirements before -

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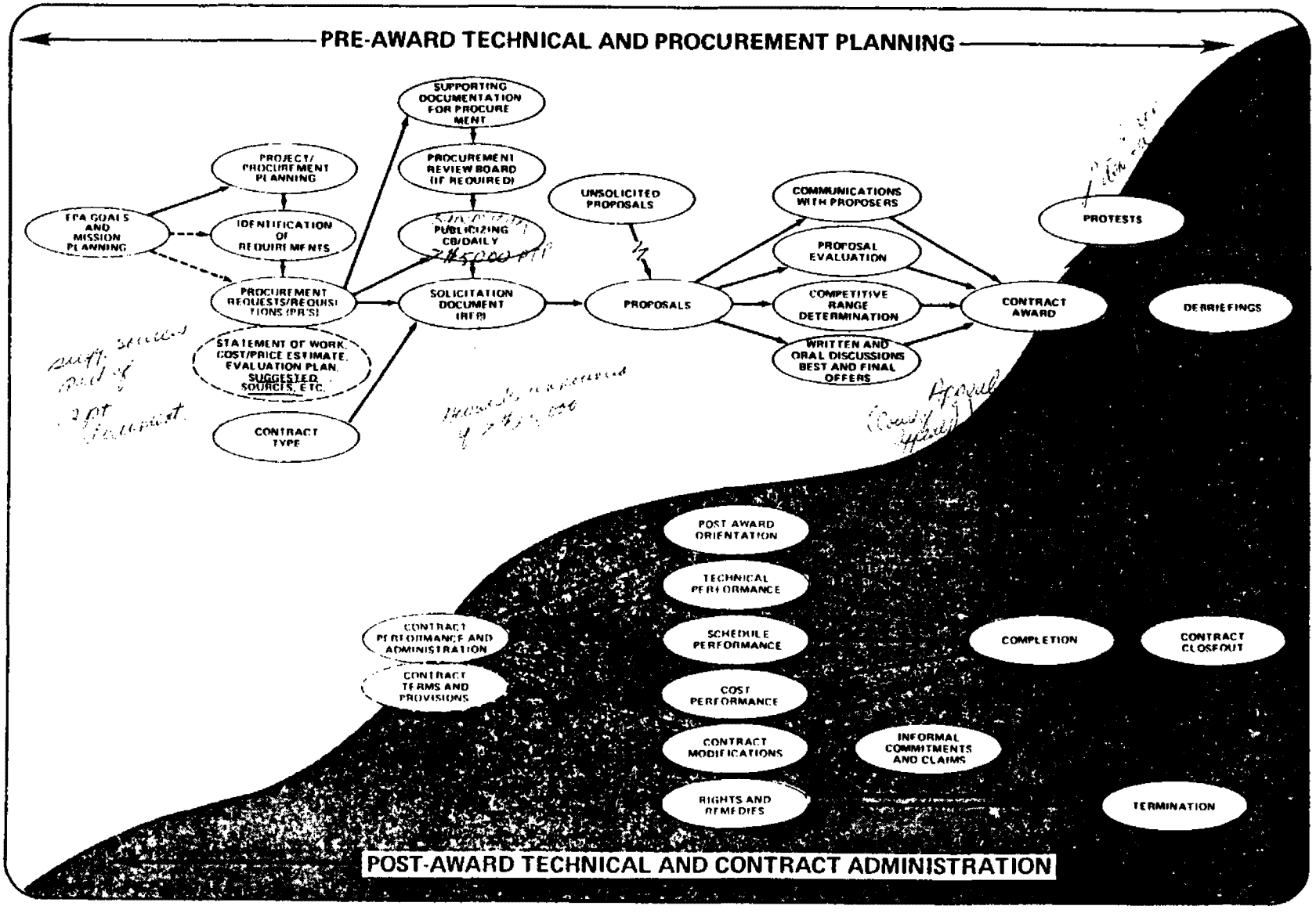
THE EPA PROCUREMENT AND CONTRACTING ENVIRONMENT

(For competitively solicited procurements)

A network of technical and procurement events, activities and decisions that determines . . . what to buy . . . how to buy . . . from whom to buy . . . the buying arrangement . . . and how to assure performance.



TOPIC II. THE EPA PROCUREMENT AND CONTRACTING ENVIRONMENT: FORM AND FUNCTION

I. THE ESSENTIAL QUESTIONS OF AN EFFECTIVE PROCUREMENT PROCESS

A. What to buy?

B. How to buy?

C. From whom to buy?

D. The buying arrangement?

E. How to assure performance?

II. RELATING THE ESSENTIAL QUESTIONS TO PRE-AWARD PLANNING AND POST-AWARD PERFORMANCE PHASES

A. What network events go with what questions?

B. What three-or-so events do you consider most important?

C. Where is the process most susceptible to breakdown?

D. Which events are the responsibility of the technical community? The contracting community?

The EPA procurement process functions within a system of EPA Procurement Regulations (EPPR) which implement and supplement the requirements and procedures specified in the Federal Procurement Regulations (FPR). EPPR are prescribed by the Administrator under the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, or under such other authority as is specifically cited. The FPR are published as Chapter 1 of Title 41, Code of Federal Regulations. EPPR are published as Chapter 15 of Title 41.

THE PROCUREMENT PROCESS
Optimum Leadtimes
New Competitive Requirements

Non-competitive proposals

Milestone Description	Less than $100,000		$100,000 or Greater	
	Optimum Calendar Days to Complete	Cumulative Calendar Days	Optimum Calendar Days to Complete	Cumulative Calendar Days
Receipt of Acceptable Procurement Package at Contract Operations Office	0	R-Day	0	R-Day
*Preparation, Print & Issue RFP Package	20	R+20	20	R+20
Proposal Preparation and Submission (1)	30	R+50	30	R+50
Evaluation (2)				
Technical	21		28	
* Cost (3)	14	R+85	32	R+110
*Negotiations	14	R+99	21	R+131
*Contract Preparation	5	R+104	5	R+136
*Contract Review (4)	5	R+109	6	R+142
Contract Award	14	R+123	14	R+156*

* These milestones are completely within the control of CMD. The accumulated time for milestones within CMD control is 47 percent for actions under $100,000 and 54 percent for those greater than $100,000.

1. Time should be added when pre-proposal conferences are conducted.
2. Cost and technical evaluations are conducted sequentially. While the cost evaluation is within the control of CMD, cost examination cannot be initiated until evaluation of the technical proposals is completed and a competitive range is established. Initial control of this milestone is held by the Project Officer and any lateness on his part will have a pyramiding effect.

3. It should be remembered that cost evaluations of procurements exceeding $100,000 are not always within the control of CMD. Many, if not most, audit actions are performed by other than EPA audit groups.
4. Ten calendar days should be added to those actions requiring CMD review and approval.

THE PROCUREMENT PROCESS
Optimum Leadtimes
New Sole Source Requirements

Milestone Description	Less than $100,000		$100,000 or Greater	
	Optimum Calendar Days to Complete	Cumulative Calendar Days	Optimum Calendar Days to Complete	Cumulative Calendar Days
Receipt of Acceptable Procurement Package at Contract Operations Office	1	R-Day	0	R-Day
*Preparation, Print & Issue RFP Package	15	R+15	15	R+15
Proposal Preparation and Submission	30	R+45	30	R+45
Evaluation (1)				
Technical	14		25	
* Cost (2)	14	R+59	35(2)	R+80
*Negotiations	10	R+69	14	R+94
*Contract Preparation	5	R+74	5	R+99
*Contract Review (3)	2	R+76	6	R+105
Contract Award	10	R+86	14	R+119

* These milestones are completely within the control of CMD. The accumulated time for milestones is 37 percent for actions under $100,000 and 34 percent for those greater than $100,000.

1. Cost and technical evaluations are prepared in parallel and the time alloted each is equal. The technical evaluation is in the control of the Project Officer. Historically, the technical evaluation requires more time than the cost. The 14 and 35 day milestones are therefore considered outside the control of CMD.
2. It should be remembered that cost evaluations of procurements exceeding $100,000 are not always within the control of CMD. Many, if not most, audit actions are performed by other than EPA audit groups.
3. Ten calendar days should be added to those actions requiring CMD review and approval.

TOPIC III. THE PROCUREMENT REQUEST RATIONALE: TRIGGER FOR BUYING

PRE-AWARD TECHNICAL AND PROCUREMENT PLANNING

[EPA Contracts Management Manual, Chapter 1: EPA Forms 1900-8 and 1900-8A are to be used for originating procurement of personal property and nonpersonal services except printing (EPA Forms 2340-1 or 2340-6), Advertising Order (Standard Form 1143), and Training (Optional Form 170). A Procurement Request Rationale must accompany the Procurement Request/Requisition for all research and development or service contracts in excess of $10,000, with certain exceptions.]

I. THE PROCUREMENT REQUEST/REQUISITION (EPA Forms 1900-8 and 1900-8A)

A. A Bridge Between Planning and Satisfaction

1. Articulates the need
2. Documents the principals
3. Details the control information
4. Provides an estimate of cost or price
5. Considers a procurement method
6. Suggests sources
7. Requires approvals
8. Permits procurement office insertions
9. Reflects distribution channels
10. Triggers procurement action

B. Procurement Request/Requisition Importance and Impact

1. On the time factor
2. On the approval process
3. On the procurement process

C. Policy. EPA procurement actions shall be initiated only after it has been determined that:

1. The acquisition of personal property or nonpersonal services is authorized by law
2. All applicable regulations have been complied with

3. Appropriate officials have approved the proposed procurement action

4. Appropriated funds are, or there is a reasonable expectation that they will be, available for obligation

5. The property or services are adequately described and meet the minimum needs of EPA

6. Proper documentation supporting the procurement action has been furnished with the procurement request

7. All purchases and contracts, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practical extent

8. Small and minority business firms including 8(a) have been accorded an opportunity to participate in the procurement

II. THE PROCUREMENT REQUEST RATIONALE

12 pt document

A. Preparation Requirements

1. For each new contract

2. For each contract modification involving additional effort with additional funds

B. Content Requirements

1. Title of project

   Name, designation, and program element identification

2. Estimated period of performance (in months)

   How long and with what end product

3. Project Officer

   Who will lead and monitor the effort

4. Background

   Does it represent the complete task or a subtask, or is it a possible candidate for set-aside for small business or 8(a) minority business?

   Relationship to other tasks?

   Are related tasks already under contract?

   Are related tasks programmed for later years?

call policy (Marge Wilson) ask whether it would be SMA 8(a)

Present state of the art?

Contemplated follow-on procurements?

Any patents, copyrights, or proprietary information?

5. Procurement abstract

For public announcement in the Commerce Business Daily, a precis of the program scope of work and desired qualifications of prospective contractors.

6. Statement of work (SOW)

A definitive statement of what the contractor will be expected to do and how the buyer will assess the performance and the conditions bearing on performance. The wording of the SOW in the Request for Proposals should be suitable for use in the resulting contract.

7. Proposed budget

Independently determined estimate of the elements of resources required for performance with their attendant estimated price. This is Government privileged information.

8. Reports

Types, timing and frequency, time to review, nature and need, content and format, and criteria for acceptability.

9. List of recommended sources

What sources are considered qualified to perform?

Is a small business set-aside possible? If noncompetitive, has a Justification for Noncompetitive Procurement been included?

10. Evaluation criteria for competitive procurement

How the proposal will be evaluated and weighted. Relates to the product required in the offerors' Technical and Business Proposals.

11. Government furnished property, data, or services

12. Unsolicited proposal for research

C. Exceptions

The following nonpersonal services or supplies do not require a separate

"Procurement Request Rationale" as described above. Normally the following require similar documentation as applicable to small purchases:

1. Communications services

2. Housekeeping services

3. Installation of equipment obtained under separate contract

4. Maintenance of personal and real property

5. Photographic, printing, and publication services

6. Stenographic reporting services

7. Transportation and related services

8. Delivery orders placed against Federal Supply Schedule contracts

9. Orders placed against any of the three types of indefinite delivery type contracts

10. Public utility services

III. ISOLATING TWO ELEMENTS OF THE PROCUREMENT REQUEST RATIONALE: STATEMENTS OF WORK AND EVALUATION CRITERIA

A. The Statement of Work for Research, Study, and Investigative Efforts

1. Its impact

   a. On potential sources

   b. On proposed cost and/or price

   c. On source evaluation and selection

   d. On measuring performance

   e. On rights and remedies

   f. On the overall procurement process

2. Erroneous notions and half-truths

   a. Writing is easy.

   b. Specificity is bad for research and investigative efforts.

c. Thought is more important than its articulation; some things are best left to the imagination.

d. Tight definition corrupts creativity.

e. Let clarification occur as performance unfolds.

f. The contractor's staff is being paid; let them worry about it.

B. <u>Specific Guidelines for Work Statement Preparation</u>

1. One interpretation: clarity is paramount.

2. Flexibility: the extent must be defined.

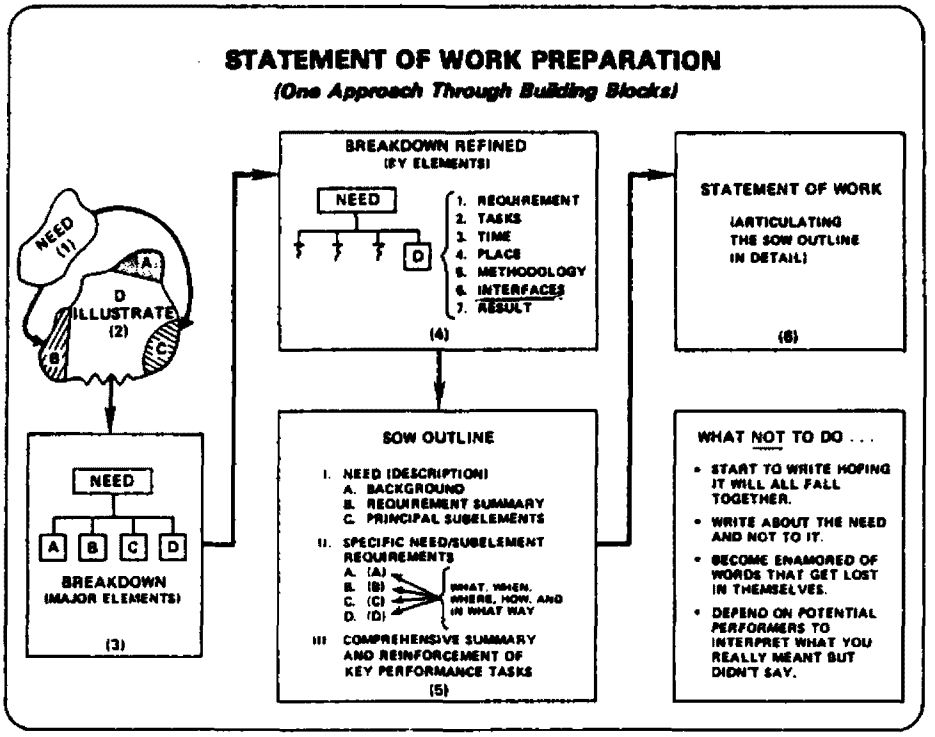
3. Language: use conventional language where possible.

4. Government obligations: these need to be carefully delineated.

5. Delivery schedule: realism is the key.

6. Tailoring: cut the cloth to suit the need.

7. Specificity: express requirements quantitatively as well as qualitatively.



C. Generating a Statement of Work for Research, Study, and Investigative Efforts

1. Organization and building blocks

   a. Think first; write later.

   b. Draw an illustration.

   c. Translate from a drawing to a diagram.

   d. Translate from a diagram to a breakdown of tasks or requirements.

   e. For each task or requirement, identify time, place, event, performance, and product.

   f. Net conclusion: you've identified the need and specified its pieces.

2. Putting the blocks together

   a. Develop a work or task-oriented breakdown structure (a family tree) of relationships.

   b. Structure an outline tied to major elements and subelements of the breakdown structure.

   c. Expand outline items into paragraphs and sentences.

d. Net conclusion: you have a draft statement of work.

3. Finishing the job

a. Seek a reading and advice about the draft.

b. Be open-minded; someone else may see the forest while you've been looking at the trees.

c. Edit and rewrite when necessary.

d. Be declarative; don't garnish your product with unnecessary literary lace.

e. Be as objective as possible when you believe the job is done.

(1) Read it as though you were receiving it

(2) Is it clear, convincing, and complete?

(3) Will it get you (or the user) what is needed?

(4) Is it contractible?

D. Considerations for the Preparer of a Statement of Work

1. Is it sufficiently specific to permit the preparer and the performer to make a list of manpower and resources needed to accomplish it?

2. Are specific duties of the performer stated as requirements so that the contract administration representative who signs an acceptance report can determine that the performer complied?

3. Are proper reference documents cited or shown? Are they really pertinent to the tasks?

4. Are specifications, standards, or exhibits applicable as shown or cited? Fully or partially?

5. Is general information separated from direction so that background data, suggested procedures, and the like are clearly distinguishable from performer responsibilities?

6. Is there a date for each thing the performer is to do or deliver? If elapsed time is used, does it specify calendar days or work days?

7. Are proper quantities shown, if appropriate?

8. Have the headings been checked for format and grammatical usage? Are subheadings consistent? Is the text compatible with the title?

9. Have all requirements been reviewed to ensure compatibility with the data requirements?

10. Are extraneous data requirements eliminated?

11. Does it mean what it says and say what it means?

E. Level of Effort or Term vs. Completion Type Tasks

F. Personal/Nonpersonal Services (PIN No. 78-12-10) Reflects EPA Policy initially issued January 30, 1973 with changes and current emphases)

1. Differences between personal and nonpersonal services

2. Limitations on the use of personal services

3. Contracting Officer's written determination

G. Technical Evaluation Criteria Development

1. Direct relationship to the Statement of Work preparation and the Procurement Request

2. Importance to:

a. Solicitation document

b. The evaluation plan

c. Offerors

VIGNETTE NO. 2: OVERHEARD OVER COFFEE

John Ringals, an engineer who frequently initiates procurement requests, was chatting with Mary Herzog, contract negotiator, at a midmorning break in the coffee shop. As John put down his cup on the table, he said to Mary...

John: "Ya know, Mary, if it wasn't for my cultivated patience I'd be a wreck. I can't get over how much is made of so little in this business!"

Mary: "Tough morning, huh? You sound perturbed. What's up?"

John: "You and your contracts management division, that's what's up! Why do you people persist in making the ballgame so difficult?"

Mary: (LOOKING AT HIM INCREDULOUSLY) "John, don't tell me that you've had another run-in with Harry Sparks. You two guys are too nice to have one go-around after another. Am I right? Is it Harry?"

John: (RESPONDING EAGERLY) "You're not only right, you're clairvoyant! He hit me right between the eyes this morning with that old saw about 'Pro-cure-ment Requests.' You know, the bit about the PR being basic to what alternatives are open to contracts so they can get on with the job of satisfying the requirement, and all that jazz."

Mary: (GOOD NATUREDLY) "Come on, John, we've been through all this before. You know he's right."

John: (SOUNDING SOMEWHAT PERTURBED) "Oh, yeah? You may think so, but I sure don't. And it's a hassle just about every time he handles one of my PRs. This time he questioned my description of a test and evaluation technique we want studied for possible application to a couple of upcoming demonstration projects. Told me I talked around the need instead of to it. Then said he couldn't buy anything else unless he had a 'firm handle' on the requirement.

"To which, in my diplomatic way, I replied, 'Harry, you wouldn't know a handle—firm or otherwise—if you were holding on to one.' I told him it was my requirement, my money, and my neck. I tried to do him a favor by recommending a competitive contract, but he didn't even pick that up.

"Then he goes into his standard song-and-dance about methods of procurement and how my PR puts him in a position of not being able to do his job. Like I said, if it weren't for my cultivated patience..."

Mary: (INTERRUPTING) "...Hey, John, wait a minute. Your patience, cultivated or not, is wearing thin. And maybe Harry's is too. You guys ought to sit down and sort the problem out."

John: "What's to sort out, Mary? Old Harry's all right, I guess. But he persists in this notion of his job and my job. I'll do mine. Always have. His is to get on with it and satisfy the need. What in heaven's name has my description of a projected technical effort got to do with determining a method of procurement? That kind of thing, at least for me, is a reflection of law and regulations, not technical requirements. Right, Mary?"

- If you were in Mary Herzog's position, how would you respond to John Ringals?

- Were John Ringals and Harry Sparks "to sit down and sort the problem out," where would you suggest they begin?

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TOPIC III. THE PROCUREMENT REQUEST RATIONALE: TRIGGER FOR BUYING (cont.)

IV. COST ESTIMATES: INDEPENDENT AND OTHER

A. Some Basic Questions

1. What is a cost estimate?

   A forecast of a future result in terms of cost, based upon information available at the present time

2. What is a cost?

   An amount of dollars identified (or estimated) for an element of performance or work, or for coverage of projected expenses, exclusive of an amount for what is usually called profit

3. What is a price?

   A total amount of dollars identified for the performance of work or for a product, including an amount for what is usually called profit

B. Basic Elements of Costing and Pricing

1. Direct costs (examples)

   a. Labor

   b. Materials

   c. Equipment

   d. Consultants

   e. Travel (sometimes)

2. Indirect costs

   a. Overhead

   b. General and administrative

3. Profit or fee

4. Role of auditors

5. Use in the award decision

C. Estimating Techniques: Pro and Con

1. Detailed

[illegible] budget of funds [illegible]

2. Parametric

3. Level of effort

D. The Role of Technical Personnel in Cost Estimating

1. Utilizing a cost or price information base

2. Identifying resource needs [illegible]

3. Analyzing resource estimates

4. Estimating the unknown: work at it; don't guess.

E. Impact of the Government Cost Estimate

1. On selecting a contract type for the project or job to be done

2. On evaluating the credibility of contractor-proposed costs relative to the project or job to be done

*3. On establishing Government cost objectives as differentiated from contractor-proposed costs . Differences must be reconciled

4. On assessing a competitive environment

5. On identifying possible "built-in" underestimates that could result in downstream overruns

6. On the requirement for incremental funding considerations, if appropriate [illegible] award options - for additional years of performance

[illegible]

VIGNETTE NO. 3: WOULD YOU TAKE ISSUE OR AGREE WITH . . .

A person's point of view reflects many influences, influences that one should consider in order to assess why stands are taken and positions put forth. Listen to the following points of view, and be ready to say whether or not, and why, you would take issue or agree with each.

- Would you take issue or agree with a contractor who says: "I haven't any problems with your suggested price for our services. I mean, let's face it. If a price is fair and reasonable—and this one is—in your terms as a buyer, then it certainly has to be in mine as a seller."

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- Would you take issue or agree with a contract negotiator who admonishes you with: "Always remember that a buyer's concern is with what something 'should cost'; a seller's concern is with what something 'will cost.' There is a real distinction between the two, one that all of us should be aware of."

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- Would you take issue or agree with a colleague who asserts that: "A proposer's cost or price estimate is almost never influenced by factors aside from the immediate project or job to be done. A business has to

recover its costs now...lest later recovery be too little, or too late."

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- Would you take issue or agree with an engineering estimator who takes the position that: "In research and study projects, it isn't salary rates or indirect costs that get to the heart of the estimating job. It's those technical analyses of labor and other resources that create estimating confidence. That's where it's at."

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- Would you take issue or agree with a Project Officer who admits that: "We could save a lot of time and frustration if we'd just let contractors know how many dollars we have for the job! It gets to be a guessing game, doesn't it? We go through this elaborate waste of time with in-house estimates...bump them against contractor estimates...and we still end up wide of the mark. Let's turn it around! Tell 'em we've got $50K for the job, and let them tell us what they'll give us for it. Now that's real competition, isn't it?"

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[illegible]

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TOPIC IV. CONTRACT TYPE SELECTION: DEALING WITH RISK AND REALISM

PRE-AWARD TECHNICAL AND PROCUREMENT PLANNING

I. THE NATURE OF CONTRACTS

A. The Contract Type Environment

1. Mutual assent
2. Conditions of performance
3. Consideration
4. Legal enforceability

B. Differing Connotations of "Contract Types"

1. Compensation or pricing arrangement
2. Form and structure
3. End purpose

II. COST RISK AND COST REALISM

A. Cost Risk

1. Assumption of exposure to monetary loss in light of the uncertainty associated with performance
2. Degree of willingness to assert a projection of costs relative to their probable incurrence

B. Cost Realism

1. Basis for estimating (forecasting) a future result in terms of cost, based on information available at the time
2. Association of the probable costs of performance with a reasonable basis for projecting resource use and expenditure in light of specified goals or objectives

III. CONTRACT TYPES: AN OVERVIEW OF FUNDAMENTALS

A. Selection of Contract Type

1. Responsibility of the Contracting Officer
2. Factors that affect contract type selection
   a. Cost risk identification

b. Kind and complexity of requirement

c. Period of performance

d. Urgency of the requirement

e. Adequacy of a performer's estimating and accounting systems

f. Extent and nature of subcontracting

g. Past procurements

B. <u>The Basic Contract Type Families</u>

1. Fixed-price

a. Common characteristics

b. The type most preferred: firm fixed-price

2. Cost-reimbursement

a. Common characteristics

b. The type most used: cost-plus-a-fixed-fee

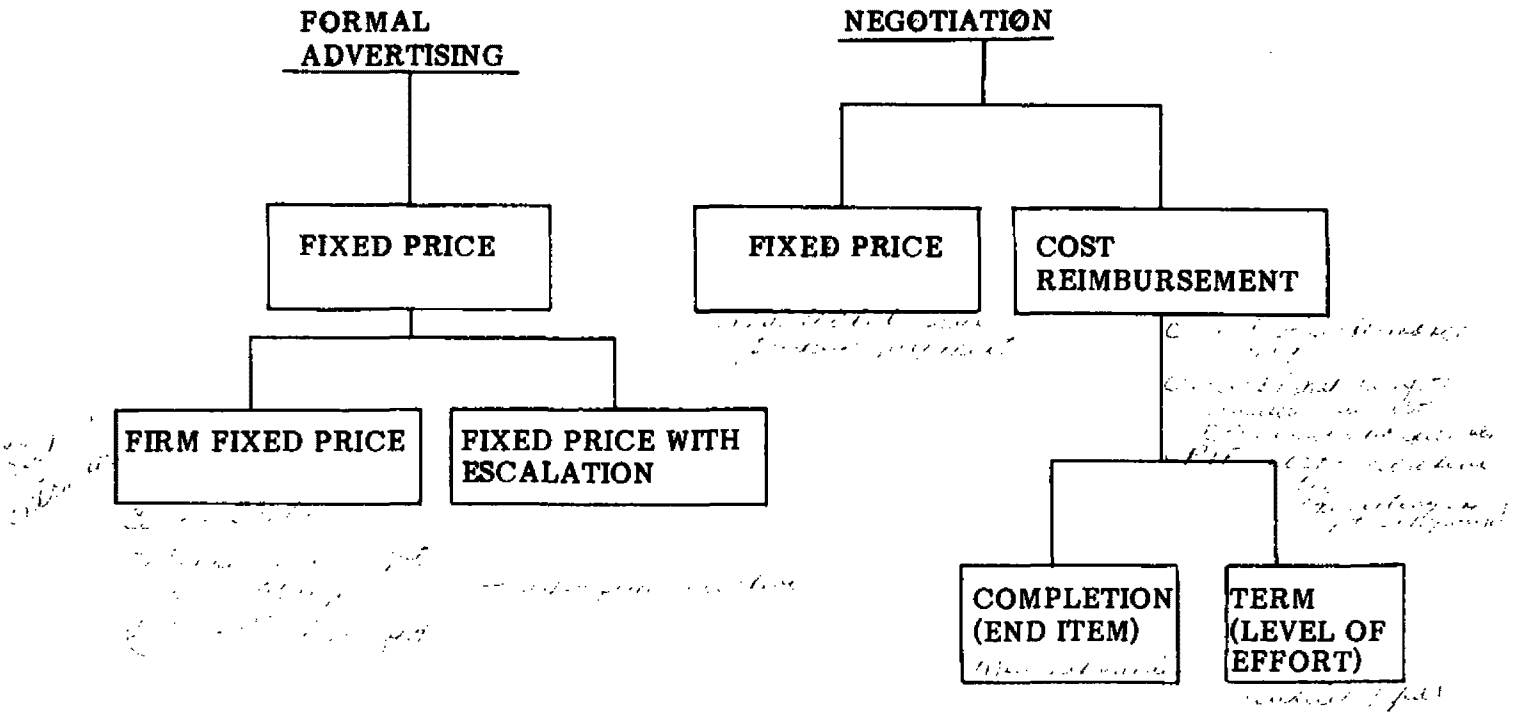
C. <u>EPA Trends</u>

1. Level of effort

2. Directions of work

3. Contractual options

PROCUREMENT METHODS AND CONTRACT TYPES



PROHIBITED: Cost-Plus-A-Percentage-of-Cost Contracts

TOPIC V. THE COMPETITIVE AND NONCOMPETITIVE ENVIRONMENTS FOR RESEARCH, STUDY, AND INVESTIGATIVE EFFORTS

PRE-AWARD TECHNICAL AND PROCUREMENT PLANNING

[EPA Contracts Management Manual, Chapter 3: Negotiated procurement by EPA will be conducted competitively to the maximum practical extent. Noncompetitive procurement may be conducted only when the Contracting Officer finds that one or more ... circumstances exist. (Nine such circumstances are indicated in Chapter 3, paragraph 8. b.)]

I. THE COMPETITIVE ENVIRONMENT

A. Maximum Competition Consistent with the Requirement and Need

1. What is competition?

2. Is it the same under all buying circumstances?

3. How can it be generated to the maximum practical extent?

4. How much competition is enough?

B. Mistaken Assumptions about Competition

1. The numbers game; more than one suffices.

2. Success ensured by the marketplace; no need to work at it.

3. Has a harmful effect on technical excellence; avoid or minimize it for complex requirements.

4. Only thing it buys is problems; it's the marketplace counterpart of Pandora's box.

C. Adequate Price Competition

FPR 1-3.807-1(b) (1): "Price competition exists if offers are solicited and (A) at least two responsible offerors (B) who can satisfy the purchaser's (e.g., the Government's) requirements (C) independently contend for a contract to be awarded to the responsive and responsible offeror submitting the lowest evaluated price (D) by submitting priced offers responsive to the expressed requirements of the solicitation."

D. Adequate Technical Competition

1. Assessed for each procurement

2. Front-end project and procurement management influences

a. Timely in-house action

b. Realistic proposal and delivery requirements.

c. A solid and well-prepared solicitation document (Request for Proposals).

d. Remember: it's what potential sources compete about that makes them competitive, and not the fact that there is more than one of them in the marketplace.

E. Competitive Negotiation

A negotiated procurement that (1) is initiated by a Request for Proposals, which sets out the Government's requirements and the criteria for evaluation of offers, (2) contemplates the submission of timely proposals by the maximum number of possible offerors, (3) usually provides discussion with those offerors found to be within the competitive range, and (4) concludes with the award of a contract to the one offeror whose offer, price and other factors considered, is most advantageous to the Government.

F. Competition Generalized

An environment of varying dimensions relating to buy-sell relationships in which the buyer induces, stimulates, or relies on conditions in the marketplace that cause independent sellers to contend confidently for the award of a contract.

II. THE NONCOMPETITIVE ENVIRONMENT

A. Preparing a Justification for Noncompetitive Procurement: Factors to Consider

1. What unique capability applicable to the specific effort does the proposed contractor have that places it clearly in a preeminent position over other organizations?

2. Is competition precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw materials, or similar circumstances? However, the mere existence of such rights or circumstances does not in and of itself justify a noncompetitive action.

3. Is the effort a continuation of a previous effort performed by the proposed contractor; and to what degree is such previous effort a factor in the nature of the current procurement?

Such questions as the following should be considered and addressed if pertinent:

a. Is the added effort a minor supplement to a completed project requirement?

b. Is the added effort a major supplement to a completed project requirement?

c. Is the added effort a segment of an essentially continuing project requirement?

4. 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.

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

6. Are Government-owned facilities involved? If so, list the facilities. Can these or similar facilities be made available to any competing offerors?

7. Is the requirement to be procured from a regional, State, or local governmental unit? If so, explain the circumstances.

8. Is an urgency situation the basis for the JNCP? There are valid reasons for obtaining the required goods or services on an urgent basis, and although there is more than one firm capable of delivering the required goods or services, no firm could deliver within the required performance period if competitive procedures are used or if only limited number of firms are solicited and expedited evaluation and award procedures are employed. Explain the situation and the circumstances that have led to the need for an urgent procurement action.

9. If the proposed basis for the JNCP is a request to award a contract to the submitter of an unsolicited proposal, see FPR 1-4.910 (Unsolicited Proposals).

B. <u>JNCP Limitations: Factors that cannot be used</u>

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

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).

C. <u>Supportable and Determinative JNCP</u>

1. Spell out facts and avoid generalities.

a. Tested the marketplace. How? Through what medium? With what results? Are they valid?

b. Literature search. How extensive? Where? When?

c. Peculiar or unique features. Mandatory for ... performance requirements, compatibility, continuity, operability, or what?

d. Required talent. How come? Who has it? How do you know? Have others been sought?

2. Tell it like it is.

a. Unvarnished facts and reason are their own reward; keep it simple.

b. Don't justify the justification; justify the basis for the noncompetitive environment.

III. IDENTIFICATION OF INTERESTED AND CAPABLE SOURCES

A. Synopses of Proposed Procurements and the Commerce Business Daily

1. General requirements for inclusion

2. Requirements that need not be synopsized

3. Special case of advance notices for research and development

B. Small Business Sources

1. Requirements for possible participation

2. Prescribed size standard for research, development, or testing industries

3. Advantages of the small business as research and development performers

C. Non-Solicitation Devices to Uncover Sources

1. Letters of interest

2. Utilization of professional symposia and conferences

3. Presolicitation notices and conferences

IV. UNSOLICITED PROPOSALS: TREATMENT, ASSESSMENT, AND DISPOSITION

A. Unsolicited Proposals and Their Importance to the EPA Mission and Programs

1. Tapping inventiveness

2. Uncovering ideas

3. Encouraging the resource of thought

B. EPA's Definition

An unsolicited proposal is a voluntary offer to perform work the offeror considers to have both technical merit and relevance to EPA programs. The unsolicited proposal usually offers ideas, processes, techniques, or equipment that the proposer considers new, novel, or unique and deserving of support by an EPA grant or contract.

C. Treatment, Assessment, and Disposition

1. Centralized control point for receipt and processing (regardless of where received in EPA) is the Grants Administration Division, Office of Administration.

2. Treatment includes acknowledgment to proposer or proposing organization, specifying a proposal control number, and transmitting proposal to appropriate program office for evaluation.

3. Favorable assessment may lead to funding and a grant or the award of a contract.

4. Encouragement of cost-sharing

D. Importance of Fair Treatment and Nondisclosure

1. Confidentiality of information

2. Restrictions against intra-EPA reproduction

E. Some Questions of Interest

1. How does industry define or characterize an unsolicited proposal?

2. What is not an unsolicited proposal that might be submitted and called one?

3. What are minimum content needs in order to assess an unsolicited proposal?

4. What if an unsolicited proposal is determined to represent a need but its attending information is somewhat shabby?

5. Does an unsolicited proposal, because it is designated as one, justify a noncompetitive award?

6. If an unsolicited proposal suggests a new or unique solution to an already-known problem for which there may be others who could also

address the problem, is it improper for EPA to develop a performance specification and competitively solicit proposals?

7. Do EPA restrictions exist which preclude noncompetitive awards for certain types of supplies and services even though unsolicited proposals are submitted to provide them?

8. How many truly unsolicited proposals are submitted to EPA?

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-183487 DATE: July 3, 1975

MATTER OF: American Federation of Government Employees Local No. 3347, AFL-CIO

DIGEST:

1. Whether EPA service contract for warehouse receiving function is improper will depend upon whether contractor or employees are functioning in contracting agency administration of contract essentially as Government employees as tested by factors delineated in Civil Service Commission 1967 opinion, as supplemented.

2. OMB Circular A-76 expresses policy guidance with respect to whether certain services should be provided in-house or purchased from commercial sources, but alleged failure of agency to comply with Circular is not for consideration under GAO bid protest procedures.

The American Federation of Government Employees (AFGE), Local No. 3347, AFL-CIO, has protested the proposed award of a contract by the Environmental Protection Agency (EPA), Contracts Management Division, NCCM-7, Research Triangle Park, North Carolina, on the grounds that the proposed award is for personal services and would create what is tantamount to an employer-employee relationship between the Government and contractor personnel in violation of Federal personnel laws.

More specifically, the proposed procurement is for the receiving function at the EPA warehouse at Research Triangle Park. The procurement contemplates that a contractor will be selected who will accept the responsibility for receiving all shipments delivered to the EPA warehouse and performing associated paperwork to facilitate timely delivery of the materials to the requestor and acceptance of the materials by the Government.

Presently, all functions relating to receipt, delivery and warehousing of materials are being accomplished by a small group of Civil Service employees who virtually perform all aspects of the warehousing function. However, to provide an allegedly more efficient operation, it was determined by the Director of the General Services Division of the local EPA Office of Administration that the receiving function could best be performed by an independent contractor.

As a result, discussions were held with Small Business Administration (SBA) representatives for the Atlanta Region prior to announcement of any proposed procurement to the general public. SBA requested that the procurement be set aside for SBA for award to an eligible concern under the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. § 637(a)). Accordingly, request for proposals (RFP) DU-75-C196 was issued to the SBA on March 14, 1975. Subsequently, the RFP was modified to "* * * reflect the planned manner of operation of the contract."

The fact that a contract is for services of a particular nature, e.g. a receiving function, does not in itself indicate that the contract is improper. In general, a contract of this nature may be improper if the contractor or its employees are functioning in the agency's administration of the contract essentially as Government employees as evidenced by the existence to a substantial degree of the factors listed in the October 1967 Civil Service Commission opinion as supplemented in 1968. B-181436, November 1, 1974. In this case, the work will be performed in an area dedicated to such receiving function and "there will be no mingling of Government and Contractor personnel in that area." Also, it is our understanding that there will be no supervision of contractor personnel by Government personnel. Therefore, we are aware of nothing in the contract which would violate the principles enunciated in the Civil Service Commission opinions. Administration of the contract in violation of the doctrine in such opinions would be inconsistent with the expressed contract purpose and intent.

In protesting the proposed award, the AFGE has contended that any ensuing contract would be in contravention of OMB Circular A-76 and therefore would be illegal. This conclusion is reached by AFGE by comparing the allegations it has presented with the standards for appropriate service contracting as set forth in the Civil Service Commission General Counsel opinion issued in 1967 regarding the legality of selected contracts at the NASA Goddard Space Flight Center. See B-133394, November 1, 1967.

OMB Circular A-76, while expressing policy guidance with respect to whether certain services should be provided in-house or purchased from commercial sources, is not a regulation in the sense that failure of an agency to comply may affect the validity of the procurement and, therefore, the issue presented is not properly for consideration under our bid protest procedures. See 53 Comp. Gen. 86 (1973); B-179943, December 26, 1973; and General

DataComm Industries, Inc., B-182556, April 9, 1975. In that connection, in 53 Comp. Gen., supra, it was stated:

> "* * * we have always regarded the provisions of Circular A-76 as matters of Executive policy which do not establish legal rights and responsibilities and which are not within the decision functions of the General Accounting Office. * * *"

Nevertheless, although it is not for consideration under our bid protest procedures, we do have a continuing interest in the matter from a management-audit standpoint. In that regard, we sent an auditor-attorney team to the EPA facilities at Research Triangle to examine the operation as it exists and to discuss the situation with EPA officials and employee union representatives. Further, compliance with the Circular is of deep concern to us and we plan to utilize the information contained in the record in connection with our responsibilities. Also, in a separate letter of today, we have suggested to the EPA Administrator that he may wish to review the circumstances to consider whether the proposed procurement should proceed under the provisions of EPA's implementation of Circular A-76.

Deputy Comptroller General
of the United States

Comptroller General Decision B-183487, July 3, 1975

American Federation of Government Employees
Local No. 3347, AFL-CIO

Having read the preceding decision, prepare to answer the following questions.

1. Whose interests do you see reflected in this decision?

2. What did the Comptroller General decide on this matter?

3. How might this protest affect the providing of warehouse receiving services?

4. What position might the EPA Small Business Advisor be likely to take on this problem?

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-166506 DATE: July 26, 1974

MATTER OF: Environmental Protection Agency sole-source procurements.

DIGEST: Factors used to justify sole-source procurement of public education and information programs such as: nonprofit organization's makeup; fact that organization would utilize volunteers in performance; organization's rapport and understanding of State and local Government, key memberships, respected position, community support and coalition approach do not represent proper justification for noncompetitive procurements irrespective of fact that nonprofit organization could quote lower price since statutes require full and free competitive consistent with what is being procured.

This decision relates to our Office's review of certain awards made under the Transportation Control Plan Public Affairs Program of the Environmental Protection Agency (EPA).

The solicitation in question all involve procurement of similar services and will, therefore, be discussed as a whole rather than individually. The services desired were public education and informational programs dealing with transportation control strategies needed to achieve ambient air standards in 38 major metropolitan areas throughout the United States. In all the questioned procurement, awards were made on a noncompetitive negotiated basis.

Each of the awards, save one, was justified on the basis that the services would be performed by nonprofit, tax exempt, volunteer citizens organizations, each having an objective to work for clean air through education. It was determined that the organizations selected were the ideal cross section of the communities involved to publicize the clean air educational program. Moreover, these organizations were selected because the majority of their efforts were to be performed on a volunteer basis by community leaders, university personnel, civil servants, state legislators, businessmen

and representatives of area environmental and civic organizations. Further justifications for the noncompetitive procurements were as follows: rapport and understanding of state and local Government, key memberships, respected position, community support, and a coalition approach.

We do not, however, believe that the above-stated reasons represent proper justifications for obtaining the services on a noncompetitive basis.

In the conduct of its procurements, EPA is subject to the Federal Procurement Regulations (FPR), 41 Code of Federal Regulations, chapter 1, as well as its own procurement regulations, EPPR, published at 41 Code of Federal Regulations, chapter 15. FPR 1-1.301-1 states specifically that "All purchases and contracts, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent." FPR 1-1.302-1(b) provides that "Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by formal advertising or by negotiation, competitive proposals * * * shall be solicited from all such qualified sources as are deemed necessary by the contracting officer to assure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the agency concerned."

In the past, our Office has recognized that noncompetitive awards may be made where the item or services are unique (B-175953, July 21, 1972); where time is of the essence and only one known source can meet the Government's needs within the required timeframe (52 Comp. Gen. 987 (1973)); where data is unavailable for competitive procurement (B-161031, June 1, 1967); or where it is necessary that the desired item manufactured by one source be compatible and interchangeable with existing equipment (B-152158, November 18, 1963). See, also, 50 Comp. Gen. 209 (1970). To the extent that a nonprofit, tax exempt, volunteer citizens group falls within one of the preceding examples, a noncompetitive procurement may be justified.

However, we find no authority justifying a noncompetitive award solely on the basis of a firm's status as either a nonprofit organization, a tax exempt entity, or a volunteer citizens group. Moreover, we can find no authority to support any of the further justifications for making noncompetitive awards.

Additionally, the justifications for award contained in the record indicate that there are other firms or organizations available to provide the services, but that these other entities, if awarded a contract, might, in EPA's view, have a more difficult time putting forth EPA's message for one reason or another. The fact that a particular group can perform the services with greater ease than any other group or firm does not, in our opinion, justify a noncompetitive procurement to the exclusion of others. We note, in this regard, that these reasons seem contrary to the specific bases stated for making award to a private firm in the New York City area.

While it may not be in the best interests of the Government at this point in time to disturb the awards in question, we do have serious reservations concerning future sole-source procurements for these types of services. In our opinion, there is no overriding uniqueness in the fact that a firm is either a consortium, tax exempt, or a nonprofit organization. It is clear that several organizations throughout the United States have the ability to disseminate the EPA message. Therefore, while nonprofit organizations may be able to quote a lower price for these services, other organizations should be afforded an equal opportunity to compete.

We, therefore, recommend that EPA eliminate any noncompetitive restrictions in future procurement for this type of service.

Deputy Comptroller General
of the United States

Comptroller General Decision B-166506, July 26, 1974

Environmental Protection Agency sole-source procurements

Having read the preceding decision, prepare to answer the following questions.

1. How did this decision come about?

2. Whose interests are being examined in this decision?

3. What impact has this decision had on the EPA procurement process?

4. How does this decision affect the work of Project Officers and other technical personnel?

TOPIC VI. REQUESTS FOR PROPOSALS, SOURCE EVALUATION AND ASSESSMENT, THE CONDUCT OF NEGOTIATIONS, AND TREATMENT OF UNSUCCESSFUL OFFERORS: MAJOR CONSIDERATIONS IN THE AWARD-MAKING PROCESS

PRE-AWARD TECHNICAL AND PROCUREMENT PLANNING

Source evaluation and selection is performed in accordance with PIN 77-15, dated February 7, 1977. A copy of this PIN is included in the Reference Materials portion of this volume.

I. THE SOLICITATION PROCESS

A. Basic Objectives

1. To inform (about the requirement)
2. To specify (conditions of solicitation)
3. To encourage (competition to the maximum practical extent)
4. To require (responses in consonance with specified format for submission)

B. The Solicitation Document (RFP): What Is It and Why Is It Important?

1. Responsibility for preparation and review: who does what?
2. Structuring the solicitation document
   a. Major sections (indicative)
      - Cover letter and information
      - Instructions to offerors (proposers)
      - Draft contract schedule
      - Work statement
      - Evaluation crite
      - Boiler Plate
   b. The RFP as a medium for enforcing national priorities, programs, and socioeconomic goals
      - EPA's Small Business Program
      - EPA's Minority Business Enterprise Program
      - Davis-Bacon

- Service Contract Act – DOL wage rates for service contracts

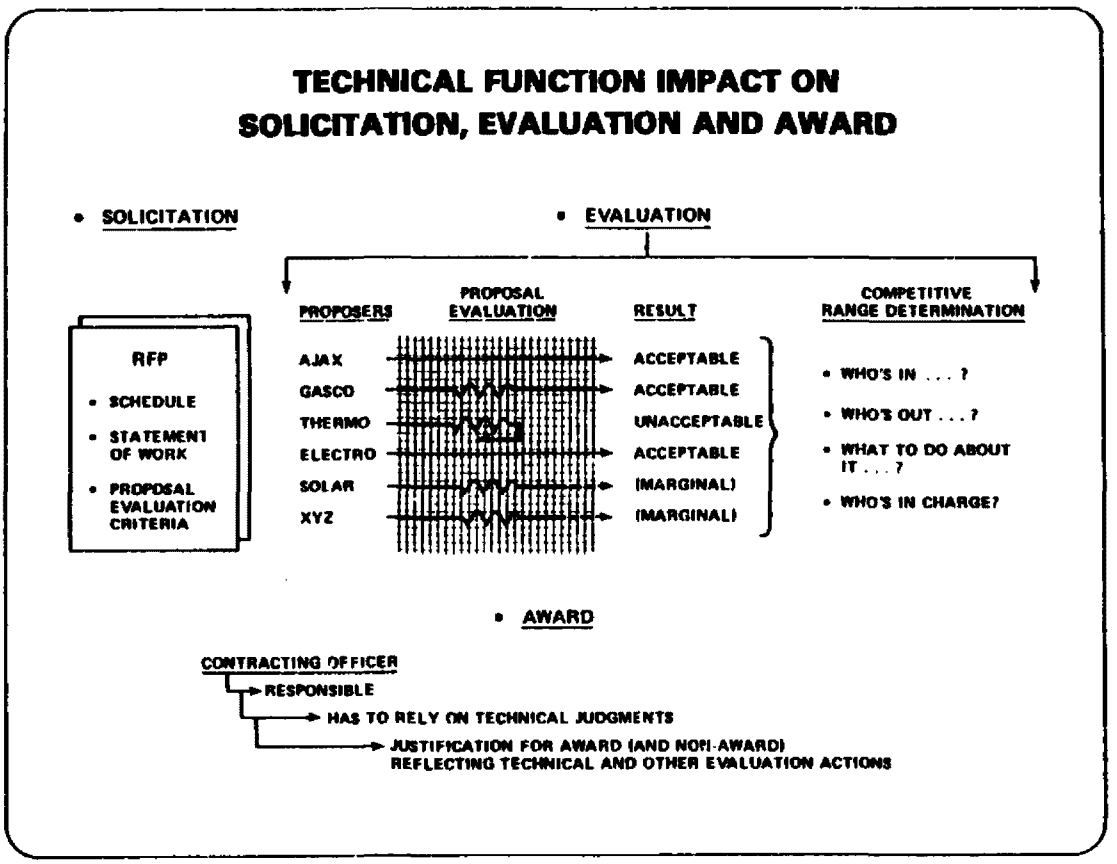
II. PROJECT/TECHNICAL PERSONNEL IMPACT ON THE SOLICITATION AND AWARD-MAKING PROCESS

A. Determinative Inputs to the RFP

1. The contract schedule

2. Qualification criteria (i.e., when appropriate, criteria that define the type or kind of source considered suitable to perform)

3. Evaluation criteria (i.e., specified factors in light of which submitted proposals will be evaluated and ranked)



B. Proposal Evaluation Criteria and Competitive Range Determinations for Competitively Negotiated Procurements

1. Must the RFP identify and articulate the evaluation criteria (factors) and provide a reasonable idea or specific numerical identification of their relative importance? Yes.

2. Must the stated evaluation criteria clearly indicate the relative importance of each criterion? Yes.

3. How has the Comptroller General stated the principle requiring evaluation criteria disclosure in RFPs?

   "Intelligent competition requires, as a matter of sound procurement policy, that offerors be advised of the evaluation factors to be used and the relative importance of those factors. Each offeror has a right to know whether the procurement is intended to achieve a minimum standard at the lowest cost or whether cost is secondary to quality. Competition is hardly served if offerors are not given any idea of the relative values of technical excellence and price." (52 Comp. Gen. 161, 14 G.C./394)

4. Must the criteria set out in the RFP be the criteria actually used in evaluation? Yes.

5. Can they change in the course of the solicitation process? Yes. Must contenders be advised of the change(s) and given the opportunity to modify their proposals accordingly? Yes.

6. Where specific percentages or weights are not specified, must the stated evaluation criteria be listed in descending order of importance. Yes, where the descent is relatively slow and uniform. (But relative importance of each often should be stated.)

7. What if the descent of non-weighted criteria is interrupted by a factor(s) that represents an exceptionally large or small part(s) of the overall scoring? Then the predominant value of that factor(s) should be indicated in the RFP at least in some narrative form.

8. Is an evaluation based on a comparison of an offeror's score with a predetermined score for acceptability proper? No, such a comparison is improper.

9. Who is responsible for determining the competitive range? The Contracting Officer. On the basis of what factors? Those determined to be salient to the procurement (i.e., technical, price/cost, delivery, and so forth).

10. When is the competitive range determined? Once proposals have been received, an initial screening is done to rule out those that are technically unacceptable. Those remaining are then evaluated and scored from both the technical and business standpoint. Meaningful discussions are then held with those offerors determined by the contracting officer to be within the competitive range. These discussions are limited to clarification and do not provide opportunity for correction of deficiencies.

11. When must a proposal be regarded as being in the competitive range? It must be regarded as being in the competitive range unless it is so technically inferior or out of line with regard to price that meaningful discussions are precluded.

12. What's that mean? It means that a proposal is in the competitive range as long as there is real probability that it can be clarified to the point where it becomes the most acceptable.

COPY

B-174589 (2) March 28, 1972

Dear Mr. Ruckelshaus:

Enclosed is a copy of our decision of today to Envirotronics denying its protest against the award of a contract to Franklin Institute Research Laboratories pursuant to request for proposals No. CI 72-0003, which was the subject of a report dated February 23, 1972, from the Assistant Administrator for Planning and Management.

There are two aspects of this procurement which require comment. We have many times stated that when a point evaluation formula is used in the evaluation process, as here, sound procurement policy dictates that offerors be informed as to the evaluation factors and their relative weight or importance. See 50 Comp. Gen. 59, 61 (1970), and cases cited. The RFP in the instant case was deficient in this respect. Also, as pointed out at page 60 of the cited case, we have serious reservations as to the propriety of determining which proposals are within a competitive range by comparing their scores with a predetermined score for acceptability, which was apparently done here, without reference to the array of scores actually achieved. We question whether the procedure employed is conducive to obtaining the maximum practicable competition contemplated by the statutes and regulations. We therefore suggest that appropriate action be taken to prevent a recurrence of these deficiencies in future procurements.

Sincerely yours,

R.F. KELLER

Deputy Comptroller
General of the
United States

The Honorable William D. Ruckelshaus
Administrator, Environmental Protection Agency

B-174589 March 28, 1972

Envirotronics
7540 Balboa Boulevard
Van Nuys, California 91406

Attention: Mr. Dale L. Carpenter
President

Gentlemen:

Further reference is made to your protest against the award of a contract to Franklin Institute Research Laboratories by the Environmental Protection Agency pursuant to request for proposals No. CI 72-0003.

The subject RFP was issued on July 28, 1971, for research in scientific literature and other specified services in connection with the offset printing of abstracts of published papers concerning health aspects of pesticides to be used in the publication of monthly issues of the "Health Aspects of Pesticides Abstract Bulletin." Eight proposals were received by the closing date of August 26, 1971. After technical evaluation of the proposals they were ranked as follows:

	Technical Rating	Amount
Franklin Institute	95	$119,194
Bionetics Research Labs	85	105,000
Herner Information Service	76	89,605
Scientific Literature Corporation	68	108,000
Envirotronics	62	88,132
George Washington University	62	69,489
Allen Associates	47	51,564
The Learning Center	43	84,706

Negotiations were conducted with Franklin Institute and Bionetics as the only offerors determined to be within a competitive range, price and other factors considered. As a result of the negotiations, Franklin Institute's price was reduced to a fixed price of $114,199, and Bionetics' price was increased to $119,250. Therefore, award was made to Franklin Institute on November 1, 1971.

You contend that your lower offer of $88,132.26 should have been accepted as you were responsive to the RFP, offered certain advantages in techniques over the previous contractor, and all of your personnel to be assigned to the contract have advanced degrees in their respective fields. Also, you question the procuring agency's assessment of your technical capabilities to fulfill the contract. Further, you point out that your firm submitted a Certificate of Eligibility for preference under Defense Manpower Policy No. DMP-4. Finally, you object to an award to a "non-profit" concern for $26,000 more than your offer.

The negotiation of this procurement was subject to Federal Procurement Regulations (FPR) 1-3.805.1(a) requiring written or oral discussions with all responsible offerors who submit proposals within a competitive range, price and other factors considered. It has been held that "other factors" includes the technical acceptability of proposals. See 46 Comp. Gen. 606 (1967). We have also held that the determination of competitive range, particularly as regards technical considerations, is primarily a matter of administrative discretion which will not be disturbed by our Office in the absence of a clear showing that such determination represented an arbitrary abuse of discretion. See 48 Comp. Gen. 314, 317 (1968).

In the instant case, the procuring activity employed a rating system to determine competitive range. Criteria, maximum possible scores, and the scoring of your proposal were as follows:

CRITERIA	MAXIMUM POINTS POSSIBLE	RATING
Understanding of the problem	25	15
Method of approach	15	10
Completeness and novelty of ideas	5	4
Adequacy of required facilities	15	12
Quality of proposed personnel	20	16
Rated experience	20	5
	100	62

In explaining its evaluation of your proposal, the agency states the following:

" *** As stated in our memorandum of September 22, 1971, their proposal, for the most part, constituted an echo of our own work scope. There was a lack of definitive information on a program for executing the requirements of the work scope and accomplishing the objectives of world-wide coverage of the literature. In our opinion, the information that was furnished on operational procedures was superficial and gave no indication of any in-depth investigation or planning.

This company has been in existence since March 1970, and at the time of this bid, they were just over a year old. Because of this fact, they could not, as they stated, specify any accomplishments in this field. The designated Project Officer did not have graduate training, or the equivalent, in library or information science as specified in the contract. Nowhere in their proposal was there any evidence that any of their staff members had ever worked on a project of this specific nature. We agree that they appear to have assembled a staff of competent scientists who would be an asset on a project such as the abstract bulletin, and we rated them accordingly on this

aspect. We believe also, however, that these qualifications alone are inadequate for meeting the requirements of this project and any experience, on the part of the company or the individuals concerned, in publishing any periodicals of this nature is completely lacking.

"The proposal stated that they have competence in French, Spanish, German, Chinese, Russian, and Dutch but provided no information on how they would handle other languages, e.g., Japanese, Italian, Norwegian, Swedish, and Danish.

"They stated that they planned to use a computerized photosetting system for printing the publication, and again we rated them high in novelty of ideas. The previous contractor was using an IBM composer for preparing the Bulletin; however, except in the initial stages of the original contract, they used a technique that did not require paste-up page layouts as stated by Envirotronics. For a new contractor, the paste-up method does provide some needed flexibility, particularly with respect to chronology, in preparation of their first issues. Furthermore, in the opinion of the head of our Data Management Section, the OCR scanning equipment has not been developed to the point of sufficient accuracy, and he questioned the ability of this equipment to read superscripts, subscripts, and other symbols. Also in his opinion Envirotronics has underestimated the effort required to program for extraction of the quarterly subject and author indexes."

In these circumstances, we see no basis for concluding that the evaluation was arbitrary or without a reasonable basis. Since this procurement was not a set-aside for labor surplus area concerns, your certified eligibility did not entitle you to any preference in the negotiations. Finally, Franklin Institute's status as a non-profit concern is not a factor affecting the award.

Accordingly, your protest is denied.

Very truly yours,

/s/ R.F. KELLER

Deputy Comptroller
General of the
United States

Comptroller General Decision B-174589, March 28, 1972

Envirotronics

Having read the preceding decision, prepare to answer the following questions.

1. What did the Comptroller General find in need of improvement regarding evaluation criteria?

[illegible]

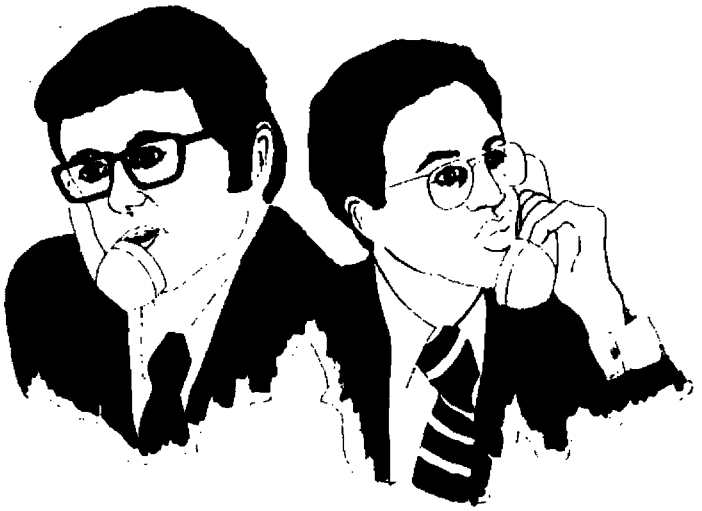
2. How is the use of a predetermined threshold score viewed by the Comptroller General?

[illegible]

3. Who is the "winner" in this instance?

[illegible]

[illegible]



VIGNETTE NO. 4: KEEPING IN TOUCH . . . MEANS SO MUCH

Brad Langsley, the Onward Company's proposal manager for research and development efforts, was organizing his thoughts about responding to a Request for Proposals that had appeared on his desk a few days ago. After examining the RFP's proposal evaluation criteria, he placed a call to Doug Rose, who he knew would be the Government's Project Officer for the job. The following conversation took place.

Doug: (ANSWERING THE PHONE) "R&D Section. Rose here. Can I help you?"

Brad: "Hi, Doug. Brad Langsley from Onward.... How's it goin'?"

Doug: "Straight up and flat out, Brad. How 'bout yourself?"

Brad: "Hangin' in, my friend. Say, we got that RFP you and I talked about a few weeks ago, and we're real anxious to submit a proposal. But first I need some clarification."

Doug: "What's the problem?"

Brad: "Well, I'm not sure there is one, but just to be on the safe side, let me run this by you. Been looking at the evaluation criteria, Doug, and a few things make me twitch a little."

Doug: "Like what?"

Brad: "Well, for starters, I see you've placed personnel way up there in emphasis and, I assume, points. Now, don't get me wrong. It's not for me to say how you should do it. And I'm not being critical, Doug, believe me. But it seems to us that you guys are asking for it...you know, the old information dump...resumes that just won't quit!"

Doug: "Yeah...well...we know that. We go through it all the time around here. But you've been there before, Brad. What's so different this time?"

Brad: "Well...probably nothing, as we see it on the surface. But the surface is about all the RFP gives us to go on, Doug. I mean, assuming you guys have a 1,000-point scale for your evaluation factors, you've probably got 200 points of it set aside for personnel--it sounds like the biggest item on the list. But there isn't a whole lot for us to go on in terms of what you really want."

Doug: "Hm-m-m...well...that's not so. We've specified that you have to identify individual backgrounds, consultants versus company staff people, what experience they bring to the job...all that stuff."

Brad: (IN ALMOST METERED TONES) "No problem with that at all. Our concern is that we want to be as responsive as possible to each of those subcritera. We want to give you the very best we've got...and you know as well as I do that we've got a lot of the best to give."

Doug: "We know that, Brad. That's why we've put so much emphasis on personnel. We're not anxious to have this job done by a second-rate horde of gypsies. We want the best...if we can get it. And we figure that one way to separate the chaff from the wheat is to concentrate heavily on personnel. I can assure you, we have no intention of going to any one other than a really good performer for this one. You know the field. There aren't more than four or five outfits that could really measure up to this job."

Brad: "I hear ya, my friend, but you guys don't award the contract. And given the way you've specified the proposal criteria, you may have just sent out an open invitation to the very type of people you don't feel can do the job."

Doug: (WITH A SLIGHT CHUCKLE IN HIS VOICE) "Look, Brad, there are times that we may not appear to look too bright, but we're not stupid. Once we get the technical proposals in hand, we'll separate the men from the boys. You can depend on that. About 100 of those suggested 200 points you've mentioned relate to current or recent experience. You guys shouldn't have to worry about that. Incidentally, do you remember Marty Reisen?"

Brad: (PLEASANTLY TAKEN ABACK) "Marty? Well, sure. We've worked with him on a half-dozen projects over the last two or three years. Very capable guy, but what's he got to do with it?"

Doug: "Plenty. He's only the chairman of our tech evaluation committee for this job! His say-so on who's gonna get it will be mighty important."

Brad: "Well son-of-a-gun! I'm glad to hear that. Kind of restores my faith in the system.... Hey look, Doug, I know you're awfully busy, and I won't

take up any more of your time. Thanks for the information. We'll be in there on this one, no doubt, competing just as hard as we can. And if we're gonna do that, I'd better get off the horn and on the job! So...take care, my friend...and take it easy."

Doug: "Okay, Brad, and the same to you. Hope I was helpful. So long."

- What do you perceive has happened here?

****

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C. EPA Evaluation Procedures for Technical Proposals (PIN 77-15)

1. Initial Review. Technical proposals shall be reviewed promptly after the time and date for the receipt of offers—to determine if any of the offers are so technically deficient as to conclusively remove them from further consideration.

2. Scoring Plan. The scoring of offers must be done through the application of a predetermined scoring plan consisting of numerical values.

3. Scoring system. The Source Evaluation Board, or contracting officer in the case of procurement actions not in excess of $1,000,000, shall prepare a scoring system for evaluating each offer against each evaluation criterion set forth in the solicitation.

4. Evaluation Guidelines. The evaluation of offers requires the exercise of careful judgment on the part of each evaluator. Offers must be carefully read and analyzed before the scoring plan is applied—evaluators should consider the following:

   a. Avoid "reading into" or "reading out of"

   b. Avoid tendency to interpret

   c. Avoid infusion of personal knowledge

   d. Recognize scoring as use of subjective judgment

   e. Recognize individual differences of evaluators' conclusions

   f. Recognize ambiguities, inconsistencies, and other factors that can affect scoring

   g. Recognize "catch phrases" and "buzz words"

   h. Recognize the difference between substance and glossy presentation format

   i. Recognize flattery by the offeror

   j. Avoid the influence of "first impression"

5. Ranking. The assignment of numerical scores to an offer determines the relative rank of that offer with respect to other offers.

D. Contract Negotiation and the Role of the Project Officer and Technical Personnel: A Brief Look

1. Contract negotiation by tradition among buyers and sellers

   Negotiation is a process of bargaining among two or more parties, each with its own viewpoints and objectives, who are seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

2. Responsibility of Contracting Officers (FPR 1-3.801-2)

   a. Acting within the scope of their appointments (or through authorized representatives) are the exclusive agents of their agencies to enter into and administer contracts on behalf of the Government.

   b. Responsibilities, while delegable, are not transferable.

   c. Coordination of a negotiation team effort, if a team is required.

      - What needs to be coordinated?

        - Planning and prenegotiation preparation

        - Factfinding and analysis

        - Negotiation session inputs and prescribed roles

      - What may happen in the absence of coordination?

        - Unfounded concessions and compromises

        - Professional embarrassment

        - Troublesome procurements

3. The role of technical personnel in the negotiation process

   a. Analyzing proposals

      - Evaluating and assessing for technical merit

      - Identifying, analyzing and assessing resource needs and estimates

      - Evaluating resource allocations

   b. Planning and prenegotiation preparation

      - Identifying an agenda of technical information needs and/or issues

- Helping to determine/uncover proposal weaknesses that need clarification or explanation

- Surfacing proposal strong points that need to be reinforced

c. At the negotiation meeting

- Supporting the contract specialist in keeping track of technical discussions

- Working through the contract specialist in discussions concerning technical aspects of the requirement

- Coming prepared

III. TREATMENT OF UNSUCCESSFUL OFFERORS

A. Requirements for the Contracting Officer to Notify the Unsuccessful

1. Pre-award notification of unacceptability for procurements over $10,000

   a. When period of evaluation is likely to exceed 30 days

   b. When limited number of offerors have been selected for negotiation

   c. In any case, only when disclosure will not prejudice the Government's interest

   "When during the process of source evaluation, the competitive range is determined and an offeror is determined to be within the competitive range for a specific category(s) of work required by the solicitation and outside the competitive range in other category(s) of work, the offeror shall be promptly notified that, after evaluation, it has been determined that he is outside the competitive range for a certain category(s). The procedure is applicable when multiple awards based on distinct categories of work are anticipated. The purpose is to put the offeror on notice that an offer for a specific category(s) of work will not receive further consideration." PIN 77-15

2. Written post-award notification of unacceptability for procurements over $10,000 indicating

   Written notification indicating

   a. Name of the successful offeror

b. Awarded price or cost

c. Number of proposals received, but not prices quoted by other offerors

3. Information in addition to post-award notification—a debriefing session, if requested in writing

B. The Interests of the Unsuccessful

1. Proposal preparation requires time and money.

2. Proposal shortcomings may reside in misunderstanding and ignorance.

3. A little education can go a long way.

4. Some equate award to others with a biased selection process.

C. The Government's Interest in the Unsuccessful

1. Debriefing is the process by which the Contracting Officer (and others, if appropriate)

a. Provides an unsuccessful offeror with the Government's evaluation of the significant factors contained in its proposal, citing determinative weaknesses.

b. Identifies those factors that were the basis for selecting the successful offeror (i.e., quality of proposal, cost or price, or whatever).

c. Does not reveal any confidential business information or the relative merits or technical standing of other offerors.

2. Summary report of the debriefing session must be placed in the contract file.

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-188542 DATE: August 16, 1977

MATTER OF: Rockwell International Corporation

DIGEST:

1. Call for new round of best and final offers, as result of various material changes made to specification requirements after submission of best and final offers, is justified and does not constitute auction technique. Agency had no alternative but to institute a second round of negotiations. Moreover, record indicates that price revisions made under second best and final offers were primarily result of changed requirements and correction of proposal deficiencies.

2. Costs of phasing in new contractor may be evaluation factor where considered desirable to do so but only if solicitation so provides.

3. Determinations of proposal merits are matter of agency discretion which will not be disturbed unless demonstrated to be arbitrary or unreasonable, and instant record fails to provide evidence of objectionable evaluation.

Rockwell International Corporation (Rockwell) protests the manner in which a cost-plus-award-fee contract was awarded to Xonics, Incorporated (Xonics). The award was made by the Environmental Protection Agency (EPA) under request for proposals (RFP) DU-76-B079 for the operation and maintenance of the CHAMP (Community Health Air Monitoring Program) air monitoring system, operated by the Health Effects Research Laboratory, Research Triangle Park, North Carolina.

Rockwell's primary contention is that EPA personnel engaged in a prohibited "auction technique" and conferred an unfair competitive advantage on Xonics when, after best and final offers had been received and EPA had tentatively selected Rockwell for final negotiations and had advised Xonics that the selection was based on Rockwell's superiority in technical merit and lower cost, EPA reopened negotiations and requested an additional round of best and final offers.

Comptroller General Decision B-188542, August 16, 1977

Rockwell International Corporation

Having read the preceding digest of the decision, read paragraph 15 of PIN 77-15 in the Reference Materials and prepare to answer the following questions.

1. Why do you think an offeror should question EPA's decision to call for an additional round of "best and final" offers?

[illegible]

2. What is the purpose of a "best and final" offer:

   a. As perceived by the Government?

   b. As viewed by the offeror?

3. Why did the Comptroller General decline to question or examine the merit of the proposal?

[illegible]

4. What are some ways in which the need for successive rounds of best and final offers may be avoided?

[illegible]

ECOSYSTEMS, INC.

Harry Allen, contract specialist in the Contracts Management Division, was perplexed. It was Monday morning, and after opening his mail he sensed a problem in the offing. At the close of business last Friday, the closing date for submission, he had had three proposals in hand responding to an EPA requirement. He now was holding a fourth, for the same requirement, which had just arrived in his in-basket. He now had to consider what should be done with the additional proposal.

He leaned back and reflected on the solicitation phase he thought had ended last Friday. Things had gone well for this one, and he certainly wasn't looking for any problem that might interrupt a smooth pre-award proposal evaluation and source selection phase. As always, it had been made clear to him that time was of the essence.

Six weeks ago, Requests for Proposals had been forwarded to five firms in light of an EPA-generated requirement for the development of new energy pollution control devices to test the spread of industrial waste fumes. Although there were several established firms in the pollution control technology field, a decision had been made to solicit only those firms believed to be most capable.

The in-house cost estimate for the work to be done amounted to $365,000. The RFP announced that a cost-plus-a-fixed-fee contract (CPFF), completion form, was contemplated for the procurement. And, as required, the procurement had been synopsized in the Commerce Business Daily, with appropriate inclusions designed to identify factors determined to be necessary for the consideration of any source interested in responding.

Three of five sources solicited had responded with timely proposals (New Era Systems, Inc., Energy Safety Systems, and Hawkeye Associates). The remaining two had indicated that ongoing workload commitments made it impossible for them to respond to the expressed requirements for performance and delivery.

Two additional sources had requested an RFP as a result of the procurement's synopsis in the Commerce Business Daily. One of them, the Spearhead Co., had been technically evaluated by EPA for a similar procurement four months ago and found unqualified. This source was denied an RFP.

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The second firm, Ecosystems, Inc., was largely an unknown. EPA technical and contracts personnel had only limited knowledge of the firm's capability and personnel. It had been in business for about seven years and had done no research work of any sophisticated character for EPA. But a search of the performance record for work it had done in other research-related activities within EPA surfaced a responsive and positive record of achievement. The firm was sent an RFP.

During the solicitation phase, Ecosystems, Inc. had called on several occasions for technical clarification of the statement of work. Harry Allen recalled his delight in having uncovered another source for the procurement, affirming his own judgment about the utility of synopsizing in the Commerce Business Daily. Yes, things had seemed to go well, but the situation at hand needed to be resolved. The contract specialist's first move was to undertake a quick desk-top review of the four proposals. As he flipped through the pages of each, he jotted down the following data:

Proposer	Cost Estimate	Proposal Arrived
New Era Systems, Inc.	$450,000	Last Friday
Energy Safety Systems	$390,000	Last Friday
Hawkeye Associates	$422,000	Last Friday
Ecosystems, Inc.	$330,000 *	Today

(*Ecosystems, inc. proposes a firm fixed-price alternative of $365,000 to its cost-plus-a-fixed-fee of $330,000.)

Shaking his head, he said to himself, "Too bad, looks like this Ecosystems, Inc. outfit might have given the competition a run for the money. But in fairness to the other three, we simply can't consider a late proposal."

He had no sooner come to that conclusion and laid the four proposals to one side, when an Air Mail/Special Delivery letter arrived at his desk. It was from Energy Safety Systems modifying its original cost proposal by quoting a new CPFF estimate of $370,000. The explanation for the modification read, in part, as follows: "The revised estimate enclosed herewith reflects a correction of our technical assessment of the research manhours to be applied, both in meeting the requirements as well as for feasibility study tasks identified in the RFP's statement of work."

"One late submission right on top of another," he grumbled. "I wonder what's next!"

* * * * * *

1. Assess the presolicitation decision to send the RFP to only five sources, when the known source-base included other firms. In view of the decision to limit the solicitation, should this procurement have been publicized in the Commerce Business Daily?

2. In responding to the CBD synopsis, one source was found unqualified and denied an RFP. Is such a finding permissible? How would the Government defend this decision if the firm were to protest? How (with) conclusion that the firm was unqualified

3. What possible impact or influence might "technical clarification" discussions with Ecosystems have on this procurement?

4. How important are estimated cost projections in a procurement of this kind? Why do you think Ecosystems submitted an alternative firm fixed-price proposal to meet the requirement?

5. Do you agree with the contract negotiator's determination that Ecosystem's proposal should not be considered because it is late?

6. Were you Harry Allen, what steps would you take to determine lateness in this case in order to deal with the situation accordingly?

7. What is the role of technical personnel in dealing with late proposals?
Don't get involved

8. What action should be taken concerning the cost proposal modification received from Energy Safety Systems?
[illegible] takes into act when [illegible] [illegible] [illegible] act.

D. Protests to the General Accounting Office (GAO)

1. The role of the General Accounting Office

   a. Basis for "assuming" jurisdiction over bid/proposal protests

      - As arm of Congress, has a statutory obligation to report illegal expenditures and contracts to Congress
      - Has statutory duty to audit and settle public accounts
      - Has obligation to assure that laws and regulations relating to expenditure of public funds are complied with

   b. GAO decisions on bid/proposal protests are regarded as final and conclusive on the contracting agency

2. Traditional GAO postures in considering protests

   a. Impropriety versus illegality

   b. Tests of arbitrary and capricious actions by procurement official

3. Prescribed protest procedures (protest stops everything)

   GAO Regulations (Title 4, Chapter 1, Part 20 of the Code of Federal Regulations)

4. GAO Protest Statistics (see Reference Materials)

TOPIC VII. PERFORMANCE ARENA POSTULATES, ORIENTATION CONFERENCES, AND PROGRESSING SYSTEMS AND SURVEILLANCE

POST-AWARD TECHNICAL AND CONTRACT ADMINISTRATION

Those negotiated contracts which require technical monitoring by EPA technical or program personnel will include specific contract language that defines the authorities of the designated Project Officer.... In seeing that his contract program is properly carried out, the Project Officer should assure that contractor's progress is monitored and, if necessary, controlled.

I. SOME CONTRACT PERFORMANCE ARENA POSTULATES

A. Contract Knowledge

1. The contract and what it says is the instrument governing performance, not what one assumes it was supposed to say or wishes it might have said.

2. "When all else fails," relates the old saw, "read the contract."

B. Work Scope Changes

A change in scope is a new procurement, requiring a Procurement Request/Requisition, justification, estimated cost, and written recommendation to the Contracting Officer for action.

C. Contract Modifications

Whether a change is in-scope or out-of-scope, only the Contracting Officer is authorized to modify the contract.

D. Contract Performance

This is where it's at. Noncompliance of the performer should be noted for appropriate Contracting Officer/ Project Officer coordination and action.

E. Contractor Communications

Keep it straight and keep a record.

F. Trips to Contractor's Site

Make trip reports that honestly reflect conditions of performance and ongoing contractor operations.

G. Progress Payments/Vouchers

Relate payment to performance achievements; relate contractor billings to work accomplished.

H. Progress Reports

Tell it like it is—good or otherwise.

I. Correspondence

1. Keep it as simple as possible and be certain to commit a copy to the contract file.

2. Remember that you are communicating within a contractual relationship.

J. Contract Completion

Requires the submission of some kind of certification and evaluation of satisfactory completion, as well as delivery and acceptance.

K. Government Personnel Restrictions

The obligation of funds in excess of those appropriated (or in advance of those to be appropriated) is a violation of the law (Anti-Deficiency Act) for which consequences are prescribed.

II. POST-AWARD ORIENTATION CONFERENCES

A. Initial Action and Establishment

1. Determination after contract award that the performer and EPA need to convene to discuss scope of work, technical requirements, and/or other information that will impact work or tasks to be done

2. Should be established and chaired by the cognizant Contracting Officer, or by an authorized representative

B. Agenda and Participants

1. Agenda (or checklist) may include such matters as: clarification of specifications and other work requirements; special contract provisions; milestone planning and determinations; processing and procedure for modifications during performance; reporting requirements; billing and payment procedures; and possible performance problem areas

2. Participants: EPA project and contract management personnel, contract performer representatives, and others as appropriate

C. Conference Procedure

1. Businesslike, recognizing that parties are in a contractual relationship

2. Commitments (if any) and clarifications among parties put in writing

3. Summary report prepared covering significant items discussed, areas requiring continuing resolution, any controversial matters, and assigned responsibility for post-conference actions (if any)

III. PROGRESSING SYSTEMS AND SURVEILLANCE

A. Basic Objectives of Management Control Systems and Their Data Outputs

1. To provide an accurate record of work progress

2. To relate cost, schedule and technical performance to each other

3. To be valid, timely, and auditable

4. To supply management with meaningful data summaries

B. Management Control Systems Permitting Effective Monitoring and Surveillance

1. Oriented to tasks or work breakdown structure activities

2. Discrete package reporting of cost, schedule, and performance

3. Tailored systems that provide exactly (not more than) what is needed

4. Timely systems that report in light of prescribed milestones

C. Difficulties in Progressing Research, Study, and Investigative Efforts

1. Nature of uncertainty

2. Unanticipated problems

3. Unanticipated breakthroughs

4. Overmanagement as a possible performance depressant

D. Potential Problem Areas

1. Change control

2. Planned and actual versus reported levels of achievement

3. Timely monitoring for effective surveillance

4. Progress report validation and verification

IV. TECHNICAL ADMINISTRATION AND TECHNICAL DIRECTION: UNDERSTANDING THE DIFFERENCE

A. Technical Administration

1. The performance of prescribed responsibilities or the execution of actions as set out by EPA issuances or directives, and sometimes reflected or noted in a contract

2. For instance: the responsibilities identified by EPA for Government technical representatives in their administration of performance efforts

B. Technical Direction

1. The contractually prescribed authority to redirect contractor (performer) effort during contract performance

2. Where a specified individual is named (usually after contract award) as the contract Project Officer

3. If appropriate, usually specified in the solicitation document (RFP) as a special (or nonstandard) provision that will appear in any awarded contract

4. For instance: a specific contract provision that identifies the person who has the authority, the extent of that authority, and what limitations have been placed on it*

---

*It is very important that the concept and consequences of technical direction be understood within the context of any specific contract. In some instances, authority and responsibility for technical direction are identified within individual contracts. Some activities prepare kits to assist project personnel in the execution of technical direction during contract performance. But even with the best of intentions, unauthorized (as well as seemingly authorized) technical direction may lead to unauthorized contract changes, and subsequent contractor performance may create difficulties in a number of areas for which there are no remedies under the contract.

Usually technical direction means direction within the general scope of the contract, issued in writing by a technical officer named in the agreement or contract. The agreement or contract defines the extent of authority for direction. This statement or clause must further state that technical direction may not constitute a basis for increase in cost or price, or serve as a basis for delivery schedule extensions. If used, it should make clear that changes to work otherwise agreed to in expressed terms, conditions, or specifications are subject to formalized procedures and Contracting Officer action under the Changes clause of the contract.

TOPIC VIII. CONTRACT MODIFICATIONS, HANDLING CASES OF UNSATISFACTORY PERFORMANCE, AND CONTRACT COMPLETION AND CLOSEOUT

POST-AWARD TECHNICAL AND CONTRACT ADMINISTRATION

The Contracting Officer is the only Government representative authorized to make any type of contract changes outside of the Scope of Work. The designated Project Officer should always consult with the Contracting Officer before issuing any direction to the contractor which may represent a change in contract requirements.

[Federal Register, Vol. 42, No. 244, December 20, 1977, EPPR 15-1.5001: A completed contract is one which is both physically and administratively complete and in which all aspects of contractual performance have been accomplished or formally waived. (Physically complete: all specified deliverables have been delivered and accepted by the Government. Administratively complete: all administrative actions accomplished, all releases executed, and final payment made.) Contract performance is formally terminated when a notice of termination is issued in accordance with the termination clause incorporated into the contract.]

I. THE CONTRACT MODIFICATIONS ENVIRONMENT

A. Elements That Affect and Influence the Probability of Changed Conditions

1. Chance and the unforeseen
2. Proper technical direction
3. Specifications requiring performance clarification
4. Performer submission of change proposals
5. Contractual encouragement of alternatives to achieve desired goals

B. Factors That May Result in Unanticipated and Unwanted Changed Conditions

1. Hastily constructed statements of work
2. Unexamined performance or technical data packages
3. Performance definition left to post-award interpretation
4. Unrealistic requirements that result in an inability to perform them
5. Unilateral change direction without regard for contractual authorization and coverage

C. The Language of Contract Changes: Basic Terms and Proper Usage

LANGUAGE OF CONTRACT MODIFICATIONS (I)

- WHAT IS A CONTRACT MODIFICATION?
- WHY IS THE TERM GENERAL SCOPE OF THE CONTRACT SO CRITICAL IN DEALING WITH MODIFICATIONS?
- WHAT HAVE THE TERMS UNILATERAL AND BILATERAL GOT TO DO WITH IT?
- WHAT IS A SUPPLEMENTAL AGREEMENT?
- WHERE DOES A CHANGE ORDER FIT IN?
- WHAT MAKES FOR AN EQUITABLE ADJUSTMENT WHEN A CONTRACT IS MODIFIED?
- WHAT IS A CONSTRUCTIVE CHANGE ORDER?

LANGUAGE OF CONTRACT MODIFICATIONS

- FPR 1-1.219 (Contract Modification)

"Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provision of an existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It includes (a) bilateral actions, such as supplemental agreements and amendments, and (b) unilateral actions, such as change orders, notices of termination, and notices of the exercise of an option.

- General Scope of Contract

In Government contracting, the general scope of the contract represents what both parties have fairly and reasonably agreed is to be done or performed (i.e., the job, the task, or combinations of these things). Where, as in some research and non-hardware contracts, it becomes genuinely difficult to define precisely what is to be done, differences in scope interpretation during performance may raise significant problems affecting not only performance but delivery and cost as well.

Recognizing that interpretations of scope during contract performance may present problems, the key to minimizing their occurrence is an effective and meaningful effort on the part of technical and procurement personnel to define the scope of work as adequately as possible for inclusion in the contract before it is signed. Advanced procurement planning, care in the structuring of specifications and the writing of the Statement of Work, adequate preparation of solicitation documents encouraging knowledgeable responses from contractors--all these represent precontractual techniques designed to further this end. And post-award clarification of general scope need not be a function of actual performance. Post-award/preperformance orientations or conferences may be most useful.

- Administrative Order

"Administrative order" is not defined by the basic procurement regulations, but is usually characterized as an amendment that corrects, changes, or in some way modifies the administrative recitals governing the contract. Normally, such orders do not require the agreement of the contractor because they bear no relationship to contract cost or delivery. Examples of such orders would be changes in appropriation citations, modifications of budgetary numbers, corrections of standard forms to be used, and so forth.

LANGUAGE OF CONTRACT MODIFICATIONS

- Change Order

"Change order" is not defined by the Federal Procurement Regulations. Other Federal Agency or Department procurement regulations generally define this term as "...a written order signed by the contracting officer, directing the contractor to make changes which the Changes clause of the contract authorizes the contracting officer to order without the consent of the contractor."

- Supplemental Agreement

"Supplemental agreement" is not defined by the Federal Procurement Regulations. Other Federal Agency or Department procurement regulations generally define this term as "...any contract modification which is accomplished by the mutal actions of the parties."

- Constructive Change Order

A "constructive change order" is not a prescribed contractual vehicle for issuing a change prior to commencing work under a contract. Quite the opposite is the case. Constructive change orders result from actions or activities which, during contract performance, were intended to clarify or to aid performance as prescribed by the contract. However, such clarification or aid may, in the light of subsequent consideration, be determined to have had the effect of requiring a contractor to perform work different from that prescribed by terms of the original contract. If this were the case, then such actions may be deemed to have constituted a constructive change order, and may permit relief to the contractor under the Changes clause. Any course of conduct might be construed to have had the practical effect of requiring a contractor to perform work not originally specified. But there are recognized limitations to application of this doctrine. Mere suggestions, for instance, do not constitute constructive change orders. Work which a contractor voluntarily performs is not subject to recovery as representing the net result of a constructive change order.

The essence of prevention in this area is a recognition and respect for the constructive change order doctrine, the exercise of care by Government representatives in their communications with contractors, and the application of constant effort to make certain that a contractor does not misconstrue "suggestions" for "directions."

CHANGE ORDERS AND THE CHANGES CLAUSE (I)

(Some Essential Points)

- WHO MUST ISSUE? → CONTRACTING OFFICER
- AUTHORITY TO ISSUE? → CONTRACT ITSELF
- TIME FOR ISSUANCE? → AT ANY TIME
- FORM OF ISSUANCE? → IN WRITING
- SCOPE OF ISSUANCE?
  - → WITHIN THE GENERAL SCOPE OF THE CONTRACT . . .
  - → FOR <u>SPECIFIED</u> AREAS THAT ARE SPELLED OUT IN THE CHANGES CLAUSE ITSELF

CHANGE ORDERS AND THE CHANGES CLAUSE (II)

(Some Essential Points)

- MUST THE CONTRACTOR (PERFORMER) PROCEED WITH A CHANGE, AS ISSUED? → YES
- MUST THE CONTRACTOR (PERFORMER) CONSENT TO A CHANGE BEFORE PROCEEDING? → NO
- MAY THE CONTRACT COST OR PRICE AND/OR DELIVERY SCHEDULE BE ADJUSTED BECAUSE OF A CHANGE? → YES
- MUST AN ADJUSTMENT BE DOCUMENTED IN WRITING? → YES
- IF PARTIES FAIL TO AGREE TO AN ADJUSTMENT, DOES THE CONTRACT'S DISPUTE CLAUSE BECOME OPERABLE? → YES

II. HANDLING CASES OF UNSATISFACTORY PERFORMANCE

A. Importance of Timely Action

1. Responsiblity to act

2. Authority to formalize action

3. Silence is not golden; it may lead to presumptions of acquiescence.

B. Range of Possible Actions by the Contracting Officer

1. Bring the particular deficiency to the attention of the performer's contract manager verbally and ask that planned corrective actions be included in a progress report.

2. By letter, bring the deficiency to the attention of the performer and ask for a response including the corrective action taken or planned.

3. By letter or verbally, ask for a meeting with the performer's management to ensure management level cognizance of the problem(s) and a written commitment by management for corrective action.

4. Withhold payment under appropriate provisions of the contract until satisfactory performance is demonstrated.

C. Contract Termination

1. Types of termination

   a. Termination for convenience

   b. Termination for default

2. Relationship of termination and its consequences to contract type

   a. Fixed-price type contracts

   b. Cost-reimbursement type contracts

III. FUNDAMENTAL ACTIONS OF CONTRACT COMPLETION AND CLOSEOUT

A. Contractor Performance Evaluations

1. Purposes

   a. Provide an orderly and uniform method for determining and recording contractor effectiveness in meeting contractual commitments

b. Increase the importance to contractors of satisfying their obligations for cost, schedule, and technical performance

c. Provide a reservoir of performance data within the Government for examination and use in considering future procurement

2. Objectives

a. Assessment of the job in light of what was required

b. Performance-oriented critique of strengths and weaknesses

c. Factual evaluation, not one of whim, notion, or personal persuasion

B. Contractor Performance Evaluation Report Requirements

1. Contracting Officer responsible for administration of the contract: prepares a business evaluation on EPA Form 1900-26.

2. Project Officer having overall technical responsibility for the contract: prepares a technical evaluation on EPA Form 1900-27.

3. Completed forms filed in the contractor's bidding application file, then coded and entered on EPA Form 1900-29 (Automated Bidder's List Applicant Data Coding Form), and computer-stored for future reference.

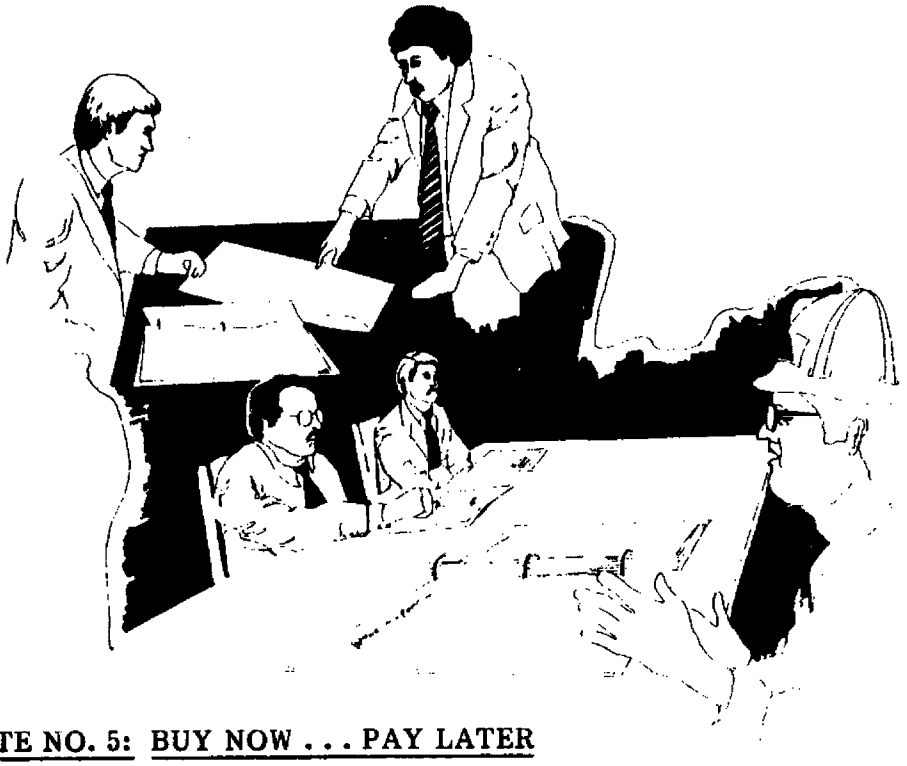
C. Considerations for Closing Completed or Terminated Contracts

1. Closing Review (Federal Register, Vol. 42, No. 244, December 20, 1977, EPPR 15-1.5002-1)

a. That all deliverables have been delivered and/or services rendered

b. That all administrative actions have been completed

2. Contract documentation (as appropriate) (Federal Register, Vol. 42, No. 244, December 20, 1977, EPPR 15-1.5002-1 (Record of Contract Actions — no fewer than 43 items are specified in this EPPR)



VIGNETTE NO. 5: BUY NOW . . . PAY LATER

Hal Beasley, a contractor's technical representative at a Government test and evaluation center, was discussing contract changes with Don King of the center's quality assurance branch. Their concluding remarks were these:

Don: "Come on, Hal, you guys always gripe about what something's gonna cost! But you never want to put your money where your mouth is until the job's over. Wouldn't you want to know what bucks you had to give up before someone started a job for you?"

Hal: (WITH A SLIGHTLY FRUSTRATED TONE) "Well, of course, Don ... if I were buying bubble gum or nuts and bolts! But that's not my point."

Don: "Oh? What is your point?"

Hal: "Simply put, it's this: the problem with the Government's approach to contract changes is that it puts the cart before the horse."

Don: "Really. How's that?"

Hal: (LEANING FORWARD AS THOUGH READY TO BRING IT HOME) "It's like this, my friend. You insist on forward pricing for the kind of work that research and study-task changes involve — the kind that have a cost hook in them every time you turn around. What you guys oughta do is issue your changes first and then deal with their cost, performance, and schedule impact once the work has gotten underway. And you know why? Because delayed pricing favors the Government. It provides you with an opportunity

to assess actual costs more accurately, instead of having to mess around and guess about projected ones. Delayed pricing is bound to give you the clearer picture ... it's like dealing with facts instead of fiction. Now come on, Don, you know that makes good sense, don't you?"

- If you were in Don King's position, how would you respond to Hal Beasley?

****

During a lengthy and difficult negotiation over a difference in estimates for a change order issued under a cost-plus-a-fixed-fee contract for research and data collection, Stan Hartman of Computron Associates turned from the Government contract negotiator and directed his comments to Alex Jefferson, the Government's Project Officer for the effort.

Stan: "Phew! How do I get to this guy, Alex? He must think I'm the original Mr. Ripoff! He's worried that if he gives in to my estimated cost for this one, you'll pay me more than he thinks the change is worth. This is a cost-type deal, and we're talking about modifying a statement of work that we agreed was slippery to begin with. Do you share his worry about this one? You must realize that I can't be reimbursed for more than my actuals anyway."

"You remember, Alex, what a tough time we had in getting this change together. It was a brute! And one of the reasons was because we simply couldn't define all the elements of the data-collection scenario at the very start of this job. You've been with this thing from the beginning. Surely you must know that what I'm saying is true, don't you?"

- Assume you are in Alex Jefferson's position. Given the situation, what would you do or say?

****

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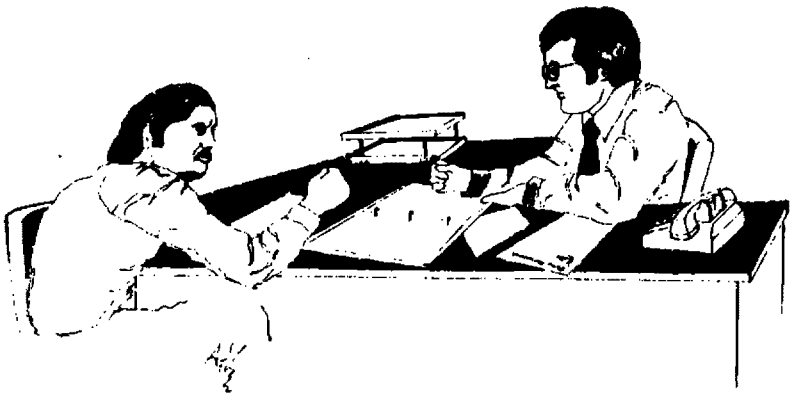

VIGNETTE NO. 6: WHO'S TO ACT . . . AFTER THE FACT?

Rick Jones was upset. As the Government's Project Officer for a development program to convert a current communication system from replaceable printed circuit module technology to large-scale integrated circuits (LSI), he had faced what he termed "an uphill battle" with the performing contractor for almost four months. He had had it with Circuit Electronics, Inc., and he was discussing his problem with Frank DeSepia, the Contracting Officer for the program.

Rick: (GETTING RIGHT TO IT) "Frank, I've had it with Circuit! I've told them. I've told my boss. And I'm telling you. The ballgame is definitely over with them!"

Frank: (WITH A LOOK OF SURPRISE) "Hey, man, calm down. You sound like you're on a one-way trip to complete frustration."

Rick: "No, not really. I've already been there ... and back. I've put up with just about as much as anyone could in dealing with Circuit and Curtis Spicer, and I want something done about it."

Frank: "Who's Curtis Spicer?"

Rick: "Circuit's project manager for the program. Or let me put it this way. He's this month's project manager! Heaven only knows who next month might bring. Last month Spicer was managing another project for Circuit ... one, I'm given to understand, that went down the drain. They ran out of money and someone had the good sense not to give them anymore. You know the old story, Frank ... 'idle hands and idle time are costly things.' So good old Circuit dumped the guy on me."

Frank: "Really? How do you know that?"

Rick: "Very simple! They've got a reputation for shifting people across projects. Everybody knows it."

Frank: (SLIGHTLY DRAWN BACK) "I didn't."

Rick: "Well now you do, Mr. Contracting Officer! When I got the word on Spicer, I called him and told him that I wasn't happy ... not one bit ... about the change. But as long as he was on the job, I wanted him to realize that Circuit had been behind the curve from 'day one,' and that my patience had diminished to zero."

Frank: (SOUNDING MUCH MORE CONCERNED) "What did he say to that?"

Rick: "Oh, he gave me some kind of flimflam about things-were-going-to-be-different, mixed in with several references to changes he understood we had made in the specifications over the past three months, and said he'd be glad to meet with me to get the whole thing back on an even keel."

Frank: "Didn't that please you?"

Rick: "Please me? It infuriated me! That's all I've heard from those guys since the start of this program. One thing I'll say for them: they've got a bottomless grab bag of curves they can throw!"

Frank: "I hear ya, Rick, and I'm not unsympathetic. But tell me, what are they doing wrong?"

Rick: (POISING HIMSELF AND FURROWING HIS BROW) "Friend, you haven't got enough time to listen to it all! But for starters, let me put it this way ... they've been late on every required delivery ... they've fought every suggestion we've made about alternatives they could take ... they tell me their budget has been exceeded for virtually every program task they've attempted ... and the bottom line has got to be late delivery, and I mean late!"

Frank: (IN ALL INNOCENCE) "What do you think we ought to do about all this?"

Rick: (TAKEN ABACK) "What do I think? Man, that's where you come in. I want this thing settled ... once and for all. They should be told 'to fish or cut bait.' It's obvious they aren't listening to me, but they've got to listen to you."

Frank: "What makes you think so? Maybe the first thing we ought to do, Rick, is stop pushing so many pronouns around ... you, me, them, and who else? How about a framework that concentrates on us for a change?"

Rick: "Oh come on, Frank ... don't get on one of those kicks. I need some action taken, not a lecture ...."

Frank: (COMING ON A LITTLE STRONG) "Tell me, how long have they not been listening to you?"

Rick: "I'd say about a dozen times over the last six weeks. On two occasions I've called old Doc Ringer — he heads up the Circuit division that has the job — and I might as well talk to a stone fence. He's about as responsive as a stick!"

Frank: "The contract for this job was let when ... about four months ago?"

Rick: "Yeah, something like that."

Frank: "CPFF contract ... completion type, as I recall. Four months ago, huh? Okay, let me check it out and see if we can pull our act together. But first, Mr. Project Manager, a couple of questions for you."

Rick: "Shoot!"

Frank: "Number one ... can you document, and I mean doc-u-ment, your case? And number two .. why didn't you come to me two months ago about Circuit?"

- If you were in Frank DeSepia's position, what would you do now? On what basis? Assuming Rick Jones' points are corroborable, what alternatives are open to Frank DeSepia?

- Quite obviously, Rick Jones has become a part of the problem he wants Frank DeSepia to solve. What would you suggest are reasons for this having happened?

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TABLE OF CONTENTS

			Page
EPA Procurement Statistics			1
Contracts Management Division — Average Leadtime Statistics			3
EPA-Related Committees and Subcommittees — Senate			5
EPA-Related Committees and Subcommittees — House			7
Extracts from the Federal Register			9
Subpart	15-1.3	General Policies	9
	15-1.313	Record of contract actions	9
	15-1.350	Release of procurement information	10
Subpart	15-1.6	Debarred, Suspended,and Ineligible Bidders	11
Subpart	15-1.7	Small Business Concerns	11
	15-1.704	Agency program direction and operation	11
	15-1.704-1	Small business advisor	11
	15-1.704-2	Small business specialists	11
	15-1.708-2	Applicability and procedure	12
	15-1.709-50	Records and reports	12
Subpart	15-1.23	Environmental Protection	13
	15-1.2302-3	Compliance responsibilities	13
	15-1.2302-5	Withholding award	13
Subpart	15-1.50	Closing Completed or Terminated Contracts	13
Subpart	15-1.53	Code of Conduct	15
Part 15-3		Procurement by Negotiations	17
Subpart	15-3.405-3	Cost Sharing Contract	17
	15-3.405-3-50	Basic guidelines	17
	15-3.405-3-51	Unsolicited proposals	18
	15-3.405-3-52	Determination of amount of cost sharing	18
U.S. Environmental Protection Agency Procurement Information Notice, PIN 77-15, re: Source Evaluation and Selection Procedures			21

U.S. Environmental Protection Agency Procurement Information Notices, PIN 78-3, re: Source Evaluation and Selection Procedures — Supplementary Procedure for Procurement Actions Not in Excess of $100,000 63

U.S. Environmental Protection Agency Procurement Information Notice, PIN 78-12-10, re: Service Contracts 69

Contracts Management Manual, Chapter 22, Procurement Plan 75

Extracts from the Federal Register 81

Part 20 Bid Protest Procedures 81

Comptroller General Decision, B-189172, Environmental Science and Engineering, Inc., December 15, 1977 85

Bid Protest Report 93

Unsolicited Proposals with Sample Letter, Chapter 4, Contracts Management Manual 97

CFR 41 — 1-3.802-1, Consideration of Late Proposals 101

EPA PROCUREMENT STATISTICS

Fiscal Year 1979

Office		Number of Actions	Dollar Value
Washington		1,471	$209,370,000
Cincinnati		780	71,598,000
Research Triangle Park		959	99,742,000
Total CMD		3,210	380,710,000
Region	I	17	1,191,192
	II	15	816,054
	III	11	1,570,788
	IV	16	1,364,502
	V	30	3,848,303
	VI	13	492,302
	VII	5	570,873
	VIII	14	383,864
	IX	13	549,501
	X	8	121,391
	Total	142	10,909,270
	Competitive Awards		300,760,900
	Noncompetitive		79,949,100
Participation by Small and Minority Business			
	Small Business Awards	1,203	105,300,000
	Minority Business Awards	26	3,118,200
	8(a) Awards	111	11,808,500

Comparative Size of Procurements

FY '79	Average Dollar Size	108,903	Median	39,845
FY '78	Average Dollar Size	99,009	Median	35,495

CONTRACTS MANAGEMENT DIVISION
Average Leadtime Statistics

CLASS		WCO	DCO	CCO	TOTAL EPA FY79	TOTAL EPA FY78
A	ADVERTISED	196	68	84	102	75
BC	COMPETITIVE	-	-	241	241	280
BS	BOA SOLE SOURCE	153	117	161	153	188
C	NEGOTIATED COMPETITIVE	282	224	212	246	239
DC	NEW CONTR NEGOT FOL COMPET	250	141	-	162	118
DS	NEW CONTR NEGOT FOL SOL SRC	137	155	-	142	134
FC	NEGOT COMPETITIVE-MOD	54	276	54	82	60
FH	MOD NEGOT-CHANGES CLAUSE	89	95	32	81	108
FI	INCREMENTAL FUNDING ACTION	25	30	17	25	27
FL	LETTER AMENDMENT	249	77	-	101	44
FO	EXERCISE OF OPTION	28	32	23	29	26
FS	NEGOT SOLE SOURCE-MOD	85	67	71	79	73
FV	COST OVERRUN	90	67	31	66	68
LC	LTR CONTR COMPET	225	-	289	268	134
LS	LTR CONTR-SOL SRC	266	30	18	136	119
S	NEGOT SOL SRC (NEW CONTR)	121	110	96	111	120
TC	TASK UNDER BOA COMPET	-	-	-	-	172
TS	TASK UNDER BOA SOL SRC	46	80	18	57	40
U	UNSOLICITED PROPOSAL	87	196	67	126	188
	TOTAL AWARDS	96	87	70	87	84

EPA-RELATED COMMITTEES & SUBCOMMITTEES

All of the following committees and subcommittees have interests in various EPA programs. The Agency has in the past had significant business (e.g., hearings, briefing, etc.) with all of them. Those marked by an * have direct jurisdiction over EPA programs.

SENATE

Committee on Agriculture, Nutrition and Forestry*

- Subcommittee on Agricultural Research and General Legislation

Committee on Appropriations*

- Subcommittee on HUD and Independent Agencies

Committee on Budget*

Committee on Commerce, Science and Transportation*

- Subcommittee on Aviation
- Subcommittee on Science and Space
- Subcommittee on Merchant Marine and Tourism

Committee on Energy and Natural Resources

- Subcommittee on Energy Research and Development
- Subcommittee on Public Lands and Resources

Committee on Environment and Public Works*

- Subcommittee on Environmental Pollution
- Subcommittee on Resource Protection

Committee on Foreign Relations

Committee on Governmental Affairs

Permanent Subcommittee on Investigations

Committee on Human Resources

Subcommittee on Health and Scientific Research

Select Committee on Small Business

Subcommittee on Environmental, Rural and Urban Economic Development
Subcommittee on Government Regulation

EPA-RELATED COMMITTEES & SUBCOMMITTEES

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HOUSE

Committee on Agriculture*

- Subcommittee on Department Investigations, Oversight and Research

Committee on Appropriations*

- Subcommittee on HUD-Independent Agencies

Committee on Budget*

Committee on Government Operations

- Subcommittee on Environment, Energy and Natural Resources

Committee on Interior and Insular Affairs

- Subcommittee on Energy and the Environment

Committee on International Relations

Committee on Interstate and Foreign Commerce*

- Subcommittee on Consumer Protection and Finance
- Subcommittee on Energy and Power
- Subcommittee on Health and the Environment
- Subcommittee on Oversight and Investigations
- Subcommittee on Transportation and Commerce

Committee on Merchant Marine and Fisheries*

- Subcommittee on Fisheries and Wildlife Conservation and the Environment
- Subcommittee on Oceanography

Committee on Public Works and Transportation*

- Subcommittee on Aviation
- Subcommittee on Investigations and Review
- Subcommittee on Water Resources

Committee on Science and Technology*

- Subcommittee on Science and Applications
- Subcommittee on Transportation, Aviation and Weather
- Subcommittee on Fossil and Nuclear Energy Research, Development and Demonstration
- Subcommittee on Science, Research and Technology
- Subcommittee on Advanced Energy Technologies and Energy Conservation Research, Development and Demonstration
- Subcommittee on Domestic and International Scientific Planning, Analysis and Cooperation
- Subcommittee on Environment and Atmosphere

Committee on Small Business

- Subcommittee on Impact of Energy Problems, Environment and Safety Requirements and Government Research on Small Business

Select Committee on Outer Continental Shelf

Subpart 15-1.3—General Policies

1. Section 15-1.313 is added as follows:

§ 15-1.313 Record of contract actions.

(a) All EPA procurement activities performing purchasing and contract administration functions shall assemble and maintain official records of all actions with respect to solicitations and contracts.

(b) To the extent that retained copies of contractual documents and correspondence do not reflect all actions taken, suitable memoranda of the undocumented actions shall be prepared promptly and placed in the appropriate official contract file.

(c) Authenticated or conformed copies of contractual instruments and signed or official record copies of correspondence, memoranda, and other documents shall be used in compiling the official files. Except to the extent that contract clauses or specifications are incorporated by reference, conformed copies shall be complete and accurate copies of the contractual instrument, including the date of execution and the names and titles of signatories.

(d) Each contract file shall include the following as appropriate for the type and dollar value of contract, actions involved, and functions assigned to the procurement activity except for small purchases (see FPR Subpart 1-3.6 and § 15-1.313(e)):

(1) Procurement planning data;

(2) A copy of the Procurement Request/Requisition, EPA Form 1900-8, including the certification of availability of funds;

(3) Appropriate determination and findings as required by FPR Subpart 1-3.3 to justify authority to negotiate, method of contracting, and advance payments;

(4) A signed justification for noncompetitive procurement;

(5) Required preaward clearances;

(6) Any small business or labor surplus area set-aside determination or consideration given thereto (see FPR 1-1.706 and FPR 1-1.804);

(7) Justification for use of "brand name or equal" purchase description (see FPR 1-1.307-5);

(8) Synopsis of the proposed procurement or reference thereto;

(9) List of sources solicited, justification for limiting sources, and a list of firms or persons whose requests for copies of the solicitation were denied together with the reasons for denial;

(10) A copy of the solicitation, including applicable drawings and specifications or reference thereto;

(11) Any amendments to the solicitation;

(12) One copy of each signed bid or proposal received, and a record of any late bids or proposals received (see FPR 1-2.303 and FPR 1-3.802-1);

(13) The abstract of bids or record of proposals received, including "no bid" or "no proposal" correspondence;

(14) The technical evaluation report;

(15) Documentation for mistakes in bid and protests of award (see FPR 1-2.406 and FPR 1-2.407-8);

(16) Documentation for selection of the successful contractor, including:

(i) Reasons for selection, including negotiation memorandum,

(ii) Contracting officer's determination of the contractor's responsibility (see FPR 1-1.1204), and a copy of each preaward survey performed (see FPR 1-1.1205-4) or reference to previous surveys relied upon,

(iii) Any Small Business Administration certificate of competency (see FPR 1-1.708), and

(iv) Justification of award to other than low bidder,

(17) Evidence of compliance with equal employment opportunity policies (EPA Form 1900-35, Request for Equal Opportunity Clearance of Contract Award),

(18) All cost and pricing data submitted or used, including Certificates of Current Cost or Pricing Data (see FPR 1-3.807-3 and FPR 1-3.807-4), and a copy of the Government price or cost estimate;

(19) Price or cost analysis report;

(20) Audit reports or reasons for waiver;

(21) Record of price negotiation (see FPR 1-3.811);

(22) Justification for type of contract used (see FPR 1-3.403);

(23) Exceptions or exemptions from the Buy American Act (see FPR Part 1-6);

(24) Required approvals of award;

(25) Notice of award;

(26) Notice of Intention to Make a Service Contract and Response to Notice (Standard Form 98) when the prospective contract is subject to the Service Contract Act, and Notice of Award (Standard Form 99) when the contract is subject to either the Service Contract Act or the Walsh-Healey Public Contracts Act;

(27) A signed or authenticated copy of the contract and all contract modifications, together with signed or official record copies of documents supporting the modifications;

(28) Synopsis of award or reference thereto (see FPR 1-1.1004);

(29) Notice to unsuccessful bidders (see FPR 1-2.408) or offerors (see FPR 1-3.103 (b));".

(30) Bid bond (Standard Form 24), performance bond (Standard Form 25) and payment bond (Standard Forms

25A and 25B) or other bond documents, or a reference thereto, and notice to sureties, in case of construction contracts (see FPR Subpart 1-10.1 and 1-10.2);

(31) Post award conference record (see FPR 1-1.1803);

(32) Approved subcontracts and supporting documentation (see FPR Subpart 1-3.9);

(33) Inspection and acceptance documentation (see FPR 1-14.101 and FPR 1-14.201);

(34) Payment vouchers and invoices;

(35) Release from liabilities, obligations, and claims (see FPR 15-1.5002-1);

(36) Records relating to Government-furnished or contractor acquired property and disposition thereof;

(37) Record of approvals or disapprovals of waivers or deviations from contract requirements;

(38) Royalty, invention, and copyright reports or reference thereto (see Subpart 15-9);

(39) The documentation concerning termination is contained in § 15-1.5002-4;

(40) References to other pertinent documents which are filed elsewhere because they pertain to more than one contract or to the contractor generally;

(41) Designation of contracting officer representatives;

(42) Records concerning disputes and litigation; and

(43) Other pertinent correspondence, messages, memoranda including documents supporting advance or progress payments.

(e) Where small purchase procedures are used in accordance with FPR Subpart 1-3.6, the file shall include the following documentation:

(1) Purchase request and purchase orders;

(2) Record of oral solicitation(s) (EPA Form 1900-13) or copy of written solicitation(s);

(3) Record of oral quotation(s) (EPA Form 1900-13) or copy of written quotation(s);

(4) Statement setting forth the basis of determination of fair and reasonable price, when only one response is received and the procurement is over $500;

(5) Justification for noncompetitive procurement when over $500;

(6) Copies of documentation involving action taken with respect to habitually delinquent vendors;

(7) Evidence of receipt and acceptance of supplies or services;

(8) Other documentation as required by FPR 1-3.606-4 when a blanket purchase arrangement is involved; and

(9) In respect to oral purchase orders, a copy of the vendor's invoice endorsed by an authorized Government representative evidencing receipt of property or service. If it is not possible to obtain a copy of the invoice, a record shall be maintained showing price and date of receipt of personal property or nonpersonal services ordered.

§ 15-1.318-1 [Amended]

2. Section 15-1.318-1 is amended by making the following changes:

1. In paragraph (a)(1) insert the words "Office of" preceding the word "Audit".

2. Delete the word "TWX", and substitute the word "telegram" in the second sentence of paragraph (b)(1).

3. Delete the words "Assistant General Counsel, Grants and Procurement", and substitute the words "Office of the Associate General Counsel, Grants, Contracts and General Administration" in the third sentence of paragraph (e)(1).

4. Delete the words "Assistant General Counsel, Grants and Procurement", and substitute the words "Office of the Associate General Counsel, Grants, Contracts and General Administration" in paragraph (e)(3).

5. Delete the words "Assistant General Counsel, Grants and Procurement", and substitute the words "Office of the Associate General Counsel, Grants, Contracts and General Administration" in the first sentence of paragraph (f)(4).

6. Delete the words "Assistant General Counsel, Grants and Procurement", and substitute the words "Associate General Counsel, Grants, Contracts and General Administration" in the first sentence of paragraph (f)(5).

7. Delete the words "Assistant General Counsel, Grants and Procurement", and substitute the words "Associate General Counsel, Grants, Contracts and General Administration" in the second sentence of (f)(6).

3. Section 15-1.350 is amended by adding new text as follows:

§ 15-1.350 Release of procurement information.

The Freedom of Information Act, 5 U.S.C. 552, provides that certain Government records shall be made available to the public upon request. This Act has been implemented by the Environmental Protection Agency (EPA) in 40 CFR Part 2. Subpart B-Confidentiality of Business Information of 40 CFR Part 2 provides the policy and guidance pertaining to the procurement of supplies and services.

4. Sections 15-1.351, 15-1.352, and 15-1.353 are revised by deleting the text and reserving the sections as follows:

§ 15-1.351 [Reserved]

§ 15-1.352 [Reserved]

§ 15-1.353 [Reserved]

Subpart 15–1.6—Debarred, Suspended, and Ineligible Bidders

§ 15–1.603 [Amended]

1. Section 15–1.603 is amended by deleting the abbreviation "CFR" in the last line and substituting "FPR".

2. Section 15–1.605–2 is added and reserved as follows:

§ 15–1.605–2 [Reserved]

3. Section 15–1.605–4 is redesignated as § 15–1.605–3 and revised as follows:

§ 15–1.605–3 Notice of Suspension.

The Administrator has designated the Deputy Assistant Administrator for Administration as the official responsible for furnishing the notification required by FPR 1–1.605–3. The Director, Contracts Management Division, or his designee, is responsible for the preparation of the notification.

Subpart 15–1.7—Small Business Concerns

1. Section 15–704 is amended by adding new text as follows:

§ 15–1.704 Agency program direction and operation.

(a) The Environmental Protection Agency (EPA) shall, in furtherance of the declared policy of the Congress, and as restated in the FPR, extend every effort to encourage participation by small business concerns in the procurement of property and services supporting the EPA mission, and that are within their capabilities. The Deputy or Associate Deputy Assistant Administrator for Administration, Directors of Administration, Regional Administrators, and Directors of Laboratories are responsible for results under the small business program within their respective activities. Procurement and technical personnel assigned to these activities shall be informed of the benefits that accrue to the Nation and to the Agency through the proper use of the capabilities of small business concerns in the procurement of EPA requirements.

(b) The Head of the procuring activity, the chief officer responsible for procurement at the contracting activity, and the chiefs of the purchasing offices in the regions and laboratories are responsible for the contracting and purchasing aspects of the small business program.

(c) The extent of small business participation in EPA procurement shall be accurately measured, reported, and publicized.

Section 15–1.704–1 is revised to change the caption and text as follows:

§ 15–1.704–1 Small Business Advisor.

The Agency shall establish and maintain an Office of Small Business and Contractor Relations. The Small Business Advisor of the Agency is appointed by the Administrator. The Small Business Advisor is responsible for the establishment, implementation, and execution of the small business program of the Agency and provides guidance and advice to the Directors and Chiefs of the field procurement operations in the implementation and execution of their respective programs. The Small Business Advisor is the central point of contact for inquiries concerning the small business program from industry, the Small Business Administration (SBA), and the Congress, and will advise the Administrator and staff as required. The Small Business Advisor will represent the Agency in the negotiations with the other Government agencies on small business matters. The duties of the Small Business Advisor may be assigned either on a full-time or part time basis; however, if assigned on a part time basis, the small business duties will take precedence over collateral responsibilities.

3. Section 15–1.704–2 is revised as follows:

§ 15–1.704–2 Small business specialists.

(a) Small business specialists shall be appointed in writing for each procurement or purchasing office. While small business specialists will normally be appointed from members of operating procurement staffs, they shall be responsible directly to the appointing authority with respect to small business matters and not to their immediate line of procurement supervision or to technical personnel. The appointing authority is as follows:

(1) Cincinnati, Research Triangle Park, and Headquarters Contract Operations, the Head of the procuring activity without power or redelegation.

(2) Regional offices, Regional Directors with power of redelegation to a Laboratory Director or to a chief of a staff office at a higher management level than the chief of the procurement activity.

(3) Laboratories, Director of the Laboratory without power of redelegation.

A copy of each appointment and termination of all specialists shall be forwarded to the Agency Small Business Advisor. In addition to performing the duties outlined in paragraph (b) of this section that are normally performed in the activity to which he is assigned, the small business specialist shall be the small business advisor to the head of the activity and shall perform such additional functions as may be prescribed in furtherance of the overall Small Business Program. The small business specialist is not precluded from being assigned the responsibility for the Labor Surplus Area Program prescribed by FPR Subpart 1–1.8, and for the Minority Business En-

terprise Program prescribed by FPR Subpart 1-1.13. The small business specialist may be appointed on either a full or part time basis; however, when appointed on a part time basis, the small business duty shall take precedence over collateral responsibilities. When the volume of procurement does not warrant assignment of a small business specialist, the contracting officer shall be responsible for the program.

(b) A small business specialist appointed pursuant to (a) above shall perform the following duties as are appropriate for his procurement activity:

(1) Maintain a program designed to locate capable small business sources for current and future procurements;

(2) Coordinate inquiries and requests for advice from small business concerns on procurement matters;

(3) Review all proposed solicitations over $2,500, assure that small business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendations for small business set-asides, complete EPA Form 1900-37, entitled "Record of Procurement Request Review," as appropriate;

(4) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in a procurement. When small business concerns cannot be given an opportunity on a current procurement, initiate action, in writing, with appropriate technical and contracting personnel to insure that necessary specifications or drawings for future procurements are available.

(5) Review proposed procurements for possible breakout of items or services suitable for procurement from small business concerns;

(6) Advise small business concerns with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(7) Participate in determinations concerning the responsibility of a prospective contractor (see FPR Subpart 1-1.12), including determinations involving integrity, business ethics, or persistent failure to apply necessary tenacity or perseverance;

(8) Participate as the minority business enterprise representative in accordance with FPR 1-1.1302 and Chapter 10, Contracts Management Manual;

(9) Participate in the evaluation of a prime contractor's small business subcontracting programs;

(10) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in the procurement program (see § 15-1.709-50);

(11) Make available to SBA copies of solicitations when so requested;

(12) Act as liaison between his procurement office, the contracting officer, and the appropriate SBA office or representative in connection with set-asides, certificates of competency, size classification, and any other matter in which the small business program may be involved; and

(13) May participate, if required, in Business Opportunity/Federal Procurement Conferences, and other Government-industry conferences and meetings to assist small business, labor surplus, and minority business enterprises.

§ 15-1.706-50-2 [Amended]

4. Section 15-1.706-50-2 is amended by deleting in the last sentence, the words, "Chief of Contract Operations" and substituting the words, "appointing authority."

§ 15-1.706-50-3 [Amended]

5. Section 15-1.706-50-3 is amended by deleting in the last sentence, the words, "Chief of Contract Operators" and substituting the words "appointing authority."

6. Section 15-1.708-2 is added as follows:

§ 15-1.708-2 Applicability and procedure.

A copy of the documentation supporting the determination that a small business concern is not responsible, as required by FPR 1-1.708-2(a)(5)(i), shall be transmitted to the Agency Small Business Advisor concurrently with the submission of a copy of the documentation to the appropriate SBA Region Office.

7. Section 15-1.709-50 is added as follows:

§ 15-1.709-50 Records and reports.

(a) As required, monthly reports of factual information, covering procurement actions and dollars awarded to small business, minority business, Small Business Administration under authority of section 8(a) of the Small Business Act, and information on actions and dollars made under small business set-asides, shall be submitted by the Cost Review and Policy Branch, Contracts Management Division, to the Agency Small Business Advisor.

(b) The Financial Management Division will submit to the Agency Small Business Advisor a copy of the Small Purchase Activity Report that shows by each EPA purchasing activity the following information cumulative monthly for small purchases ($10,000 and under):

(1) Total actions and dollar value of awards.

(2) Total actions and dollar value of awards to all businesses.

(3) Total actions and dollar value of awards to small business.

(4) Total actions and dollar value of construction awards to small business made by set-aside.

(5) Total actions and dollars value of small business awards made by set-asides, excluding set-asides for construction.

(6) Total actions and dollar value of awards made to the Small Business Administration pursuant to section 8(a) of the Small Business Act.

(7) Total actions and dollar value of awards made to minority concerns.

(c) The reports identified in paragraphs (a) and (b) of this section are to be submitted to the Small Business Advisor no later than the 20th day following the end of the reporting period with the exception of the last report of the fiscal year which shall be submitted no later than the 30th day following the end of the fiscal year.

Part 15-1 is amended by adding a new Subpart 15-1.23 as follows:

Subpart 15-1.23—Environmental Protection

§ 15-1.2302-3 Compliance responsibilities.

Notifications required by FPR 1-1.2302 shall be forwarded, in writing to the Director, Contracts Management Division.

§ 15-1.2302-5 Withholding award.

Notifications required by FPR 1-1.-2302-5 shall be forwarded, in turn, to the Director, Office of Federal Activities, and the Director, Contracts Management Division. Such notice shall be by telephone and the date notice is given shall be noted in the procurement file to establish the start of the 15 working day delay period.

Part 15-1 is amended by adding a new Subpart 15-1.50 as follows:

Subpart 15-1.50—Closing Completed or Terminated Contracts

§ 15-1.5000 Scope of subpart.

This subpart establishes procedures governing the closing of contract files when all contract performance is completed or the contract is terminated.

§ 15-1.5001 Definition—Completed contract.

A completed contract is one that is both physically and administratively complete and in which all aspects of contractual performance have been accomplished or formally waived. A contract is physically complete only after all property and services called for under the contract, including such related items as reports, materials, data, and exhibits, have been delivered to and accepted by the Government including property and services for which no specific compensation may have been stipulated or a notice of complete contract termination has been given the contractor by the Government. A contract is administratively complete when all payments have been made and all administrative actions accomplished. A contractor accorded limited administration and having a face value of $10,000 or under is closed when evidence of physical completion is received by the contracting officer.

§ 15-1.5002 Procedures.

§ 15-1.5002-1 Closing review.

(a) Upon physical completion, the contract and contract file shall be reviewed to verify that all actions have been fully documented to the extent practicable. Consideration must be given to the type of contract being closed, and the contract file shall be reviewed to determine that:

(1) All services have been rendered and accepted;

(2) All property, including but not limited to contract end items, reports, data, and exhibits, have been delivered and accepted;

(3) All payments and collections have been accomplished;

(4) Releases from liabilities, obligations, and claims have been obtained from the contractor, if appropriate;

(5) Assignments of refunds, rebates, and credits, have been executed by the contractor, if appropriate;

(6) All administrative actions have been completed such as determination of final overhead rates, release of funds, or disposal of property, and all administrative reviews and approvals have been accomplished and documented regarding such items as wages, salaries, insurance, and accounting;

(7) The file is documented as presribed in § 15-1.313; and

(8) Ascertain the possible existence of pending disputes, contingent liabilities, or circumstances out of which future claims or litigation might arise, potential credits, or refunds or other future recoveries. Insure that adequate reserves have been set aside to provide for contingent liabilities.

(b) A closing review shall be made to insure that either the contract file contains, or that all actions necessary to complete the file have been consummated as they are applicable to the type of contract being closed:

(1) Inspection and acceptance documents or a statement from program personnel that all services and property required by the contract have been performed or delivered in accordance with the terms of the contract and are acceptable to the Government. All discrepancies in actual performance or delivery with contract requirements must

be reconciled before the contract file is closed;

(2) Contract files shall not be closed or final payment made until (i) all questions of disallowed or suspended costs are settled; (ii) the "completion voucher" and the "cumulative claim and reconciliation statement" are vertified (see § 15-1.5002-3) and final audit report or closing statement obtained from the Cost Review and Policy Branch, Contracts Management Division; (iii) all discrepancies are resolved between payments and deliveries or performance, and between billings and payments; (iv) final overhead rates are established and set forth in a contract modification; (v) assignments of refunds, rebates, credits, and other amounts are executed; (vi) final release of claims is received from the contractor; and (vii) partial or complete termination settlements are set forth in a supplemental agreement and payment or collection made;

(3) A copy of each subcontract approved or ratified by the contracting officer, together with the letter or document of approval and the subcontract review memorandum must be retained in the contract file. If approval of individual subcontracts is waived by approval of the contractor's purchasing system, a copy of or a specific reference to the purchasing system approval must be included in the contract file. Unresolved disputes between prime and subcontractors must be resolved before the prime contract file can be closed, unless the prime contractor releases the Government from any obligation relating to the subcontractor claims;

(4) Before a contract file can be closed, all additions or changes to the terms, conditions, or administrative recitals must be formalized by an appropriate supplemental agreement or unilateral change order. Timely action must be taken to formalize adjustment of price, estimated cost, or fee when required by special contract provisions, such as price redetermination, incentive clauses, escalation, or partial or complete termination settlements. Contracting officers have no authority to, and shall not, give or execute any kind of release of claim or obligation to the contractor except by formal modification of the contract;

(5) All Government-owned property, real or personal, either furnished by the Government or acquired by the contractor for the account of the Government, must be accounted for and appropriate disposal action taken upon physical completion of the contract. The contract file shall not be closed until the inventory of all such Government-owned property is verified and a complete record of the disposition of all property is placed in the file;

(6) Individual copies of the following must be placed in the contract file prior to closing: (i) Systems approvals, i.e., accounting, estimating, purchasing, property management, quality assurance, and maintenance; (ii) advance understanding on particular items of cost identified in FPR 1-15.107; i.e., IR&D, employee compensation, travel, insurance plans, and precontract costs; and (iii) other agreements relating to contract performance;

(7) Copies of appropriate clearances and reports relating to inventories, patents, royalties, copyright, publications, and tax exemptions must be included in the official contract file. Also the file must contain copies of inquiries from and answers and reports to sources such as the Congress, the General Accounting Office, audit activities, and other organizations; and

(8) Copies of letters delegating contract administration, such as technical direction, quality assurance inspection and acceptance, property management, and subcontract approval, must be included in the official contract file and a statement that all delegated actions were completed satisfactorily.

§ 15-15.5002-2 Contract closing memorandum.

The contracting officer shall prepare a memorandum that may take the form of a memorandum for the record or a checklist of contract actions applicable to the type of contract involved (see § 15-1.313 and § 15-1.5002-1). The memorandum shall contain as a minimum verification that all contract performance is completed and that all contract action have been fully documented. Contracting activities shall design and prescribe the form and contents of such closing checklists.

§ 15-1.5002-3 Verification of costs.

Before final payment is made under a cost-reimbursement type contract, the contracting officer must verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred should be obtained from the Office of Audit, through the Cost Review and Policy Branch, CMD, in the form of a final audit certification. Similar verification of actual costs must be made for fixed-price contracts when cost incentive or price redetermination are involved. Termination settlement proposals shall be submitted to the Cost Review and Policy Branch for review by the Office of Audit, as prescribed by FPR 1-8.207.

§ 15-1.5002-4 Termination.

(a) All documentation relating to the terminated portion of a contract shall be maintained in a separate termination file or in a separately identifiable section of the official contract file. After final settlement and payment or collection of all

termination claims, the termination file shall be reviewed to insure that the file contains documentation to support all actions relating to the termination settlement and to the disposition of the Government-owned property. Documentation of the file shall include:

(1) Request for termination action or a statement of reasons for the termination;

(2) Notice of termination and instructions to the contractor, and notice to the General Accounting Office as prescribed by FPR 1-8.403;

(3) Correspondence with the contractor and records of all discussions, meetings, and negotiations;

(4) Copies of all settlement proposals and accounting reviews and analysis thereof;

(5) Records and approvals of subcontractor settlements;

(6) Inventory schedules and records of disposal of Government-owned property; and

(7) Settlement agreements, records of exceptions, and contracting officer determinations, as appropriate.

(b) After all termination actions are completed and the separate termination file closed, it shall be filed as part of the official contract file.

Subpart 15-1.53—Code of Conduct

§ 15-1.5300 [Amended]

Section 15-1.5300 is amended by making the following change:

In paragraph (a)(1)(v), change the citation 18 U.S.C. 200 to 18 U.S.C. 209.

[FR Doc.77-36268 Filed 12-19-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 15—ENVIRONMENTAL PROTECTION AGENCY

[FRL 810-5]

PART 15-3—PROCUREMENT BY NEGOTIATIONS

Cost Sharing in Contracts for Research

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action revises an Environmental Protection Agency (EPA) regulation that covers the basic guidelines for the use of cost sharing in contracts for research. Previously, the EPA procurement regulations encouraged cost sharing for research contracts that resulted from unsolicited proposals, however, for fiscal years 1976 and 1977 EPA was included in the Department of Housing and Urban Development—Independent Agencies Appropriations Acts which do contain requirements for cost sharing when contracts result from proposals not specifically solicited by the Government. Cost sharing is a financial arrangement under which a contractor bears a portion of costs of performing a contract. The intended effect of this regulation is to require cost sharing in an amount that will reflect the mutuality of interest of the contractor and the Government.

EFFECT DATE: January 12, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank Boyer, Contracts Policy and Review Branch (PM-214), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0900.

SUPPLEMENTARY INFORMATION: Prior to fiscal year 1976, money for the EPA was appropriated under the provisions of the Agriculture—Environmental and Consumer Protection Appropriation Acts. These Acts did not contain requirements for cost sharing.

It is the general policy of the EPA to invite comments regarding the development of proposed rules; however, this action consists only of a revision of an existing regulation to bring it into conformance with provisions of law and no useful purpose would be served by inviting comments.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

NOTE.—The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 28, 1977.

DOUGLAS M. COSTLE,
Administrator,
Environmental Protection Agency.

The table of contents for Part 15-3 is amended to provide new entries as follows:

Sec.
15-3.405-3-50 Basic guidelines.
15-3.405-3-51 Unsolicited proposals.
15-3.405-3-52 Determination of amount of cost sharing.

Subpart 15-3.4—Types of Contracts

Section 15-3.405-3 is revised to add §§ 15-3.405-3-50, 15-3.405-3-51, and 15-3.405-3-52 as follows:

§ 15-3.405-3 Cost sharing contract.

This section prescribes the conditions under which cost sharing contracts are to be used and guidance for the amount of cost sharing to be obtained. As defined in the Federal procurement regulations, a cost sharing contract is a cost-reimbursement type contract under which the contractor receives no fee but is reimbursed only for an agreed portion of its allowable costs. However, the principles set forth in this section are considered to apply equally to fixed-price contracts where the contractor agrees, or is required by statute, to bear a portion of the cost of performance.

§ 15-3.405-3-50 Basic guidelines.

(a) Cost sharing with non-Federal organizations shall be encouraged where the parties have considerable mutual interest in the basic or applied research subject matter of the contract. For example, when it is probable that the contractor will receive significant future benefits from the research such as increased technical knowledge useful in future operations, additional technical or scientific expertise or training for its personnel, opportunity to benefit through patent rights, and the use of background knowledge in future production contracts.

(b) Normally, cost sharing need not be applied where the contracting officer has determined that one or more of the following circumstances exist:

(1) The particular research objective or scope of effort for the project is specified by EPA rather than proposed by the performing organization. This will usually include any formal solicitation for a specific project;

(2) The research effort has only minor relevance to the non-Federal activities of the performing organization, and the organization is proposing to undertake the research primarily as a service to EPA;

(3) The organization has little or no non-Federal sources of funds from which to make a cost contribution. Cost sharing should generally not be requested if cost sharing would mean that EPA would have to provide funds through some other means (such as fees) to enable the organization to cost share. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to make a cost contribution; or

(4) Payment of the full cost of the project is necessary in order to obtain the services of the particular organization.

§ 15-3.405-3-51 Unsolicited proposals.

The Department of Housing and Urban Development-Independent Agencies Appropriation Act contains a requirement that none of the funds provided in the Act may be used for payment through grants or contracts to recipients that do not share in the cost of conducting research resulting from proposals that are not specifically solicited by the Government. Accordingly, contracts which result from unsolicited proposals shall provide for the contractor to bear a portion of the cost of performance as determined in accordance with § 15-3.405-3-52. However, where there is no measurable gain to the performing organization, there is no mutuality of interest, and, therefore, no means by which the extent of cost sharing may reflect a mutuality of interest.

§ 15-3.405-3-52 Determination of amount of cost sharing.

When cost sharing is determined to be appropriate in accordance with § 15-3.405-3-50 or required by statute pursuant to § 15-3.405-3-51, the amount of cost participation by the performing organization may vary in accordance with a number of factors relating to the performing organization and the character of the research effort. The amount of cost participation shall reflect the mutual agreement of the contracting officer and the contractor. Factors which contracting officers may consider in any negotiations with prospective contractors regarding the amount of cost-participation include the following:

(a) Cost participation by educational institutions and other not-for-profit or nonprofit organizations should normally be at least 1 percent of total project cost. In many cases cost sharing of less than 5 percent of total project cost would be appropriate in view of the organization's nonprofit status and their normally limited ability to recover the cost of such participation from non-Federal sources. However, in some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(b) The amount of cost participation by commercial or industrial organizations should depend to a large extent on whether the research effort or results are likely to enhance the performing organization's capability, expertise, or competitive position and the value of such enhancement to the performing organization. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from their research under Federal agreements. Therefore, cost participation by commercial or industrial organizations could reasonably range from as little as 1 percent or less of the total project cost to more than 50 percent of total project cost.

(c) If the performing organization will not acquire title to, or the right to use, inventions, patents, or technical information resulting from the research project, it would generally be appropriate to obtain less cost sharing than in cases in which the performer acquires such rights.

(d) Where cost sharing is required by statute, cost participation of less than 1 percent may be appropriate if consistent with the provisions of the statute and the circumstances set forth in § 15-3.405-3-50(b) are present.

(e) A relatively low degree of cost sharing may be appropriate if, in the view of the Federal agency, an area of research requires special stimulus in the national interest.

(f) A fee or profit will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit on the research. However, if the research is expected to be of only minor value to the performing organization and if cost sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing the costs of the project.

[FR Doc. 78-860 Filed 1-11-78; 8:45 am]

Will soon be chapter in contracts manual

No. PIN 77-15

Date. Feb. 7, 1977

U.S. Environmental Protection Agency
PROCUREMENT INFORMATION NOTICE

Subject: Source Evaluation and Selection Procedures

Reference: EPPR Subpart 15-3.8, Price Negotiation Policies and Techniques

Purpose & Scope: To provide revised policy and procedures for source evaluation and selection applicable to EPA competitive negotiated procurement actions in excess of $10,000 except architect-engineer services.

Discussion: The referenced EPPR established EPA policies and procedures for the evaluation of offerors for negotiation and award. The growth of case law covering the subject, as well as the potential for misinterpretation of the EPPR Subpart, and the desire to adopt a procedure that provides a detailed evaluation and selection method, prompted the drafting of the proposed chapter to the Contracts Management Manual (copy attached).

The policies and procedures set forth in the attachment shall be observed by all EPA personnel engaged in the acquisition of agency requirements through the procurement process to the extent that those requirements are within the purview of the attached chapter (see paragraph 2, APPLICABILITY).

The policies and procedures set forth become effective March 1, 1977. Concurrent with the issuance of this PIN a copy of the attachment is being forwarded to the Management and Organization Division (PM-213) for appropriate agency coordination and subsequent publication as a chapter in the Contracts Management Manual. Cancellation of the EPPR Subpart 15-3.8 will be effective on March 1, 1977.

EPA HQ FORM 1900-38 (1-76)

TABLE OF CONTENTS

PARAGRAPH TITLES	PARAGRAPH NUMBERS
Purpose	1
Applicability	2
Deviations and Exceptions	3
Policy	4
Policy	a
Conflict of Interest	b
Disclosure of Information	c
Definitions, Responsibilities, and Duties	5
Head of the Procuring Activity	a
Source Selection Official	b
Source Evaluation Board	c
Technical Evaluation Panel	d
Business Evaluation Panel	e
Program Manager	f
Project Officer	g
Contracting Officer	h
Contract Specialist	i
Director or Chief of Contract Operations	j
Source Evaluation Board Report	k
Technical Evaluation Panel Report	l
Business Evaluation Panel Report	m
Source Selection Decision Report	n
Evaluation and Selection Functional Assignments	6
In Excess of $5,000,000	a
In Excess of $1,000,000 But Not Exceeding $5,000,000	b
In Excess of $10,000 But Not Exceeding $1,000,000	c
Procurement Request and Solicitation Preparation	7
Procurement Request	a
Presolicitation	b
Evaluation Criteria	8
Preproposal Conferences	9
Prior to Issuance of the Solicitation	a
After Issuance of the Solicitation	b
Post Conference Actions	c
Receipt and Distribution of Offers	10
Receipt	a
Security Measures	b
Distribution of Offers	c

TABLE OF CONTENTS

Evaluation Procedures 11
Initial Review . . . . . a
Scoring Plan . . . . . b
Scoring System c
Evaluation Guidelines . . . . . d
Ranking . . . . . e
Other Evaluation Factors 12
Determination of the Competitive Range 13
Technical Evaluation . . . . . a
Business Evaluation . . . . . b
Determination and Documentation c
Example . . . . . d
Written or Oral Discussions 14
Background . . . . . a
Purpose . . . . . b
Uncertainties c
Deficiencies . . . . . d
Limitations . . . . . e
Best and Final Offer 15
Notification . . . . . a
Receipt . . . . . b
Evaluation c
Limitation . . . . . d
Source Selection Decisions 16
General . . . . . a
SSO Selection . . . . . b
Contracting Officer Selection c
Negotiations with the Source Selected 17
Award 18
Notifications to Unsuccessful Offerors 19
Unacceptable Offers . . . . . a
Competitive Range . . . . . b
Unsuccessful Offerors c
Debriefing 20

Exhibits

1. PURPOSE. This Chapter prescribes the policies and procedures for the source evaluation and selection processes pertaining to the procurement of personal property and nonpersonal services (including construction) as defined in the Federal Property and Administrative Services Act of 1949, as amended, and major systems acquisition as set forth in Office of Management and Budget Circular A-109 from non-Federal sources by competitive negotiation.

2. APPLICABILITY.

a. The provisions of this Chapter apply EPA-wide to all competitive negotiated procurement actions in excess of $10,000 except architect-engineer services. For the selection and award procedures pertaining to architect-engineer services see Federal Procurement Regulations (FPR) Subpart 1-4.10 as implemented by Environmental Protection Agency Procurement Regulations (EPPR) Subpart 15-4.10.

b. Generally the provisions of this Chapter also apply to the procurement of automatic data processing equipment and services. However, any special requirements placed by the General Services Administration on a particular procurement action shall take precedence if such requirements are in conflict with any provision of this Chapter.

c. The provisions need not be applied to negotiated procurement where award is based on any of the conditions set forth as exceptions in FPR 1-3.805-1(a)(1) through (a)(5). However, in those cases where

technical evaluation of offers is a significant factor in the source selection process, the procedures are applicable.

d. In those cases where the charter of a Federal Contract Research Center (FCRC) permits competition, these procedures apply.

3. DEVIATIONS AND EXCEPTIONS. The Director, Contracts Management Division (PM-214), may authorize deviations or exceptions to any of the provisions of this Chapter upon the receipt of adequate justification (also see EPPR 15-1.009-2).

4. POLICY.

a. Policy. It is EPA policy that source evaluation and selection shall be conducted in accordance with standards and procedures that insure fair and impartial treatment of all offerors, and further insure the selection of sources whose performance is expected to best meet EPA objectives at a reasonable price or cost within budgetary resources. Commensurate with this policy it is paramount that source evaluation and selection proceedings be conducted in a manner designed to avoid any appearance of bias, partiality, arbitrary or capricious behavior, inequitable treatment, or undue influence.

b. Conflicts of Interest.

(1) Title 40, Protection of Environment, Part 3, of the Code of Federal Regulations, prescribes the high ethical standards of conduct required of each EPA employee, including both regular and special Government employees as they are covered by Part 3, in carrying out their duties and responsibilities. Each EPA employee engaged in source evaluation and selection is required to familiarize himself with the

provisions of Part 3 regarding conflicts of interest and to inform the Director or Chief of Contract Operations in writing if his participation in the source evaluation and selection process could be reasonably interpreted as a possible or apparent conflict of interest. Any EPA employee so informing the Director or Chief of Contract Operations and determined to have a conflict of interest shall be relieved of further duties in connection with the evaluation and selection process and a successor designated.

(2) Only regular or special Government employees of EPA, or where appropriate, other Federal Government agencies, shall participate in the evaluation and selection process. Employees of contractors shall not participate either formally or informally in the evaluation and selection process.

c. Disclosure of Information. During the course of evaluation and selection, personnel shall not reveal any information concerning the evaluation to anyone who is not also participating in the same evaluation proceedings, except as may be required for internal clearances or technical assistance. The right to information during the evaluation process does not extend to the chain of supervision of personnel engaged in the evaluation. However, nothing in this procedure precludes reasonable status reports of activities to persons having program or procurement responsibilities, provided that no information relating to the status or content of a specific proposal is disclosed.

5. DEFINITIONS, RESPONSIBILITIES, AND DUTIES.

a. Head of the Procuring Activity. As defined in FPR 1-1.206, "head of the procuring activity" means that official intermediate between

the head of the agency and the contracting officer, who has the responsibility for supervision and direction of the procuring activity. For the purpose of this Chapter, the Director, Contracts Management Division (PM-(PM-214), is the head of the procuring activity in that he is responsible for the procedural supervision and direction of all EPA organizational elements engaged in procurement. Specific functions in regard to source evaluation and selection include:

(1) Monitor the source evaluation and selection process;

(2) Provide guidance and direction where required; and

(3) Rule on requests for deviation and exceptions from the policy and/or procedures prescribed herein.

b. Source Selection Official. The official designated, as hereinafter provided in this Chapter, to direct the source selection process. Duties include:

(1) Appointing the Source Evaluation Board and chairman;

(2) Appointing the Technical Evaluation Panel and Business Evaluation Panel and chairmen;

(3) Approving the solicitation and the evaluation criteria, including any changes subsequent to issuance;

(4) Monitoring the source evaluation and selection process;

(5) Providing guidance and/or direction when required;

(6) Approving competitive range determinations and exclusion of offerors therefrom;

(7) Selecting source(s) for negotiations; and

(8) Conducting formal debriefings.

c. Source Evaluation Board. The Source Evaluation Board (SEB) is appointed by the Source Selection Official (SSO), and is composed of personnel representing the various functional and technical disciplines involved in a specific procurement action. The membership consists of a chairman who is responsible for all of the procedural and administrative aspects of the SEB, and other specialists, e.g., technical, legal, procurement, and financial, as may be deemed appropriate by the SSO. In addition to the chairman and other specialists, the Chairman of the Technical Evaluation Panel (TEP) and Business Evaluation Panel (BEP) are members of the SEB.

d. Technical Evaluation Panel. The TEP is composed of personnel including, but not limited to, the project officer and at least two additional members knowledgeable of the technical aspects of the procurement action. Responsibilities of the TEP are to participate in the coordination of evaluation criteria and statement of work for the solicitation, evaluate offers, provide a comprehensive evaluation report to the SEB, and prepare a summary of the strengths and weaknesses of each offer for the Chairman of the SEB to use in his presentation to the SSO.

e. Business Evaluation Panel. The BEP is composed of personnel including, but not limited to, the contracting officer and/or contract specialist, and a cost and price analyst. Responsibilities of the BEP are to participate in the coordination of evaluation criteria and statement of work for the solicitation, evaluate the business and contractual aspects of the offerors' business proposals, and prepare a

summary of findings, including strengths and weaknesses of each offer, and recommendations for the use of the Chairman of the SEB to use in his presentation to the SSO.

f. Program Manager. The EPA program official at division, office, or laboratory director level having overall responsibility for the management of a program. The program manager usually is the Chairman of the SEB.

g. Project Officer. The EPA individual designated by the program manager, with the concurrence of the SSO as the technical representative for the procurement action. The project officer usually is the Chairman of the TEP.

h. Contracting Officer. The EPA official delegated the authority to enter into and administer contracts and make related determinations and findings. Delegations of contracting officer authority have been made by the Administrator to positions in EPA and redelegated to positions and individuals whose functions are to provide procurement support (See Delegations Manual, Chapter 1, General, Administrative and Miscellaneous).

i. Contract Specialist. The EPA individual assigned the responsibility for the procurement action and for the accomplishment of the administrative duties necessary for and leading to a contract. Responsibilities of the contract specialist include, but are not limited to, preparing the solicitation document, arranging preproposal conferences, conducting negotiations, insuring complete and accurate documentation of the official contract file, and preparing the

contractual instrument. Generally, the contract specialist is also responsible for receiving, safeguarding, distributing offers to the SEB, and, when so designated, may be a member of the BEP.

j. Director or Chief of Contract Operations. The senior EPA individual classified in the GS-1102 series having assigned responsibilities for the management and operations of the procurement activities at a specific location, i.e., Washington, D.C.; Research Triangle Park, North Carolina; and Cincinnati, Ohio.

k. Source Evaluation Board Report. The formal report prepared by the SEB which contains the evaluation standards (including the evaluation criteria, specifications, and other special terms and conditions of the solicitation), detailed narrative assessments of each offer against these standards, numerical scores when used, and a summary of facts and findings of significant strengths, weaknesses, and risks of each offer. The SEB report forms the basis for analysis and selection by the SSO.

l. Technical Evaluation Panel Report. The formal narrative report prepared by the TEP for submission to the SEB. This report is the basis for a major portion of the SEB report to the SSO. It includes the detailed scoring and a summary of facts and findings of significant strengths, weaknesses, and risks associated with each offer. The report must be in sufficient detail to permit a determination of acceptable offers, justify the relative ranking of offers, and to adequately advise, through debriefing sessions, those offerors who did not receive an award of the reason their offers were not accepted.

m. Business Evaluation Panel Report.

(1) The formal narrative report prepared by the BEP for submission to the SEB. This report is the basis for a portion of the SEB report to the SSO. It includes the consideration, analysis, and recommendations concerning the following elements of each offeror's business and management proposal:

(a) Reasonableness of price or estimated cost in relation to the requirement;

(b) Investigation and analysis of unrealistically low or or high cost elements;

(c) Evaluation of the proposed management structure to be utilized for performance;

(d) Indirect cost management;

(e) Analysis of manhours, materials, and, if applicable, such elements as computer time, subcontractors, consultants, and travel;

(f) Subcontracting program as it relates to small business, labor surplus area concerns, and minority business enterprises; and

(g) Record of past performance under prior Government contracts as it relates to timely performance, history of cost control, requests for changes, and quality of the end product.

(2) The Business Evaluation Report represents a continuing function during the source evaluation and selection process. It may be necessary to prepare more than one business evaluation report. One may be prepared based upon preliminary evaluations of offers wherein

a price or cost comparison is made between offeror's proposals and against an independent Government cost estimate. A second report may be required to analyze laborhours against classification of skills among the offerors. For example, the hourly rates of one offeror may appear to be high in comparison to other offerors, but the analysis may indicate an entirely different classification of skills offered. The final Business Evaluation Report contains a detailed analysis of the individual elements of the offeror's price or costs and is normally supported by an audit report. The requirements relating to contract audit as a pricing aid are set forth in FPR 1-3.809.

(3) Generally, business proposals are not susceptible to the application of a numerical scoring system. However, the BEP Report should reflect adjectival ratings for each significant element of the proposal that has been analyzed. The adjectival ratings to be used are "minus," "plus," or "check" and are applicable under the following conditions:

(a) "Minus" means that the particular element is lacking to such a degree that contract performance may be impaired;

(b) "Plus" means that the particular element is superior to such an extent that contract performance is likely to be enhanced; and

(c) "Check" means that the particular element neither exceeds nor falls below what is considered essential for successful contract performance.

n. Source Selection Decision Report. The Source Selection Decision Report is prepared by, or under the direction of, the SSO. It reflects the analysis made by the SSO of the SEB Report, the TEP Report, and the BEP Report. The Report fully documents the rationale of the SSO in arriving at the decision to select a particular source, or sources, for final negotiation.

6. EVALUATION AND SELECTION FUNCTIONAL ASSIGNMENTS. The following conditions are applicable to the appointment or designation of the SSO, SEB, TEP, and BEP and their functional duties with respect to procurement actions of the dollar values indicated.

a. In Excess of $5,000,000:

(1) SSO - The Head of the Procuring Activity (see 5a);

(2) SEB Chairman - Program Manager (see 5f);

(3) SEB Members - Chairmen of the TEP and BEP. (Such other specialists may be appointed by the SEB Chairman as deemed appropriate for the particular procurement action) (see 5c);

(4) TEP Chairman - Project Officer (see 5d); and

(5) BEP Chairman - Contracting Officer (see 5e).

b. In Excess of $1,000,000 But Not Exceeding $5,000,000:

(1) SSO - Director or Chief of Contract Operations (see 5j);

(2) SEB Chairman - Program Manager (see 5f);

(3) SEB Members - Chairmen of the TEP and BEP. (Such other specialists excluding members of the TEP and BEP may be appointed by the SEB Chairman as deemed appropriate for the particular procurement action) (see 5c);

(4) TEP Chairman - Project Officer (see 5d); and

(5) BEP Chairman - Either the Contracting Officer (see 5h) or the Contract Specialist (see 5i) as determined by the Contracting Officer.

c. In Excess of $10,000 But Not Exceeding $1,000,000:

(1) SSO - Contracting Officer (see 5h);

(2) SEB Chairman - Generally a functional SEB is not appointed for procurement actions of these dollar values; therefore, the project officer and contract specialist shall perform those duties normally associated with the SEB Chairman and SEB Members;

(3) SEB Members - None;

(4) TEP Chairman - The normal functions of the TEP are performed by the Project Officer; and

(5) BEP Chairman - The normal functions of the BEP are performed by the contract specialist and the price analyst.

7. PROCUREMENT REQUEST AND SOLICITATION PREPARATION.

a. Procurement Request. Chapter 1, Procurement Request/Requisition and Rationale Document, Contracts Management Manual prescribes policies and procedures for the use of EPA Form 1900-8, Procurement Request/Requisition, and establishes the documentation which must accompany the form. Paragraph 4e(12) sets forth the requirement for inclusion of the evaluation criteria with the form.

b. Presolicitation.

(1) The effectiveness of the source selection process depends to a large extent on the content and quality of the solicitation document.

It is important at this stage in the procurement action that the SEB, TEP, and BEP are appointed and become actively associated with the contracting officer, or contract specialist, in the preparation of the solicitation. Therefore, the SEB and panels shall be appointed at this time where the procurement action is in excess of $1,000,000.

(2) For those procurement actions not in excess of $1,000,000, the contracting officer, or contract specialist, shall thoroughly review the solicitation document for consistency with law, policy, and regulations. Other matters to be addressed include type of contract contemplated, planned contractual provisions, quantities, schedules, completeness, and specification and data requirements. The contracting officer shall insure that specification requirements have been correlated with the operational needs. The contracting officer shall insure that both management and technical data requirements have been similarly evaluated to eliminate nonessential or unduly restrictive requirements.

(3) Irrespective of the dollar value of the procurement action the solicitation document including the evaluation criteria shall be reviewed and approved by the SSO, as designated in paragraph 6a, b, or c, above, prior to release to the public. Proposed amendments of the solicitation shall be similarly reviewed and approved prior to release.

8. EVALUATION CRITERIA.

a. Although the initiator of EPA Form 1900-8, Procurement Request/ Requisition, is responsible for the development of the evaluation criteria, the TEP and BEP are additionally responsible for insuring that the evaluation criteria are adequately stated and are applicable to the procurement action.

b. The development of evaluation criteria is not susceptible to the application of a pre-determined mathematical formula, but must be developed on a case-by-case basis after taking into consideration all of the salient features of the specific procurement action. Each element of the evaluation criteria must have a direct and important relationship to each salient feature.

c. All offerors must be able to readily determine from an examination of the criteria included in the solicitation, the bases upon which their offers will be evaluated. In order to accomplish this, the criteria shall be set forth in elements, and subelements to the extent appropriate, and provide the relative order of importance of each.

d. Depending upon the procurement action, weights may be assigned to each major element of the evaluation criteria; however, it is not necessary to specify subelement weights. The decision regarding the use of evaluation criteria having assigned weights vests in the SSO.

e. Where the ratio of importance of one element to another is 6 to 1, or higher, the weights must be set forth in the solicitation (see Comptroller General Decisions B-180245, May 9, 1974 and B-184446, March 2, 1976). Likewise, consideration should be given to including weights in the solicitation where the ratio is 5 to 1, or as low as 4 to 1.

9. PREPROPOSAL CONFERENCES. Preproposal conferences are an important part of the solicitation process, and shall be conducted in a fair and impartial manner that will not give any prospective offeror an unfair competitive advantage over another. The determination to conduct a preproposal conference may be made by the SSO, or the contracting officer, under the following conditions:

a. Prior to Issuance of the Solicitation. Where it is determined that a preproposal 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) Reveal 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, and site tour, or visits to the place of performance.

b. After Issuance of the Solicitation. It may become necessary to conduct a preproposal conference even though the solicitation does not provide for one. A notice shall be given to all prospective offerors who have received the solicitation, and shall be in such form as the SSO, or contracting officer, may determine, i.e., an amendment to the solicitation or a letter notice. The following circumstances are indicative that a preproposal conference is desirable.

(1) Numerous questions regarding the solicitation have been directed to the contracting officer, contract specialist, or project officer, and these questions are relative to substantive matters;

(2) An important segment of industry requests the conference; or

(3) Continuing review of the technical and business aspects of the solicitation by EPA personnel reveals matters which should be clarified.

c. Post Conference Actions. The actions to be taken following a preproposal conference are dependent upon several factors, generally as follows, and are largely judgmental.

(1) In those cases where a transcript (either based upon tape or stenographic notes) has been prepared, the transcript may be furnished to all prospective offerors or all prospective offerors may be notified of its availability upon request, provided that, nothing in the transcript in any way modifies the solicitation; or

(2) Where the transcript modifies the solicitation, an amendment of the solicitation shall be prepared and furnished to all prospective offerors.

10. RECEIPT AND DISTRIBUTION OF OFFERS. The integrity and consequent effectiveness of the source evaluation and selection process is dependent upon the care that must be exercised in the receipt and subsequent handling of offers. Offerors' identities, offer contents, and prices shall be handled with the utmost discretion to avoid compromising the evaluation results, or giving any offeror an unfair competitive advantage over other offerors. The contracting officer is the single point of contact during the entire competitive process. Any questions regarding the receipt and distribution of offers, the status of the proceedings, or other matters shall be referred to the contracting officer. The receipt and distribution of offers shall be governed by the following minimum standards:

a. Receipt. Only those offers which are received on or before the time and date set forth in the solicitation shall be considered for award, unless the late receipt is due to one of the conditions described in the "Late Proposals, Modifications of Proposals, and Withdrawals of Proposals" provision of the solicitation.

b. Security Measures. The Director or Chief of Contract Operations is responsible for insuring that as offers are received they are promptly recorded and properly safeguarded to prevent unauthorized disclosures.

c. Distribution of Offers. Each EPA solicitation sets forth a requirement that offerors shall submit the technical and business proposals as separate and complete in themselves so that evaluation of each may be accomplished concurrently and independently. It is imperative that this separation be maintained throughout the evaluation process to insure that the technical evaluation is conducted solely on the technical

proposal and is not in any way influenced by cost or price considerations. Therefore, promptly following the time and date set for the receipt of offers, the contract specialist, or other individual who has been designated by the Director or Chief of Contract Operations, shall distribute the technical and business portions to:

(1) The TEP and BEP, respectively, where the procurement action is in excess of $1,000,000: or

(2) The project officer (technical portion only) and contracting officer, or contract specialist when so designated, and the price analyst (business portion only) where the procurement action is $1,000,000 or less.

The contract specialist, or other designated individual, shall maintain a record, i.e., log of the offers received, furnish a copy of this record to the recipients of the offers, and obtain a receipt, if deemed appropriate. Recipients shall be advised of the requirements for maintaining the technical and business proposals as completely separate entities, and of the requirements regarding the disclosure of information contained in the offers (see 4c).

In those cases where offerors have been instructed to submit their technical offers to a location other than the procurement activity, the individual at that location must be designated to receive, record, and distribute offers in the same manner as prescribed for the contract specialist.

The original copy of each offer received shall be retained by the contract specialist, pending the completion of the evaluation process, as the official file copy. This original copy and any modifications thereto

shall become a part of the official contract file after award. Concurrent with the distribution of the proposals, the contract specialist shall advise the evaluators when the evaluation must be completed and the evaluation reports are to be submitted to the SEB or, when the procurement action is $1,000,000 or less, to the SSO.

11. EVALUATION PROCEDURES. In previous parts of this Chapter, the evaluation and source selection policy has been established; definitions, responsibilities, and duties have been set forth; functional assignments have been made; and the procedures leading to the receipt and distribution of offers have been described. This paragraph expands on the procedures governing the technical and business evaluation of offers, and prescribes the method of scoring that shall be used in determining the relative ranking of offers.

a. Initial Review. Technical proposals shall be reviewed promptly after the time and date for the receipt of offers as set out in the solicitation. The purpose of this review is to determine if any of the offers are so technically deficient as to conclusively remove them from further consideration. Either the contracting officer, project officer, the TEP, or the contract specialist acting alone, or in conjunction with each other, shall make this initial review. Some examples of technically deficient offers are: the offeror is offering equipment instead of the study called for in the solicitation, the technical approach will clearly not accomplish the desired results, the offer contains an approach or methodology that has previously been found to be unworkable, or the offer is contingent upon conditions which EPA cannot meet without violating

statutes or regulations. The removal of an offer from further consideration is a very serious matter which may have an adverse impact upon EPA; consequently, if any reasonable doubt exists regarding the offer it shall be included for complete evaluation, scoring, and ranking.

b. Scoring Plan. The scoring of offers must be done through the application of a predetermined scoring plan consisting of numerical values. These values are applied against the weight assigned to each subelement of the evaluation criteria set forth in the solicitation. The values are on a scale of zero through five; consequently, each value, except zero, represents 20% of the maximum rating that a subelement may receive. For example, an assigned value of four means that within a particular subelement the offer has been evaluated and found to contain 80% of the elements of the scoring plan. The following scoring plan shall be used in conjunction with numerical weights to arrive at scores for each element and subelement.

SCORING PLAN

Value	Descriptive Statement
0	Not addressed in the offer.
1	Addressed, but totally deficient.
2a	Deficient, but appears to be capable of improvements to adequate or better without adopting a new approach.
2b	Appears to be deficient; however, final scores will be determined subsequent to answers to written questions and/or oral questions.
3	Adequate; overall it meets the specifications.
4	Good; has some superior features.
5	Generally superior in most features.

The relationship of the scoring plan to written or oral discussions and to subsequent negotiations is as follows:

(1) Value of "0," "1," or "2a" - The element or subelement clearly is deficient and is not to be questioned or discussed during written or oral discussions. Such values are solely for the purposes of scoring, ranking, and determination of the competitive range. If, however, the offer attains an overall score, because of other factors, that places it in a sufficiently high position to be selected for negotiations, the offeror shall be allowed to correct these deficiencies during negotiations.

(2) Value of "2b" - The element or subelement contains uncertainties which must be resolved before the offer is fully understood. Such uncertainties are to be resolved during written or oral discussions, and the offer is to be given a final score that is based on the offeror's clarifications.

(3) Values of "3," "4," or "5" - The element or subelement is fully understood and there is no need for clarification by the offeror. However, discussions involving any such elements or subelements are not precluded.

c. Scoring System. The SEB, or contracting officer in the case of procurement actions not in excess of $1,000,000, shall prepare a scoring system for evaluating each offer against each evaluation criterion set forth in the solicitation. The scoring system shall consist of the scoring plan (see paragraph 11.b) and numerical weights assigned to each element and subelement of the evaluation criteria. The numerical weights assigned must coincide with the relative importance of each evaluation criterion

element and subelement. For example, if the solicitation stated that the first criterion was twice as important as each of the remaining three, then the scoring system should reflect this by providing for a maximum numerical weight of 200 points for this element of the offer, and 100 points for the remaining three elements. When the scoring system contains subelements, particular attention must be given to maintaining the relative importance of each subelement to the total element. The scoring system shall be developed prior to any comprehensive review of offers, and, once adopted, shall be applied without change throughout the entire evaluation. On rare occasions it may be found that the system is impracticable or not conducive to fair and impartial scoring. In such cases the system may be modified with the approval of the Director or Chief of Contract Operations. However, all offers shall be rescored using the modified system.

In scoring offers a numerical value of the scoring plan is applied to each numerical weight in order to arrive at a score for that particular element or subelement. The sum of these scores is the overall score attained by the offer. The following example is an outline of a typical scoring system showing the assignment of numerical weights, the application of the scoring plan, the derivation of individual scores for each element and subelement, and the overall score to be used in ranking the offers.

TECHNICAL EVALUATION SCORING SYSTEM

Evaluation Criteria	Numerical Weight	Scoring Plan	Individual Scores
I. Adequacy of Technical Proposal	200		128
a. Literature search and investigation methodology	40	3	24
b. Proposed sources of information	40	2b	16
c. Plan for assessing the value of each publication	40	5	40
d. Correlation of literature to economic aspects	40	4	32
e. Presentation of findings	40	2a	16
II. Project Management	100		55
a. Previous experience the project manager has had in this type of effort	25	3	15
b. Company resources available to the project manager	25	5	25
c. Proposed subcontracting effort in connection with obtaining additional resources	25	0	0
d. Project management organization and plan	25	3	15
III. Personnel Qualifications	100		62
a. Technical experience of principal project staff related to the project performance	35	4	28
b. Educational qualifications related to the project performance	35	4	28
c. Qualifications of consultants	30	1	6
		Total Score	245

The application of the principles set forth in 11.b.(1), (2), and (3) to the above sample will result in the following:

(1) Item I.b, Proposed sources of information, must be discussed with the offeror, and the element appropriately rescored. If the clarification offered is such that a rescoring is not appropriate, the value and score will remain as initially determined;

(2) Item I.e, Presentation of findings, is not to be discussed, but the offeror shall be allowed to correct his offer if he is selected for negotiations because of other factors that have resulted in the attainment of a high rank; and

(3) Items II.c, Proposed subcontracting effort in connection with obtaining additional resources, and III.c, Qualifications of consultants, shall be treated in the same manner under the same circumstances set forth in (2) above.

d. Evaluation Guidelines. The evaluation of offers requires the exercise of careful judgment on the part of each evaluator. Offers must be carefully read and analyzed before the scoring plan is applied to any element or subelement. Evaluators should consider the following when analyzing offers:

(1) Avoid "reading into" or "reading out of" any portion of the offer a meaning other than the exact language appearing in the offer;

(2) Avoid the tendency to interpret the meaning of the offeror's writing;

(3) Avoid any infusion of personal knowledge concerning the offeror, particularly if the offer does not address the matter;

(4) Recognize that the assignment of a score to an element or subelement is subjective and based upon judgment;

(5) Recognize that no two individuals may assign the same numerical score to an element or subelement;

(6) Recognize ambiguities, inconsistencies, errors, omissions, irregularities, and deficiencies that can affect scoring;

(7) Recognize that offerors often use "catch phrases," "buzz words," and semi-legalistic phraseology which may not indicate a thorough understanding of the solicitation;

(8) Recognize the quality of substance and do not be influenced by form, format, or method of presentation;

(9) Recognize flattery on the part of the offeror; and

(10) Avoid forming "first impressions" of an offer that might tend to influence the score to be assigned.

e. Ranking. The assignment of numerical scores to an offer determines the relative rank of that offer with respect to other offers. While the use of predetermined scores as a cutoff for the establishment of the competitive range is prohibited, the scoring and relative rank of offerors does influence this determination materially. This is particularly true when an offer, or group of offers, falls significantly below the lowest score attained by the higher ranking offers.

12. OTHER EVALUATION FACTORS. Frequently there are other factors that enter into the evaluation process that must be considered in arriving at a relative ranking. These factors are not included in the evaluation criteria of the solicitation, but consist of important items which may have a significant impact upon the determination of those offers within the competitive range and upon selection for award. They are not point scored, but are presented to the SSO for his consideration as deemed appropriate. While some of these items appear in 5 m, concerning the functions of the BEP, the following examples are items related to prior performance on Government contracts that must be taken into consideration:

a. Compliance With:

(1) Socio-economic programs such as small business and labor surplus area concerns and minority business enterprise;

(2) Labor standards provisions such as the Fair Labor Standards Act, Service Contract Act of 1965, Contract Work Hours and Safety Standards Act, and, if applicable, the labor standards provisions relative to construction;

(3) The provisions of the Disabled Veterans and Veterans of the Vietnam Era and the Employment of the Handicapped clauses; and

(4) The provisions of the Clean Air and Water acts.

b. Have Record of:

(1) Lack of integrity, business ethics, or failure to apply necessary tenacity or perseverance to do an acceptable job;

(2) Poor financial capability or credit;

(3) Violation of statutes or regulations resulting in placement on a debarred, suspended, or ineligible listing (see FPR 1-1.6);

(4) Actual or potential conflict of interest situation; and

(5) Previous determinations of nonresponsibility in connection with the award of contracts.

c. Additional. There may be occasions where there are reasons to include other factors that are not stated above. However, they must be reasonable in the judgment of the SSO and pertinent to the procurement action.

13. DETERMINATION OF THE COMPETITIVE RANGE. Determination of the competitive range is not treated in depth by the FPR (see 1-3.805-1(a)), which states in part "... a competitive range, price and other factors considered, except ..." The implication here being that price is the primary consideration, and that other factors are secondary. In the case of EPA procurement actions this would be applicable only to negotiated supply contracts, but is not applicable to the procurement of research and development studies, surveys, demonstrations and similar subjects which are more prevalent. Almost all EPA procurement actions to which this Chapter applies involve other factors which are of greater importance than the price or estimated cost proposed. Accordingly, determination of the competitive range shall be made only after evaluation of all offers received and careful consideration of and possible trade offs as follows:

a. Technical Evaluation. While the attainment of a particularly high score would seem to indicate that an offer should be considered

within the competitive range, upon consideration of the price offered, it may not be practicable to trade off the superior technical aspects of the offer against a significantly higher price. Generally, the attainment of a high technical evaluation score in itself need not be sufficient basis for a 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.

b. Business Evaluation. The business evaluation of offers is an essential element in determining the competitive range, and is of particular significance where several offers have received scores that are close in numerical value as a result of the technical evaluation. In such cases, the business evaluation may be the determining factor in arriving at the competitive range. Similarly, one or more of the factors set forth in paragraph 12 may be of such importance that the offer cannot be reasonably determined to be within the competitive range.

c. Determination and Documentation. The contracting officer shall make the determination of the competitive range with the subsequent approval by the SSO (see 5 b (6)). 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 should be 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 the rationale supporting the determination.

d. Example. The following example is furnished for guidance in 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.	200	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 qualities. A review of the scoring will show several essential qualities to have been scored as "0," "1," or "2a;"

(2) A Co., while attaining the highest technical score has offered a price/cost that is unreasonable for the effort required. If an analysis of the business proposal shows that several elements of cost or price are unusually high, but may be susceptible to downward revision, the offer may be included in the competitive range; however, if those circumstances do not exist, the offer may safely be considered to be outside the competitive range because of price/cost.

(3) C Co., has attained a score which represents only 50% of the essential qualities desired. This is also reflected in the business proposal. The offer should not be considered within the competitive range, and

(4) The offers of B Inc., K Co., and D Co., are close as to both the technical evaluation and cost/price offered. Therefore, these three offers should be within the competitive range, and, depending upon the

circumstances incident to the much higher price, A Co., may also be included.

14. WRITTEN OR ORAL DISCUSSIONS

a. Background. Public Law 87-653, commonly known as the Truth in Negotiations Act, amended 10 U.S.C. 2304(g) to require written or oral discussions in negotiated procurements with all responsible offerors who submit proposals within a competitive range. While this Act did not apply to those agencies subject to the Federal Property and Administrative Services Act of 1949, as amended, the Administrator of General Services has applied the same provision to civilian executive agencies in the interest of uniformity. This provision is set forth in FPR 1-3.805-1(a).

b. Purpose. The FPR provides guidance as to the purpose of conducting discussions by the statement contained in 1-3.804 which is "Oral discussions or written communications shall be conducted with offerors to the extent necessary to resolve uncertainties relating to the purchase or the price to be paid." By interpretation, the purposes of these discussions are to:

(1) Provide offerors an opportunity to further explain their offers;

(2) Afford the contracting officer an opportunity to understand fully what is being offered;

(3) Arrive at preliminary agreements regarding price, cost, performance, contract terms and conditions; and

(4) Resolve minor informalities in offers, e.g., incomplete representations and certifications, and incomplete cost or pricing information.

c. Uncertainties. An uncertainty is described as any part of an offer that is not stated in a manner that is clear and concise enough to avoid the necessity for interpretation of its meaning or intent. Uncertainties may arise because of terminology, sentence structure, grammatical composition, word usage, misspelling, or inconsistencies or ambiguities in two or more portions of the offer.

d. Deficiencies. Deficiencies, as distinguished from uncertainties, are those portions of an offer that are lacking in some necessary quality or element such that they do not address the minimum requirements as stated in the solicitation.

e. Limitations. Careful judgment in determining the extent of discussions must be exercised. Discussions with each offeror must be confined to those areas of the offer that have been identified as containing uncertainties. There must be a scrupulous avoidance of disclosure of technical information, ideas, or cost data from any other offeror. No indication shall 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, but in so doing, the price elements of any

other offeror must not be discussed, disclosed, or compared. It is of paramount importance that discussions shall not be extended into the identification and correction of deficiencies.

15. BEST AND FINAL OFFER

a. Notification. At the conclusion of written or oral discussions, a final common cut-off date, in accordance with FPR 1-3.805-1(b), which allows a reasonable opportunity for submission of final written offers must be established and all participants so notified. This notification must include information to the effect that discussions are being concluded; offerors are being asked for their "best and final" offer (which can be a confirmation of a prior offer, but should be explicitly stated as a final offer); and the confirmation or revised final offer must be submitted by the date specified. When contracting officers call for the "best and final" offer, offerors should be cautioned against "buying-in" and submitting unsupported changes in their former offers.

b. Receipt. Any "best and final" offer received after the established final common cut-off date must thereafter be handled as "late" in accordance with FPR 1-3.803-1.

c. Evaluation. "Best and final" offers shall be subject to a final evaluation (price or cost, technical, and other salient factors) to the extent considered necessary by the contracting officer. Evaluations shall be performed in accordance with the procedures previously prescribed for use in the evaluation of initial offers (see paragraph 11, EVALUATION PROCEDURES and paragraph 12, OTHER EVALUATION FACTORS) in order to determine the relative ranking of the revised offers.

d. Limitation. Contracting officers shall not call for "best and final" offers more than once unless fully justified and then only when approved by the SSO.

16. SOURCE SELECTION DECISIONS.

a. General. The selection of a source, or sources, for negotiations shall be made after the receipt and evaluation of "best and final" offers.

b. SSO Selection. After the SSO has reviewed the SEB report (see 5 k) he shall prepare, or direct the preparation of, a source selection decision report which shall reflect:

(1) The source selection decision,

(2) Comprehensive rationale for the decision,

(3) Authorization for the contracting officer to conduct negotiations with the source selected, and

(4) Authorization to award a contract upon successful completion of negotiations.

c. Contracting Officer Selection. For these procurement actions not in excess of $1,000,000, the contracting officer shall prepare a source selection decision report which reflects:

(1) The source selection decision, and

(2) Comprehensive rationale for the decision.

17. NEGOTIATIONS WITH THE SOURCE SELECTED. The contracting officer, assisted by the contract specialist and such other technical and business specialists as deemed appropriate, shall conduct negotiations with the source selected. Such negotiations shall not involve material changes which, in the judgment of the contracting officer, would alter the bases for the source selection decision. In the event that the SSO directs negotiations with more than one source, negotiations may be conducted successively with those sources selected. At the conclusion of negotiations offerors will be requested to submit written confirmation of agreements with respect to price and other significant elements agreed upon. A common cut-off date shall be established for the receipt of these confirmations. The procedures described in paragraph 16, SOURCE SELECTION DECISION, paragraphs b(1), (2) and (4) or, paragraph c, as appropriate, shall be followed to document the selection decision. Negotiations at this point in the source evaluation and selection process permits consideration and correction of elements and subelements which were assigned numerical values of "0," "1," or "2a."

18. AWARD. Contract award shall be made to that offeror who has submitted an offer which promises the greatest advantage to EPA in terms of performance at an affordable cost, and as a result of fair and impartial evaluation. However, award shall be made only after all required clearances and approvals have been obtained.

19. NOTIFICATIONS TO UNSUCCESSFUL OFFERORS.

a. Unacceptable Offers. Written notice shall be given to those offerors whose offers have been found to be unacceptable as a result

of the initial evaluation made pursuant to 11 a. The notice shall be substantially in accordance with Exhibit A and shall be furnished promptly following the initial evaluation.

b. Competitive Range. Promptly after establishing the competitive range those offerors (other than those in 19 a, above) whose offers have not been found to be within the competitive range shall be notified. The notice shall be substantially in accordance with Exhibit B.

c. Unsuccessful Offerors. Offerors who have not been selected for award shall be notified as promptly as possible that their offers are no longer being considered. If after selection of the successful offeror, it is expected that an award will be made in a short period of time, those offerors that were within the competitive range, but have not been selected for award, need not be notified. In such cases the notification shall be made after award (see FPR 1-3.103(b)). Where notification is made before award, such notice shall be substantially in accordance with Exhibit C.

20. DEBRIEFING. If unsuccessful offerors request a debriefing prior to contract award, they shall be afforded the opportunity for a formal debriefing, provided that the contract award will not be unreasonably delayed. Debriefing shall be conducted only for those offerors who submit written requests, and where the request has been signed by a corporate official, senior partner, or other comparable executive of the offeror. Debriefings must be absolutely factual and in conformance with the documentation supporting the decision of the selection official. Restrictions on disclosure of information pertaining to any other offeror's proposal are set forth in FPR 1-3.103(b).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PLANNING AND MANAGEMENT

Gentlemen:

Your proposal submitted in response to our Request for Proposals No. _____ has been received and has undergone an initial technical evaluation. As a result of this evaluation, your proposal has been found to be inadequate in the treatment of certain elements which we consider to be essential for successful contract performance. The inadequate areas were (briefly explain the areas which were considered inadequate).

A substantial modification of your proposal would be necessary to correct the inadequate treatment. The "Late Proposals, Modifications of Proposals, and Withdrawals of Proposals" provision in the request for proposals precludes consideration of any modification of a proposal received after the date and time specified. Based on the foregoing, your proposal will not receive further consideration nor will any modifications be considered.

Your interest in EPA programs is appreciated. We encourage you to continue responding to our future requirements.

Sincerely yours,

Contracting Officer

EXHIBIT B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PLANNING AND MANAGEMENT

Gentlemen:

So that you may redirect resources held in anticipation of receiving a contract award, this Agency, as a service to you, is providing advance information which indicates your proposal submitted in response to RFP No. was not determined to be within the competitive range.

Based on the foregoing, revisions to your proposal will not be considered. Following award of the contract you will receive a further notice setting forth the successful contractor and the contract amount. We wish to express appreciation for your interest in EPA programs, and encourage you to continue responding to our future requirements.

Sincerely yours,

Contracting Officer

EXHIBIT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PLANNING AND MANAGEMENT

Gentlemen:

So that you may redirect resources held in anticipation of receiving a contract award, this Agency, as a service to you, is providing advance information which indicates your proposal for

although judged to be in the competitive range will not be considered for further negotiation. Subsequent revisions to your proposal will not be considered.

We have selected the firm listed below as the offeror whose proposal offers the greatest advantage to the Government, cost or price, technical, and other factors considered. Negotiations will be held with:

(Name of source selected for negotiations)

Following award of the contract, you will receive a further letter setting forth the name of the successful contractor and the contract amount. We wish to express appreciation for your interest in EPA programs and encourage you to continue responding to our future requirements.

Sincerely yours,

Contracting Officer

PROCESSING SEQUENCE

FOR

SOURCE EVALUATION AND SELECTION

1. Procurement Request
2. Develop evaluation criteria for the solicitation
3. Prepare and issue the solicitation
4. Receive offers
5. Conduct preliminary evaluation
6. Determine the competive range
7. Conduct written or oral discussions
8. Request "Best and Final" offers
9. Receive and evaluate "Best and Final" offers
10. Select the source for negotiations
11. Conduct negotiations with the source selected
12. Conclude negotiations
13. Award the Contract
14. Debriefing

No. 78-3

Date. II-9-77

U.S. Environmental Protection Agency
PROCUREMENT INFORMATION NOTICE

Subject: Source Evaluation and Selection Procedures - Supplementary Procedure for Procurement Actions Not in Excess of $100,000

Reference: Procurement Information Notice (PIN) No. 77-15, February 7, 1977

Purpose & Scope: To provide a supplementary procedure for the evaluation of proposals where the procurement action is not in excess of $100,000, and the type of action is clearly susceptible to the use of simplified methods.

Discussion: PIN No. 77-15 transmitted a draft of a proposed chapter of the Contracts Management Manual entitled "Source Evaluation and Selection Procedures." Paragraph 5, Subparagraph 1, describes the Technical Evaluation Report prepared by the Technical Evaluation Panel. Paragraph 11 presents more detailed procedures governing the technical and business evaluation and prescribes a method of scoring. There have been indications from some field procurement activities that the requirements regarding narrative discussions may be creating a workload for program personnel which is resulting in delayed technical evaluations. This is particularly true where procurement actions not in excess of $100,000 are involved, and where requests for proposals are not expected to result in offers which are complex enough to require extensive evaluation.

Accordingly, a combined checklist-scoring system is authorized for use under the foregoing conditions. A suggested format and minimum number of headings of a combined checklist-scoring system is attached. Both the format and major headings may be modified to accommodate the particular circumstances and evaluation criteria of a specific request for proposals. In all circumstances the format and heading shall be compatible with the evaluation criteria.

EPA HQ FORM 1900-38 (1-76)

This supplementary procedure may be used on a trial basis through June 30, 1978. If the trial period shows conclusively that significant savings of manpower and more prompt technical evaluations have resulted, consideration will be given to amending the Source Evaluation and Selection Procedures to include the use of a combined checklist-scoring system.

Action Officer: Frank Boyer (PM-214), Telephone: 755-0900

PROPOSAL TECHNICAL EVALUATION

RFP NUMBER AND TITLE: _____

OFFEROR: _____

EVALUATED BY: _____ DATE: _____

MAXIMUM SCORE ATTAINABLE: _____ EVALUATION SCORE: _____

EVALUATION CRITERIA - SCORING PLAN - SCORE

A. ADEQUACY OF TECHNICAL PROPOSAL

1. Understanding Scope of Work (Assigned Weight: _____ Points)

%	Value	Descriptive Statement
0	0	Not addressed in the offer.
20	1	Addressed, but totally deficient.
40	2a	Deficient but appears to be capable of improvements to adequate or better without adopting a new approach.
40	2b	Appears to be deficient; however, final scores will be determined subsequent to answers to written questions and/or oral questions.
60	3	Adequate; overall it meets the specifications.
80	4	Good; has some superior features.
100	5	Generally superior in most features.

(Score: % of Assigned Weight _____)

2. Project Approach (Assigned Weight: _____ Points)

%	Value	Descriptive Statement
0	0	Not addressed in the offer.
20	1	Addressed, but totally deficient.
40	2a	Deficient but appears to be capable of improvements to adequate or better without adopting a new approach.
40	2b	Appears to be deficient; however, final scores will be determined subsequent to answers to

		written questions and/or oral questions.
60	3	Adequate; overall it meets the specifications.
80	4	Good; has some superior features.
100	5	Generally superior in most features.
		(Score: % of Assigned Weight_____)

3. Project Management - Resources Allocation (Assigned Weight:___Points)

%	Value	Descriptive Statement
0	0	Not addressed in the offer.
20	1	Addressed, but totally deficient.
40	2a	Deficient but appears to be capable of improvements to adequate or better without adopting a new approach.
40	2b	Appears to be deficient; however, final scores will be determined subsequent to answers to written questions and/or oral questions.
60	3	Adequate; overall it meets the specifications.
80	4	Good; has some superior features.
100	5	Generally superior in most features.
		(Score: % of Assigned Weight_____)

B. OFFEROR

1. Experience (Assigned Weight:_____)

%	Value	Descriptive Statement
0	0	Not addressed in the offer.
20	1	Addressed, but totally deficient.
40	2a	Deficient but appears to be capable of improvements to adequate or better without adopting a new approach.
40	2b	Appears to be deficient; however, final scores will be determined subsequent to answers to written questions and/or oral questions.

60	3	Adequate; overall it meets the specifications.
80	4	Good; has some superior features.
100	5	Generally superior in most features.

(Score: % of Assigned Weight_____)

2. Personnel Background and Experience (Assigned Weight_____Points)

%	Value	Descriptive Statement
0	0	Not addressed in the offer.
20	1	Addressed, but totally deficient.
40	2a	Deficient but appears to be capable of improvements to adequate or better without adopting a new approach.
40	2b	Appears to be deficient; however, final scores will be determined subsequent to answers to written questions and/or oral questions.
60	3	Adequate; overall it meets the specifications.
80	4	Good; has some superior features.
100	5	Generally superior in most features.

(Score: % of Assigned Weight_____)

3. Facilities (Assigned Weight_____Points)

%	Value	Descriptive Statement
0	0	Not addressed in the offer.
20	1	Addressed, but totally deficient.
40	2a	Deficient but appears to be capable of improvements to adequate or better without adopting a new approach.
40	2b	Appears to be deficient; however, final scores will be determined subsequent to answers to written questions and/or oral questions.
60	3	Adequate; overall it meets the specifications.
80	4	Good; has some superior features.

100	5	Generally superior in most features.

(Score: % of Assigned Weight_____)

DEBRIEFING REMARKS: (Specific comments concerning the proposal as it relates to the technical evaluation criteria in the RFP)

_____

_____

_____

_____

NOTE: Detailed data substantiating any score shall be made available by the evaluator upon request.

No. 78-12-10

Date. 01-19-78

U.S. Environmental Protection Agency
PROCUREMENT INFORMATION NOTICE

Subject: Service Contracts

Reference: Memo from Director, Contracts Management Division, dated January 30, 1973, same subject.

Purpose & Scope: To incorporate outstanding EPA policy into the PIN system.

Discussion: Policy continues in effect until cancelled or superseded, with the following emphasis and/or changes:

1. Note the requirement in the third paragraph for a written determination by the Contracting Officer in all instances of contracting for nonpersonal services, except as provided.
2. In the third complete paragraph on page 3 change the citation of EPA Order 1900.2 to read Contracts Management Manual, Chapter 5.
3. Note the RFP certification at the top of page 4. The permissive language "should" in the last line on page 3 is hereby changed to "shall."

Action Officer: Robert L. Wright, 755-0822

EPA HQ FORM 1900-38 (1-76)

Service Contracts

Chief, Headquarters Contract Operations
Chief, Durham Contract Operations
Chief, Cincinnati Contract Operations
Chief, Cost Review and Policy Branch

We have decided to defer publication of EPPR 15-55, Service Contracts, which appeared for rule making in the Federal Register August 29, 1972. As an alternative, the following guidance is provided:

A service contract is one which requires the contractor to furnish the Government the time and effort of his personnel, rather than (or in addition to) an end product. A contract may call for the furnishing of both supplies and services; in such a case, these guidelines apply to the extent that the furnishing of services is involved. Service contracts may be classified as "personal" or "nonpersonal." These two terms refer to the relationship between those employees of the contractor who perform the services and the Government agency for which the services are performed.

All contracts for services, other than contracts for personal services are contracts for nonpersonal services. Nonpersonal services may be obtained by contract, utilizing regular procurement procedures. The contracting officer shall, prior to issuance of any invitation for bids, request for procurement, or award, determine in writing that the services to be procured are nonpersonal in nature stating the reasons for his determination. This determination shall be maintained in the contract file in the form of a separate memorandum or an appropriate statement in the summary of negotiations. Contracts for construction and contracts for architect-engineering services for preparations of designs, plans, drawings and specifications, awarded pursuant to FPR, Part 1-18 and simplified small purchases under FPR, Subpart 1-3.6 are exempt from this determination requirement.

CONCURRENCES

OFFICIAL FILE COPY

Contracts for personal services are those contracts where, either under the terms of the contract or the method of its performance and administration, the Government has the right to (or does in fact) supervise or direct the method by which contract work is performed, subsequent to the date of execution of the contract, by means other than change orders or other contract modifications. No contracting officer or other EPA offical or employee may authorize or enter into a contract (or approve a subcontract) for the furnishing of personal services to the Government; except, when such services are to be furnished by bona fide experts or consultants.

EPA is authorized by 5 U.S.C. 3109, as implemented by annual appropriations acts, to obtain by contract or by appointment, without regard to certain otherwise applicable Civil Service requirements, personal services of experts or consultants to fill expert positions or consultant positions, on a temporary or intermittent employment basis. Where the services of experts or consultants are to be personal in nature, such services will be obtained by appointment pursuant to EPA personnel procedures whenever possible. (See EPA Order 3110.4 for policy and definition.)

No contract for expert or consultant services may be awarded until the program or staff office requesting the procurement of such services obtains and furnishes to the contracting officer a determination by the Director, Personnel Management Division (or his designee) that the services in question will be:

a. Nonpersonal in nature; or

b. Personal in nature, and furnishes to the contracting officer satisfactory evidence that the personal services of a particular individual are required and that circumstances beyond the control of such individual would prevent his accepting an appointment under personnel procedures if such an appointment were tendered.

Contracts for services of experts and consultants shall not be used --

(1) To perform work which can be done as well by regular EPA employees

(2) To perform duties of a full-time continuing position

(3) To avoid competitive civil service employment procedures

(4) To avoid statutory pay limitations

(5) To avoid agency manpower ceilings.

The requirements of EPA Order 3110.4 which concern confidential statements of employment and financial interests, dual employment and dual compensation, political activity restrictions, etc., shall be complied with with regard to each individual who performs personal services by contract.

Compensation of individuals who contract with the Government to furnish personal expert or consultant services shall not exceed the compensation that would be allowable were such individuals appointed pursuant to EPA personnel procedures in accordance with EPA Order 3110.4.

Contracts with nonprofit or profit making organizations under which experts or consultants will furnish personal services to the Government shall provide that compensation (salary) paid to any individuals (including subcontractor personnel, etc.), who actually furnish personal services to the Government shall not exceed the per diem equivalent of the highest rate fixed by the Classification Act pay schedule for Grade GS-18. This limitation prevails regardless of the type of contract used and regardless of whether the contract provides for such compensation as a direct charge, an indirect charge, or part of a composite rate.

EPA Order 1900.2 prescribes that all proposals to obtain management consultant services by contract must be approved by the Assistant Administrator for Planning and Management. Management consultant services are defined in EPA Order 1900.2. Any request for procurement of management consultant services not accompanied by the approval of the Assistant Administrator for Planning and Management will be returned to the initiator for compliance with EPA Order 1900.2.

5 U.S.C. § 3108 prohibits contracts with detective agencies or their employees, regardless of the nature of services to be performed. However, the Comptroller General of the United States has ruled that a bona fide, separate subsidiary of a detective agency corporation, with its own operating personnel, financial transactions, and books of account, separate from the parent corporation, may be regarded as a separate legal entity and not subject to the detective employment prohibition in 5 U.S.C. 3108, even if it is wholly owned by a detective agency corporation.

A detective agency may be defined as a legal entity certified or licensed under tax, permit, or licensing requirements of any State or municipality to provide services of a detective or investigative nature.

Solicitations for protective services as distinguished from investigative services, shall include the following certification:

"The (bidder/offeror) is not a detective agency, nor an employee of such agency as contemplated by 5 U.S.C. 3108."

The provisions of statutes and regulations requiring competition are fully applicable to service contracts.

The contracting officer shall, prior to award, obtain the advice of the Office of General Counsel regarding any procurement of services the authority for which appears questionable.

CHAPTER 22

PROCUREMENT PLAN

1. PURPOSE. This Chapter establishes policy and procedures regarding the use of procurement plans. Conditions for use are described, procedures for coordination are set forth, and forms are provided.

2. BACKGROUND.

a. Procurement planning is the process by which the efforts of all personnel responsible for the procurement of personal property and nonpersonal services are coordinated and integrated through a comprehensive plan. This involves analysis of the requirements and the documentation of technical, business, policy, operational, and other procurement considerations into a comprehensive plan portraying realistic milestones that must be met to achieve the end results of a particular program requirement.

b. At the latest, procurement planning should start with the receipt of the Procurement Request/Requisition, and should represent the coordinated efforts of program and procurement personnel in arriving at a realistic and workable schedule of events.

3. POLICY. A procurement plan is required for each negotiated cost reimbursement or fixed-price type procurement action in excess of $100,000, except for the procurement of architect-engineer services under the provisions of FPR 1-4.10 and EPPR 15-4.10. The application of this policy to procurement actions of $100,000 or less is optional at the discretion of the chief officer responsible for procurement at the contracting activity. For the purpose of this policy, the term "procurement action" also includes contract change orders and modifications.

4. APPROVALS REQUIRED.

a. Approval of procurement plans is required as follows:

(1) Head of the procuring activity - procurement actions expected to result in a contract of $5,000,000 or more.

(2) Chief officer responsible for procurement at the contracting activity - procurement actions expected to result in a contract of $100,000 but less than $5,000,000.

b. The chief officer responsible for procurement at the contracting activity shall forward procurement plans which require approval to the head of the procuring activity for concurrent review with the pertinent requests for proposals (RFP). Procurement plan and RFP reviews shall be accomplished promptly by the Contracts Policy and Review Branch.

5. PROCEDURES.

a. General. The contract specialist responsible for a procurement action shall prepare a procurement plan promptly after receipt of the Procurement Request/Requisition. After preparation of the procurement plan, coordination with the project officer shall be effected for the purpose of obtaining written program office approval of the projected contract award date (Forecast Date). Upon receipt of program office and Procurement and Contracts Management Division (PCMD) approval, the contract specialist shall maintain the plan so that actual occurrences of events are recorded in the manner described below, and for subsequent management review. The Contract Award Schedule is a working document for use primarily by the PCMD. Upon award of the contract the document shall be included in the contract file under Item 5 (See EPA Form 1900-19).

b. Forms. EPA Form 1970-1, Contract Award Schedule (Competitive) Figure 22-1, or EPA Form 1970-2, Contract Award Schedule (Noncompetitive), Figure 22-2, shall be used as appropriate to record the planned procurement schedule and other pertinent data. The column headed "Optimum No. of Days" has been completed on both forms to reflect the number of days appropriate to competitive and noncompetitive procurement actions.

c. Completing the Contract Award Schedule. The contract specialist responsible for the procurement action shall forecast the date by which each milestone is anticipated to occur. The basis for the forecast of events is the "Optimum No. of Days" schedule and a realistic assessment of the time required to award the contract. Upon completion of the scheduling the contract specialist shall

obtain the written approval of the contracting officer, the project officer (if not colocated, by telephone with subsequent written confirmation) and the appropriate approving authority set forth in subparagraph 4a. The procedures for scheduling, posting, and rescheduling milestone events are as follows.

(1) Scheduling the milestone events requires entering a calendar date under the column headed "Forecast Date", and by inserting a symbol under the appropriate month. In the event that the forecast date for contract award exceeds the total optimum time, i.e., 156 days total for competitive, or 119 days total for noncompetitive, by more than 14 days, an explanation of the reason(s) for the extended time shall be included in the plan (either as an entry under "Remarks", or by separate attachment).

(2) Recording the actual date that the event is completed requires the posting of a date in the "Actual Date" column.

(3) Rescheduling of milestone events is required whenever the contract specialist has reason to believe that the approved forecast award date will be delayed by more than 14 days. The chief officer responsible for procurement at the contracting activity shall be responsible for the review and approval of the new schedule. However, a revision to a schedule previously approved by the head of the procuring activity shall be forwarded as information to the head of the procuring activity. Approval by the project officer shall be obtained in all rescheduling forecasts.

d. Recording significant information. The contract specialist shall enter the title of the procurement in the space at the top of the forms after the word "Title." The blocks at the bottom of the forms shall be completed to record the required data. Abbreviations may be used to identify the Program Office. The description to be entered in the block titled "Contract Type" shall indicate whether the proposed contract is expected to be fixed price, cost reimbursement, or award or incentive fee. Also, if cost reimbursement, whether the proposed contract is anticipated to be a completion or term form contract. The contract specialist shall use the "Remarks" part of

the form, when appropriate, to record information that will advise the procurement plan approving official of significant problems and decisions which affect the procurement schedule. For example, the "Remarks" block shall be used to:

(1) Relate anticipated problems which can be expected to affect the projected schedule;

(2) Set forth reasons for deviations from optimum leadtimes in the projected schedule;

(3) Explain material deviations in actual accomplishment of events versus projected accomplishment, and where appropriate the rationale for rescheduling the milestone events; and

(4) Record such other information as may be necessary to reflect actual problem areas encountered.

CONTRACT AWARD SCHEDULE (Competitive)

TITLE | PROGRAM OFFICE | RFP NO.

MILESTONES / EVENT	OPTIMUM NO. OF DAYS	FORECAST DATE	ACTUAL DATE	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	REMARKS
1 RECEIVE PROCUREMENT PACKAGE	0															
2 RECEIVE APPROVED PROCUREMENT PACKAGE	0															
3 SYNOPSIS MAILED—IF APPLICABLE	4															
4 ISSUE RFP	16															
5 RECEIVE OFFERS	30															
6 COMPLETE INITIAL EVALUATION	11															
7 DETERMINE COMPETITIVE RANGE	3															
8 CONDUCT MEANINGFUL DISCUSSIONS	10															
9 RECEIVE REVISED OFFERS	10															
10 EVALUATE REVISED OFFERS	27															
11 SELECT SOURCE	4															
12 COMPLETE NEGOTIATIONS	16															
13 PREPARE CONTRACT	5															
14 REVIEW CONTRACT	6															
15 AWARD CONTRACT	14															
16 TOTAL	156															

CONTRACT TYPE	ESTIMATED TOTAL PROJECT AMOUNT	APPROVALS		CHIEF OFFICER RESPONSIBLE FOR PROCUREMENT	
		CONTRACT SPECIALIST	DATE	NAME	DATE
CERTIFIED AVAILABLE FUNDS		FULL NAME		HEAD OF PROCURING ACTIVITY	
		CONTRACTING OFFICER	DATE	FULL NAME	DATE
		PROJECT OFFICER	DATE		

EPA Form 1970-1 (8-78)

Figure 22-1. Procurement Plan

CONTRACT AWARD SCHEDULE (Noncompetitive)

TITLE | PROGRAM OFFICE | RFP NO.

MILESTONES / EVENT	OPTIMUM NO. OF DAYS	FORECAST DATE	ACTUAL DATE	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	REMARKS (Additional remarks below if necessary)
1 RECEIVE PROCUREMENT PACKAGE	8															
2 RECEIVE APPROVED PROCUREMENT PACKAGE	8															
3 SYNOPSIS MAILED-IF APPLICABLE	4															
4 ISSUE RFP	11															
5 RECEIVE PROPOSAL	30															
6 RECEIVE TECHNICAL & COST EVALUATION	35															
7 COMPLETE NEGOTIATIONS	14															
8 PREPARE CONTRACT	5															
9 REVIEW CONTRACT	6															
10 AWARD CONTRACT	14															
11																
12 TOTAL	119															

CONTRACT TYPE | ESTIMATED TOTAL PROJECT AMOUNT

APPROVALS: CONTRACT SPECIALIST | DATE

CHIEF OFFICER RESPONSIBLE FOR PROCUREMENT: NAME | DATE

CERTIFIED AVAILABLE FUNDS

FULL NAME: CONTRACTING OFFICER | DATE; PROJECT OFFICER | DATE

HEAD OF PROCURING ACTIVITY: FULL NAME | DATE

ADDITIONAL REMARKS

EPA Form 1920-2 (8-78)

Figure 22-2. Procurement Plan 80 (Noncompetitive)

PART 20—BID PROTEST PROCEDURES

Sec.
20.0 Definitions.
20.1 Filing of protest.
20.2 Time for filing.
20.3 Notice of protest, submission of agency report and time for filing of comments on report.
20.4 Withholding of award.
20.5 Furnishing of information on protests.
20.6 Time for submission of additional information.
20.7 Conference.
20.8 Time for decision by Comptroller General.
20.9 Request for reconsideration.
20.10 Effect of judicial proceedings.

AUTHORITY: Sec. 311, 42 Stat. 25, as amended (31 U.S.C. 52). Interpret or apply sec. 305, 42 Stat. 24 (31 U.S.C. 71); sec. 304, 42 Stat. 24, as amended (31 U.S.C. 74).

SOURCE: 40 FR 17979, Apr. 24, 1975, unless otherwise noted.

§ 20.0 Definitions.

(a) All "days" referred to in this part are deemed to be "working days" of the Federal Government. The term "file" or "submit" in all sections except § 20.2 and § 20.9(b) refers to the date of transmission.

(b) "Adverse agency action" is any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with an agency. It may include but is not limited to: a decision on the merits of the protest; a procurement action such as the award of a contract or the rejection of a bid despite the pendency of a protest; or contracting agency acquiescence in and active support of continued and substantial contract performance.

§ 20.1 Filing of protest.

(a) An interested party may protest to the General Accounting Office the award or the proposed award of a formally advertised or negotiated contract of procurement or sale by or for an agency of the Federal Government whose accounts are subject to settlement by the General Accounting Office.

(b) Such protests must be in writing and addressed to the General Counsel, General Accounting Office, Washington, D.C. 20548. To expedite handling within the General Accounting Office, the address should include "Attn: Bid Protest Control Unit."

(c) The initial protest filed with the General Accounting Office shall (1) include the name and address of the protester, (2) identify the contracting activity and the number of the solicitation and/or contract, (3) contain a statement of the grounds of protest, and (4) specifically request a ruling by the Comptroller General. A copy of the protest shall also be filed concurrently with the contracting officer and the communication to the General Accounting Office should so indicate. The grounds for protest filed with the General Accounting Office must be fully supported to the extent feasible. See § 20.2(d) with respect to time for filing any additional statement required in support of an initial protest.

(d) No formal briefs or other technical forms of pleading or motion are required, but a protest and other submissions should be concise, logically arranged, and direct.

§ 20.2 Time for filing.

(a) Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. In any case, a protest will be considered if filed with the General Accounting Office within the time limits prescribed in paragraph (b).

(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation.

(2) In cases other than those covered in subparagraph (1), bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier.

(3) The term "filed" as used in this section means receipt in the contracting agency or in the General Accounting Office as the case may be. Protesters are cautioned that protests should be transmitted or delivered in the manner which will assure earliest receipt. Except as provided in paragraph (c) of this section, any protest received in the General Accounting Office after the time limits prescribed in this section shall not be considered unless it was sent by registered or certified mail not later than the

fifth day, or by mailgram not later than the third day, prior to the final date for filing a protest as specified herein. The only acceptable evidence to establish the date of mailing shall be in the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. The only acceptable evidence to establish the date of transmission by mailgram shall be the automatic date indication appearing on the mailgram. If the postmark in the case of mail or the automatic date indication in the case of a mailgram is illegible, the protest shall be deemed to have been filed late.

(c) The Comptroller General, for good cause shown, or where he determines that a protest raises issues significant to procurement practices or procedures, may consider any protest which is not filed timely.

(d) If an additional statement in support of the initial protest is required by the General Accounting Office, one copy shall be mailed or otherwise furnished to the General Counsel, General Accounting Office, and a copy shall be mailed or otherwise furnished to the contracting officer, not later than 5 days after receipt of notification from the General Accounting Office of the need for such additional statement.

[40 FR 17979, Apr. 24, 1975, as amended at 40 FR 60035, Dec. 31, 1975; 41 FR 2073, Jan. 14, 1976]

§ 20.3 Notice of protest, submission of agency report and time for filing of comments on report.

(a) The General Accounting Office shall notify the contracting agency by telephone and in writing within one day of the receipt of a protest, requesting the agency to give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The agency shall be requested to furnish in accordance with applicable procurement regulations copies of the protest documents to such parties with instructions to communicate further directly with the General Accounting Office.

(b) Material submitted by a protester will not be withheld from any interested party outside the Government or from any Government agency which may be involved in the protest except to the extent that the withholding of information is permitted or required by law or regulation. If the protester considers that the protest contains material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest document and the allegedly proprietary information must be so identified wherever it appears.

(c) The Office of General Counsel shall request the agency to submit a complete report on the protest to the General Accounting Office as expeditiously as possible (generally within 25 working days) in accordance with applicable procurement regulations, and to furnish a copy of the report to the protester and other interested parties.

(d) Comments on the agency report shall be filed with the Office of General Counsel within 10 days after receipt of the report, with a copy to the agency office which furnished the report and to other interested parties. Any rebuttal a protester or interested parties may care to make shall be filed with the Office of General Counsel, General Accounting Office, within 5 days after receipt of the comments to which rebuttal is directed, with a copy to the agency office which furnished the report, the protester, and interested parties, as the case may be. Unsolicited agency rebuttals shall be considered if filed within 5 days after receipt by the Agency of the comments to which rebuttal is directed.

(e) The failure of a protester or any interested party to comply with the time limits stated in this section may result in resolution of the protest without consideration of the comments untimely filed.

[40 FR 17979, Apr. 24, 1975, as amended at 40 FR 60035, Dec. 31, 1975; 41 FR 2073, Jan. 14, 1976]

§ 20.4 Withholding of award.

When a protest has been filed before award the agency will not make an award prior to resolution of the protest except as provided in the applicable procurement regulations. In the event the agency determines that award is to be made during the pendency of a protest, the agency will notify the Comptroller General.

§ 20.5 Furnishing of information on protests.

The Office of General Counsel, General Accounting Office, shall, upon request, make available to any interested party information bearing on the substance of the protest which has been submitted by interested parties or agencies, except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon shall be submitted within a maximum of 10 days.

§ 20.6 Time for submission of additional information.

Any additional information requested by the Office of General Counsel, General Accounting Office, from the protester or interested parties shall be submitted no later than 5 days after the receipt of such request. If it is necessary

to obtain additional information from the agency, the General Accounting Office will request that such information be furnished as expeditiously as possible.
[40 FR 60036, Dec. 31, 1975]

§ 20.7 Conference.

(a) A conference on the merits of the protest with members of the Office of General Counsel, General Accounting Office, may be held at the request of the protester, any other interested party, or an agency official. Request for a conference should be made prior to the expiration of the time period allowed for filing comments on the agency report (see § 20.3(d)). Except in unusual circumstances, requests for a conference received after such time will not be honored.

(b) Conferences normally will be held prior to expiration of the period allowed for filing comments on the agency report. All interested parties shall be invited to attend the conference. Ordinarily, only one conference will be held on a bid protest.

(c) Any written comments to be submitted and as deemed appropriate by the General Accounting Office as a result of the conference must be received in the General Accounting Office within 5 days of the date on which the conference was held.

§ 20.8 Time for decision by Comptroller General.

The Comptroller General establishes a goal of 25 days for issuing a decision on a protest after receipt of all information submitted by all parties and the conclusion of any conference.

§ 20.9 Request for reconsideration.

(a) Reconsideration of a decision of the Comptroller General may be requested by the protester, any interested party who submitted comments during consideration of the protest, and any agency involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(b) Request for reconsideration of a decision of the Comptroller General shall be filed not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier. The term "filed" as used in this section means receipt in the General Accounting Office.

(c) A request for reconsideration shall be subject to these bid protest procedures consistent with the need for prompt resolution of the matter.

§ 20.10 Effect of judicial proceedings.

The Comptroller General may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such a court. The foregoing shall not apply where the court requests, expects, or otherwise expresses interest in the Comptroller General's decision.

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-189172 DATE: December 15, 1977

MATTER OF: Environmental Science and Engineering, Inc.

DIGEST:

1. Protest that evaluation criteria should have been broader is untimely because not raised prior to date for submission of initial proposals. Moreover, agency properly evaluated protester's proposal based on factors stated in solicitation rather than on factors not so stated.

2. Agency's determination that proposal was outside of competitive range was reasonable where evaluation criteria in Request for Proposals (RFP) emphasized contractor experience and proposed methodology, and proposal contained a number of major informational deficiencies with regard to experience and methodology.

3. Agency was not required to request additional information from offeror concerning aspects of RFP to which offeror failed to respond where addition of such information would have been a major revision of the proposal.

Environmental Science and Engineering, Inc. (ESE) protests the award of a contract under Request for Proposals (RFP) No. WA-76-B533, issued by the Environmental Protection Agency (EPA).

The subject RFP requested proposals for assisting various regional offices of EPA with the preparation of Environmental Impact Statements. Fifteen proposals for Region IV were received by EPA. A technical evaluation concluded that three offerors, not including ESE, had submitted acceptable technical proposals. ESE was informed by letter that it was not within the competitive range. A debriefing was held at which time ESE was informed of the reasons why EPA had found its proposal to be unacceptable. Subsequently, ESE protested to

this Office the exclusion of its proposal from the competitive range. ESE protests on the grounds that the evaluation criteria were incomplete, ESE's proposal was improperly graded, and EPA was required to request clarification from ESE concerning its proposal prior to finding it unacceptable.

With regard to the evaluation criteria, ESE contends that EPA should have considered factors in addition to those specified in the evaluation criteria of the RFP, in making its competitive range determination. ESE cites as examples of such factors the following: prior performance on Government contracts, the proximity of the contractor to anticipated work in Region IV, the number of professionals the contractor has available in Region IV, the in-house disciplines available through the contractor, the facilities the contractor has available to do the job and their proximity to Region IV.

To the extent that ESE is asserting that additional factors should have been included in the evaluation criteria, its assertions are untimely raised. Section 20.2(b)(1) of Title 4 of the Code of Federal Regulations requires that protests based upon alleged improprieties in the solicitation which are apparent prior to the closing date for initial proposals shall be filed prior to that date. Here, ESE's protest was received after the closing date for initial proposals and thus is untimely regarding objections to the evaluation criteria.

However, ESE also asserts that, even if the omitted criteria were not included in the evaluation criteria of the RFP, they should have been considered by the agency evaluators. ESE points to EPA's Procurement Information Notice (PIN) 77-15 Source Evaluation and Selection Procedures, which states on page 25 that:

> "OTHER EVALUATION FACTORS. Frequently there are other factors that enter into the evaluation process that must be considered in arriving at a relative ranking. These factors are not included in the evaluation criteria of the solicitation, but consist of important items which may

> have a significant impact upon the determination of those offers within the competitive range and upon selection for award. They are not point scored, but are presented to the SSO for his consideration as deemed appropriate."

Two categories of examples are cited in this provision: compliance with statutory contractual requirements (e.g., labor standards incorporated into the contract) and negative record of responsibility. Such factors are relevant to a competitive range or award determination because an offeror who fails to satisfy them will not be considered for award. However, in order to be considered for award, the offeror also must submit a proposal which is technically acceptable. A determination of technical acceptability is based on the evaluation criteria stated in the solicitation. 50 Comp. Gen. 670 (1971). Consequently, it was proper for EPA to evaluate the offers for technical acceptability on the basis of the evaluation factors stated in the RFP, without specifically taking into consideration other factors which ESE contends would have enhanced its point score. See North American Telephone Association, B-187239, December 15, 1976, 76-2 CPD 495; 48 Comp. Gen. 314 (1968).

ESE next asserts that EPA's determination that ESE's proposal was outside of the competitive range was erroneous. EPA s determination was based on three findings of deficiencies in ESE's proposal. EPA first found that ESE's proposal had not "demonstrated specific experience in planning and/or designing various wastewater subsystems." Part I, Section III, of the technical evaluation criteria listed "contractor's experience with planning and/or designing various wastewater subsystems." Six subsystems which were to be addressed were listed as follows: flow and waste measures, interceptor systems, treatment measures, wastewater disposal, sludge treatment and disposal and facilities siting. The criteria also specified the components of each subsystem to be discussed. For example, under "flow and waste measures," the components were listed as: "infiltration/inflow, household water conservation, user charge systems, flow equalization and industrial recycling." ESE's proposal provided a list of twelve wastewater subsystem planning and design projects which it had completed, or was in the process of completing. Each listed project contained a notation as to which of the six subsystems specified

in the RFP were included in that project. Five of the projects included all six subsystem functions specified. EPA found that the proposal contained no further description of ESE's experience concerning the subsystem components specified in the RFP.

EPA secondly found that ESE's proposal did not "indicate satisfactory capability in identifying objectives and constraints and applying them to alternative subsystems." Part I, Section IV of the technical evaluation criteria is entitled: "contractors experience with and proposed methodologies for evaluating alternative wastewater subsystems and systems and for selection of an optimum system." Subsection (A) of Section IV lists: "Identification of objectives and constraints and application to alternative subsystems." ESE's proposal provided a list of ten projects which ESE denoted as having included identification of objectives and constraints and application to alternative subsystems. EPA found that ESE's proposal did not describe the methodology which it proposed to use for identifying objectives and constraints. EPA concluded that ESE's inadequate description of experience coupled with a lack of methodology description did not demonstrate that the firm could satisfactorily meet the minimum requirements of the RFP.

EPA thirdly found that ESE's proposal did not "indicate adequate experience in the evaluation of environmental impact to the natural environment." Part I, Section V of the technical evaluation criteria is entitled: "contractors past performance and proposed methodologies for evaluating primary and secondary environmental impacts on the natural and socioeconomic environment." Section V contains a list of ten subcategories of environmental impact to be considered (water, land, groundwater, air, land use and population densities, etc.). ESE's proposal lists twenty-two projects with a notation as to which of the ten subsystems specified in Part V were involved in each project. EPA states that the low rating given to ESE for this Part was primarily due to a lack of specific experience in each subcategory. In addition, low point scores were given to each category in this Part for unsatisfactory proposed methodologies.

EPA determined that in order for ESE to remedy the omissions from its proposal, it would have to provide more than clarifying data, but rather, it would have had to add to its proposal new information concerning its experience and proposed methodology. EPA concluded

that ESE's proposal was technically unacceptable and outside of the competitive range.

ESE contends that the information contained in its proposal was a "documented response to the general intent of EPA criteria, and an implied response to specific criteria sufficient for a prudent review." It contends that the listing in its proposal of major environmental studies currently being performed by ESE was sufficient to indicate a high level of experience. ESE asserts that to the trained reader each of the projects listed in its proposal implies a certain level of accomplishment. ESE states, for example, that the listing of six effluent guidelines projects conducted over the past five years would by definition require design and cost analysis for hundreds of treatment systems. ESE also contends that the experience of its personnel, which was described in its proposal was sufficient to satisfy the RFP evaluation criteria in light of Amendment 1 to the RFP which states, at page 3, that: "The experience of each prospective contractor is being evaluated by a combination of company experience in environmental analysis and the experience of personnel who would be assigned to perform directives of work issued under this contract."

Alternatively, ESE contends that, even if its proposal was deficient, EPA was required to request clarification from ESE concerning the extent of its experience and its proposed methodology, prior to determining it to be outside of the competitive range. ESE cites 41 C.F.R. 15-3.805-1(a)(4)(ii) which states that:

> "The technical evaluators shall determine whether any proposal which appears to be unacceptable might be found acceptable upon the furnishing of clarifying data by the proposer * * *"

This Office has held that a contracting agency may exclude a proposal, as submitted, from the competitive range for "informational" deficiencies when those deficiencies are so material as to preclude any possibility of upgrading the proposal to an acceptable level except through major revisions and additions which would be tantamount to the submission of another proposal. Servrite International, Ltd., B-187197, October 8, 1976, 76-2 CPD 325; Comten-Comress, B-183379, June 30, 1975, 75-1 CPD 400; 53 Comp. Gen. 1 (1973); 52 id. 382, 386 (1972); 52 id. 865, 868 (1973). Here, the

evaluation criteria clearly indicated that the contractor's experience with planning and/or designing wastewater subsystems and selecting between alternative subsystems, was an important element of proposal evaluation. ESE cited projects which it had conducted but did not describe its experience regarding those components specifically listed in the RFP. ESE's listing of the experience of its personnel did not remedy the lack of information as to company experience, because the RFP specified that both company and personnel experience would be scored. Also ESE's proposal contained no discussion of ESE's proposed methodology for identifying objectives and constraints of wastewater systems and subsystems, as listed in the RFP.

We find to be reasonable EPA's determination that it had no duty to request clarifications from ESE because ESE's proposal could be upgraded to an acceptable level only through major revisions and additions related to a basic requirement of the RFP. See 52 Comp. Gen. 382, 386 (1972). We conclude that the absence of description in ESE's proposal of the types of experience specifically enumerated in the evaluation criteria and omissions of information regarding proposed methodology was a major deficiency which formed a reasonable basis for EPA's finding that ESE was outside of the competitive range. Because ESE's proposal was found to be technically unacceptable, ESE was not entitled to an opportunity to submit a revised proposal. See Servrite International, Ltd., supra.

ESE finally asserts that EPA's decision to proceed with award prior to resolution of the protest by this Office violated the spirit of bid protest procedures. The Federal Procurement Regulations (FPR) provide that award may be made prior to resolution of a bid protest by GAO where: (i) the items to be procured are urgently required; or (ii) delivery or performance will be unduly delayed by failure to make award promptly; or (iii) a prompt award will otherwise be advantageous to the Government. FPR 1-2.407-8(b)(4). ESE has not shown that EPA failed to follow this regulation or that EPA proceeded with award in bad faith. Consequently, we have no basis to question EPA's action in awarding a contract prior to resolution of the bid protest by this Office.

Accordingly, the protest is denied.

R. F. Keller

Deputy Comptroller General
of the United States

BID PROTEST REPORT

FISCAL YEAR - 1977

October 1976 - September 1977

		AGENCY		GAO		OTHER		TOTAL		PROTESTS	
GENCY	PROTESTS	DAYS	AVERAGE	DAYS	AVERAGE	DAYS	AVERAGE	DAYS	AVERAGE	D	S
CTION	3	55	18.3	64	21.3	17	5.6	136	45.3	-	3
GRIC.	31	564	18.1	660	21.2	665	21.4	1889	60.9	29	2
IR FORCE	98	2644	27.	2716	29.8	3055	31.1	8415	85.7	81	17
ID	2	7	3.5	16	8.	37	19.5	60	30.	2	-
RMY	147	3540	24.	3413	23.2	4267	29.	11126	75.	133	14
SC	1	26	26.	35	35.	55	55.	116	116.	-	1
OMMERCE	22	644	29.2	618	28.	1439	65.4	2684	122.	18	4
.C. GOVT.	13	256	19.6	416	32.	314	24.1	996	74.3	9	4
CA	2	121	60.5	50	25.	37	18.5	208	104.	1	1
LA	72	1837	25.5	1471	20.4	1721	23.9	4883	67.8	66	6
SA	2	91	45.5	212	106.	154	77.	457	228.5	2	-
DA	1	51	51.	14	14.	13	13.	78	78.	1	-
PA	14	535	38.2	365	26.	318	22.7	1215	86.	12	2
RDA	5	301	60.2	172	34.4	103	20.6	576	115.2	2	3
CC	1	-	-	26	26.	3	3.	29	29.	1	-
TC	3	-	-	26	8.6	-	-	26	8.6	1	2
PO	9	79	8.7	178	19.7	127	14.1	394	43.7	9	-
SA	101	2547	25.2	2322	23.	3085	30.5	8049	79.7	89	12
EW	27	682	25.5	617	22.8	1025	37.9	2286	84.6	26	1
JD	7	183	26.1	74	10.4	98	14.	355	50.7	7	-
NTERIOR	23	1145	49.9	710	30.8	648	28.1	2501	108.7	20	3
RS	1	21	21.	90	90.	12	12.	123	123.	1	-

AGENCY	PROTESTS	AGENCY DAYS	AGENCY AVERAGE	GAO DAYS	GAO AVERAGE	OTHER DAYS	OTHER AVERAGE	TOTAL DAYS	TOTAL AVERAGE	PROTES D	PROTES S
JUSTICE	5	149	29.8	204	40.8	154	30.8	507	101.4	3	
LABOR	10	141	14.1	180	18.	355	35.5	676	67.6	7	
MAR. CORP	6	228	38.	140	23.3	152	25.3	540	90.	5	
NASA	18	1097	60.9	661	36.7	530	29.4	2288	127.1	16	
NAVY	114	3510	30.8	2641	23.1	3396	29.6	9547	83.7	110	
NSF	1	47	47.	26	26.	16	16.	89	89.	1	
PANAMA CANAL	1	-	-	4	4.	6	6.	10	10.	1	
SBA	11	399	36.2	190	17.2	187	17.	869	79.	11	
SEC. & EXCH. COMMISSION	1	27	27.	42	42.	11	11.	80	80.	1	
STATE	4	72	18.	122	30.5	162	40.5	321	80.2	3	
SMITHSON.	3	40	13.3	94	31.3	77	25.6	211	70.3	2	
TRANSP.	28	983	35.1	703	25.3	608	21.7	2054	73.4	26	
TREASURY	5	253	50.6	103	20.6	102	20.4	458	91.6	5	
TVA	4	-	-	21	5.2	40	10.	61	15.2	4	
USIA	2	50	25.	82	41.	50	25.	182	91.	2	
VA	20	516	25.8	557	27.6	679	33.8	1713	65.6	16	
DEFENSE	1	-	-	6	6.	11	11.	17	17.	1	
LIBRARY CONGRESS	1	28	28.	70	70.	10	10.	98	98.		
	820	22869	27.8	20111	24.7	23665	28.8	66323	80.8	724	9

BID PROTEST REPORT

FISCAL YEAR - 1977

RESUME

Protests Denied	723
Protests Sustained	97
Advertised Procurements	469
Negotiated Procurements	351
Protests Received and Decided Before Award	350
Protests Received and Decided After Award	358
Protests Received Before Award and Decided After Award	104
Corrective Action Recommended	115
Corrective Action Recommended Under P.L. 91-510	35
Reconsiderations	84
Contract Cancellation/Termination Recommended	15
Untimely Submissions	108
GAO Without Jurisdiction	68
Protests Where Decisions Rendered	820
Withdrawals Before Decision	435
Miscellaneous	258
Dismissed	151
Total Protests Closed During FY 1977	1,664
Total Protests Received During FY 1977	1,607
Review of Awards Under Grants	20

B-184562, HEW October 6, 1976
B-187008, DOT October 28, 1976
B-185475, EPA November 29, 1976
B-184899, HEW December 23, 1976
B-187698, HEW December 8, 1976
B-186913, Justice February 25, 1977
B-188355, EPA February 23, 1977
B-185169, EPA March 1, 1977
B-185874, EPA March 8, 1977
B-189249, EDA September 22, 1977

B-184562, HEW April 12, 1977
B-186962, EPA May 6, 1977
B-187999, EPA May 4, 1977
B-184562, HEW May 24, 1977
B-188116, Labor June 23, 1977
B-187734, EPA July 1, 1977
B-189280, DOT July 7, 1977
B-188488, HEW August 3, 1977
B-189280, DOT August 8, 1977
B-187912, EPA August 17, 1977

CHAPTER 4

UNSOLICITED PROPOSALS

1. PURPOSE. This chapter establishes a centralized control for the receipt, accounting, and processing of unsolicited proposals.

2. DEFINITION. An unsolicited proposal is a voluntary offer to perform work the offeror considers to have both technical merit and relevance to Environmental Protection Agency programs. The unsolicited proposal usually offers ideas, processes, techniques, or equipment that the proposer considers new, novel, or unique and deserving of support by an EPA grant or contract.

3. SOURCES OF PROPOSALS. Proposals are voluntarily submitted by individuals and various types of organizations having scientific and technological ideas which they feel will contribute to the success of the EPA mission. Many of these proposals may be of little or no value. However, others may be substantially beneficial and may therefore merit EPA support in the form of a grant or contract.

4. CENTRALIZED CONTROL POINT. A centralized control point will be located in the Grants Administration Division, Office of Administration, to process unsolicited proposals regardless of where they are received in EPA. To fully utilize the source of scientific and technical information being submitted, the Agency should encourage the submission of unsolicited proposals and should promptly acknowledge receipt of a proposal. The proposal will then be evaluated for its scientific merit and relevance to EPA programs.

5. PROCEDURE.

a. Unsolicited proposals received by any organizational element of EPA shall be forwarded immediately to the Grants Administration Division, Office of Administration, for official receipt and processing.

b. The Grants Administration Division will (1) acknowledge receipt to the person or organization submitting the proposal (Figure 4-1), (2) assigns a proposal control number, and (3) transmit the proposal to the appropriate program office for evaluation.

c. If the program office decides to fund the proposal as a grant, the proposal will be returned to the Grants Administration Division for further processing. If the proposal is to be funded by contract, a request for a contract will be forwarded to the Contracts Management Division, Office of Administration.

6. DISCLOSURE AND USE OF PROPOSAL DATA.

a. Because of the "proprietary rights" involved in unsolicited proposals, ethical and legal considerations impose restrictions on the disclosure and use of data submitted with the proposal.

b. The Grants Administration Division, Office of Administration, is authorized to copy, photograph, or reproduce in any manner, any part of an unsolicited proposal. All other organizational elements of EPA must obtain approval from the Grants Administration Division before duplicating information from unsolicited proposals.

7. NONCOMPETITIVE PROCUREMENT. Although contracts resulting from unsolicited proposals may be awarded on a "sole source" basis, the unsolicited proposal does not, in and of itself, justify noncompetitive procurement. Award of a contract on a "sole or single source" basis must be justified as prescribed in Chapter 3 of this Manual, Noncompetitive Procurement.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Re: Proposal No.
Title:

Receipt Date:

Dear

This is to inform you that your unsolicited proposal, as referenced by the title above, was received on the date indicated. The proposal, which now bears the identifying Environmental Protection Agency number as shown above, is being forwarded to the appropriate office for evaluation as a grant or contract and will be considered for technical merit and relevance to the program mission.

It should be understood that this is not a commitment of funds or a notice to initiate the investigation. Should the review be favorable, you will be contacted with advice as to how to proceed further; if the review is unfavorable, you will be notified to that effect.

In accordance with Government procurement regulations, competition must be utilized to the maximum extent possible. While an unsolicited proposal may receive a favorable technical evaluation, prior to its funding, it must be determined that the substance of the proposal is sufficiently unique to justify acceptance as an original proposal, is not available from another source, or does not closely resemble that of a pending competitive solicitation.

We appreciate your interest in our program; if we can be of further assistance, please do not hesitate to contact us.

Sincerely yours,

Referral Officer
Grants Administration Division

SAMPLE

Figure 4-1. Acknowledgement Letter

§ 1–3.802–1 Consideration of late proposals.

(a) Except as provided in § 1–3.802–2, the following provision regarding the receipt and consideration of proposals for award that are received after the exact time set for receipt in the request for proposals shall be placed in each solicitation:

LATE PROPOSALS, MODIFICATIONS OF PROPOSALS, AND WITHDRAWALS OF PROPOSALS

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made, and:

(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);

(2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) It is the only proposal received.

(b) Any modification of a proposal, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in (a)(1) and (a)(2) of this provision.

(c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.

(d) The only acceptable evidence to establish:

(1) The date of mailing of a late proposal or modification sent either by registered or certified mail is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the proposal or modification shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service.)

(2) The time of receipt at the Government installation is the time-date stamp of such installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding (a), (b), and (c), of this provision, a late modification of an otherwise successful proposal which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(f) Proposals may be withdrawn by written or telegraphic notice received at any time prior to award. Proposals may be withdrawn in person by an offeror or his authorized representative, provided his identity is made known and he signs a receipt for the proposal prior to award.

NOTE.—The term "telegram" includes mailgrams.

(b) Proposals and modifications of proposals received in the office designated in the request for proposals after the exact time specified are late proposals and shall be considered for award only if the circumstances set forth in the provision in § 1–3.802–1(a), above, are applicable. When a late proposal or modification of proposal is received and it is clear from available information that it cannot be considered for award (e.g., when the postmark clearly shows that the proposal was mailed later than the fifth day prior to the date specified), the contracting officer, or his authorized representative, shall promptly notify the offeror that it was received late and will not be considered for award. However, when a late proposal or modification of proposal is transmitted by registered or certified mail and it is received before award but it is not clear from the available information whether it can be considered, the offeror shall be promptly notified substantially in accordance with the notice in § 1–2.303–6, appropriately modified to relate to proposals. Disposition of late proposals that cannot be considered for award shall be in accordance with agency procedures.

(c) Where only one proposal is involved and it is received after the time specified, it may be evaluated and considered for award in accordance with agency procedures. As used in this section the term "only proposal received" means a proposal which is one submitted by (1) the only offeror responding to the request for proposals, (2) a sole source, or (3) an offeror who is offering proprietary items in response to a request for proposals which specifies that awards will be made on the basis of proprietary items identified by the offeror by brand name, model, type, or other identification. With respect to (3) of this paragraph (c), the term does not mean an offer which is based on a performance specification or a brand name product which is specifically identified in the request for proposals.

(d) The normal revisions of proposals by offerors selected for discussion during the usual conduct of negotiations with such offerors are not to be considered as late proposals or later modifications to proposals but shall be handled in accordance with § 1–3.805.

[38 FR 26914, Sept. 27, 1973]

EFFECTIVE DATE NOTE: The Note in § 1–3.802–1(a) becomes effective Aug. 22, 1972.