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# **Project Officers' Handbook**

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## **U.S. ENVIRONMENTAL PROTECTION AGENCY**

### **PROJECT OFFICER'S COURSE**

#### **Course Description & Objectives**

##### **A. GENERAL DESCRIPTION**

The Project Officer's course is a comprehensive, survey-style, three and one-half day course which provides the attendee with a thorough understanding of the Project Officer's responsibilities within the pre-award phase of the acquisition cycle. The course commences with a description of a contract and a comparison of its use to grants and cooperative agreements; discusses authority of individuals involved in the acquisition process; what is required of the Project Officer in planning and developing the requirement; and delves into contract types and their relationship to preparation of the Statement of Work. Considerable time is devoted to: the development of a Statement of Work; exploration of specialized sources—e.g., 8(a), LSA, and small business contracting; focusing on preparing an independent Government cost estimate; developing technical evaluation criteria; evaluating technical proposals; and the process of negotiating and selecting a source. Although not included in the course discussions, the text includes coverage of the Project Officer's responsibilities in the post-award phase.

Course presentation is made through a combination of lecture and student participation. It includes a pre- and post-course exam, both of which contain 50 objective test questions. The text for the course is the Project Officer's Handbook (Second Edition - April 1984).

##### **B. COURSE OBJECTIVES**

The general objectives of this course are to:

- provide an understanding of the acquisition cycle;
- ensure that the student comprehends the Project Officer's responsibilities, duties, and authority during the acquisition cycle;
- foster knowledge, understanding, and appreciation of the roles and authorities of other persons in the acquisition process; and
- equip the student with specific information on how to perform the duties of a Project Officer.

## **PURPOSE, STRUCTURE, AND USE OF THE HANDBOOK**

**This Handbook has been developed for use by Project Officers as a reference tool. It meets the needs of both the newly initiated and most experienced Project Officers for information on the acquisition cycle and their responsibilities therein. The Handbook incorporates all relevant regulatory and policy guidance at the time of publication.**

- Chapter 1:** Provides basic information such as definitions, responsibilities of the key players in the acquisition process, and an overview of the acquisition cycle. It is recommended reading for newly-appointed Project Officers.
- Chapter 2:** Covers the Budget, Planning, and the Acquisition Planning Process.
- Chapter 3:** Examines steps involved in individual acquisition planning and scheduling.
- Chapter 4:** Provides coverage on the preparation of the procurement request.
- Chapter 5:** Delineates step-by-step the evaluation and award processes.
- Chapter 6:** Provides comprehensive coverage of Project Officer duties in contract monitoring.
- Chapter 7:** Outlines the rights and responsibilities of the parties under all Government contracts.
- Appendices:** Include: A - Glossary of Terms; B - Acronyms; C - Work Words; D - Extramural Activity Report; E - Front Page of Commerce Business Daily; F - PEB Report Dated 12/14/83; G - Sample Award Fee Plan Dated 12/14/83; H - Contract Administration Case Study.

**Second Edition  
April 1984**

## **EPA PROJECT OFFICERS' QUALIFICATION COURSE**

### **COURSE SCHEDULE**

#### **First Day**

- 8:30-9:30**      **Opening Remarks; Pre-Course Test; Course Overview; Purpose & Objectives of the Course; and Class Introductions.**
- 9:30-11:45**      **Legal and Regulatory Framework for Contracting, Business Ethics and Conflicts of Interest, Contractor Fraud and the Role of the IG's Office, Budgeting and Planning and Contracting Out.**
- 11:45-12:00**      **EPA Organization for Procurement and Functional Responsibility**
- **Overview of the EPA Procurement and Contracts Management Division Organization Functions and Responsibilities**
  - **Relationship between EPA Contracting Officers and Project Officers**
- 12:00-1:00**      **LUNCH**
- 1:00-2:00**      **An Overview of the Acquisition Cycle; Roles and Responsibilities of Project Officers/Contracting Officers; and Methods of Procurement.**
- 2:00-4:30**      **Acquisition Planning & Scheduling**
- **Purpose & Types of Planning**
  - **The Project Officer's Responsibilities**
  - **The Procurement Cycle, and Lead Times**
  - **Developing the Procurement Request**
  - **Content of a Procurement Request (PR)**
  - **Routing of the PR**
  - **Role and Responsibilities of the Initiator of the Requirement**
  - **Pre-Procurement Request Considerations**
  - **Justifications for Other Than Full and Open Competition**
  - **Options**
  - **Incremental Funding/Bona Fide Need**
  - **Determining Potential Sources**
  - **Socially/Economically Disadvantaged Business Considerations**
  - **Other Socioeconomic Programs**
  - **Personal vs. Non-Personal Services**
  - **Conflicts of Interest**
  - **Management Consultants**
  - **OMB Circular A-76**
  - **Federal Reports Act**
  - **Evaluation Criteria**
  - **Project Clearances and Approvals**
  - **Estimating Project Costs**
  - **Specification**
  - **Commercial Products**

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## Second Day

- 8:30-9:30**      **Contract Types**
- Firm-Fixed-Price
  - Time and Materials
  - Indefinite Quantity
  - Cost-Plus-Fixed-Fee
    - Completion
    - Term
  - Cost-Plus-Award-Fee
  - Additional Contract Types
- 9:30-12:00**    **Organizing, Composing and Preparing a Work Statement**
- Purpose
  - Importance and Implication for Contract Type Selection
  - Types of Work Statements
  - Pre-Planning
  - Phasing and Work Breakdown Structure
  - Planning the Work Statement
  - Preparing the Work Statement
- 12:00-1:00**    **LUNCH**
- 1:00-2:00**      **Organizing, Composing and Preparing a Work Statement (Con't)**
- Writing the Work Statement
  - Language of Work Statement
  - Critical Evaluation of Work Statements—  
Implications/Cost Estimating  
Work Statement, Analysis, Critiques
- 2:00-3:30**      **Preparation of Statement of Work**
- 3:30-4:30**      **Team Presentation of Work Statement, Analysis, and Critiques  
Thereof**

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### Third Day

**8:30-9:00**      Summarization by Instructor of Preparation of Statement of Work

**9:00-11:00**      How to Develop Technical Evaluation Criteria

- When and Why Prepared
- Prerequisites for Preparing
- Content of Technical Evaluation Criteria
- Considerations in Writing
- Qualifications of the Offeror
- Characteristics of the Requirement
- Need to Tailor Criteria
- Weighting of Criteria
- Go-No-Go Evaluation Criteria

**11:00-12:00**      Class Exercise

- Development of Evaluation Criteria
- Presentation and Critique
- Instructor Summarization of Exercise

**12:00-1:00**      LUNCH

**1:00-3:00**      Proposal Evaluation

- Dollar Value of the Proposal and Role of Technical Evaluation, Source Evaluation, and Business/Cost Evaluation Officials
- The Project Officer's Responsibilities
- The Purpose of Evaluation
- What's To Be Evaluated and Criteria To Be Used
- When Is a Proposal Acceptable, Unacceptable, or Capable of Being Made Acceptable
- Predetermined Cut-Offs and Why They Should Not Be Used
- Communications During the Evaluation Process
- Protection of Data
- The Criticality of Narrative Comments
- Content and Use of Technical and Source Evaluation Reports
- Cost Proposals and the Project Officer's Role in Evaluating Them
- Site Visits

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### **Third Day (Continued)**

**3:00-3:30      Technical Analysis**

**3:30-4:30      Selection of Offerors for Negotiation and Award**

- The Competitive Range
- How To Develop and Structure Technical Questions
- Technical Transfusion and Technical Leveling
- Project Officer's Role During Negotiations
- Evaluating Written Confirmations
- Source Evaluation and Selection Procedures
- Technical Aspects of the Contracting Officer's Determination of Responsibility
- Debriefings and Project Officer's Role
- Freedom of Information Act
- Protests

### **Fourth Day**

**8:30-9:30      Selection of Offerors for Negotiation and Award  
(Continued)**

**9:30-10:00      Course Summary and Evaluation**

**10:00-12:00      Final Examination**

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

**PROJECT OFFICER'S COURSE**

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CHAPTER M-1.000  
MEANING AND OVERVIEW OF ACQUISITION

M-1.100 Introduction

To the potential Project Officer, the idea of being involved in an unknown process that is critical to the success of his or her project or program is unnerving. For this reason, Chapter 1 has been written to provide some basic information such as definitions, responsibilities, and an overview or "road map" of what is involved in the process.

M-1.101 Acquisition (Contracting) vis-a-vis Assistance

M-1.101-1 Differences

There are basic differences between acquisition and assistance. Acquisition is the process of acquiring property or services for the direct benefit of the Government by purchase, lease, or barter. Assistance is the process of transferring money, property, services, or anything of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute.

M-1.101-2 Relationships and Definitions

(a) Acquisition and assistance instruments create different relationships between the Government and recipients. Because of these differences in Government/recipient relationships, the decision to use a particular instrument must be made deliberately and in accordance with the rules for using that instrument. Acquisition/assistance instruments are defined as follows:

- (1) Contract. A mutually binding legal relationship obligating the seller to furnish supplies or services and the buyer to pay for them.
- (2) Interagency Agreement. A legal agreement between Federal agencies where goods or services are provided.

- (3) Cooperative Agreement. A legal instrument which defines the relationship between the Government and a recipient for the transfer of money, property, services, or anything of value to the recipient for the accomplishment of a public purpose of support or stimulation authorized by law. A cooperative agreement presumes a significant amount of involvement by the Agency in the performance by the recipient.
- (4) Grant. A legal instrument which defines the relationship between the Government and a recipient for the transfer of money, property, services or anything of value to the recipient for the accomplishment of a public purpose of support or stimulation authorized by law. A grant presumes a limited amount of involvement by the Agency in the performance by the recipient.

(b) The legal and regulatory framework for implementation of the acquisition process is set forth in M-1.102.

#### M-1.102 Legal and Regulatory Framework for Contracting

(a) The Federal Acquisition Regulation (FAR) established (1) a single regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds, and (2) the Federal Acquisition Regulations System consisting of the FAR and agency acquisition regulations that implement or supplement the FAR. The FAR System was developed in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974, as amended by Public Law 96-83. The FAR was issued within applicable laws under the joint authorities of the Administrator of General Services, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration and under the broad policy guidance of the Administrator for Federal Procurement Policy. The FAR is codified as Chapter 1 of Title 48 of the Code of Federal Regulations with an effective date of April 1, 1984.

(b) The Environmental Protection Agency Acquisition Regulation (EPAAR) implements the FAR where further implementation is needed and supplements the FAR when coverage is needed for subject matter not covered in the FAR. The EPAAR is codified as Chapter 15 within Title 48 of the Federal Acquisition Regulations System. In addition, EPA establishes acquisition policies and procedures that are disseminated through the EPA Contracts Management Manual and the Acquisition Handbook. The EPAAR generally is reserved for those items implementing and supplementing the FAR and for items of significant general interest which are pertinent to Government contractual relationships. The Acquisition Handbook generally is used for subjects of primary interest to acquisition personnel in addition to those items already contained in the FAR and EPAAR. The Contracts Management Manual generally is reserved for subjects of particular interest to Project Officers and management personnel involved in the acquisition process as well as acquisition personnel. It generally does not address contractual relationships. Contracting authority is part of the authorities granted in the legislation which established the Agency.

(c) The effectiveness of the EPA acquisition system depends on project and contract personnel working together in a fully coordinated environment. Each personnel group has an interdependent role in the selection, award, and administration of contracts, and each must know and understand its respective roles.

#### **M-1.103 Key Participants in the Process**

There are several key players in the contracting process: the Contracting Officer, the Contract Specialist, the Project Officer and the Competition Advocate. There are, of course, other members of the team whose participation may be required, such as the Quality Assurance Officer in projects involving environmentally related measurements. An understanding of the roles of these key individuals is crucial.

##### **M-1.103-1 Contracting Officer**

(a) The Contracting Officer (CO) is a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. Contracting authority must flow down through the Agency organization until it reaches the Contracting Officer. Exhibit 1-1 depicts this flow within EPA. Contracting Officers are appointed in writing on a "Certificate of Appointment," SF 1402, which states any limitation on the scope of authority that may be exercised.

(b) Only Contracting Officers can enter into contracts or otherwise commit the Government to pay for products or services, and then only to the extent of their actual authority. Therefore, any unauthorized commitment by a Government employee, or commitment made by a Contracting Officer beyond the extent of legitimate actual authority, may be declared invalid despite any apparent authority or position of responsibility. This holds true despite the "apparent authority" of the Government employee—i.e., an employee whose position is such that one would believe he or she has the authority to bind the Government. Actions of individuals in the commercial sector who have apparent authority usually result in binding their firm, a concept of agency which does not hold true within the Federal Government.

##### **M-1.103-2 The Contract Specialist**

Some Contracting Officers have several people working for them. Most of these people will have the title of "contract specialist." They have the responsibility of assembling the solicitation package, publicizing the requirements, soliciting and evaluating bids, and negotiating with offerors. Often, the only difference between a Contracting Officer and a contract specialist is the authority to enter into a contract. While contract specialists have authority to process contracts, the CO will have to sign the contract agreement, having the final determination and responsibility for the contracting process and performance.

##### **M-1.103-3 The Project Officer**

(a) The Project Officer (PO) is the official in the agency who oversees on-going programs and organizes resources and personnel for the achievement

of a program goal. The Assistant, Associate, and Regional Administrators, General Counsel and the Inspector General are responsible for designating individuals who have completed the certification program to serve as Project Officers. The Director, PCMD, appoints these individuals to administer contracts. The Contracting Officer acts as the representative of the Director, PCMD, by naming the designated individual as the Project Officer in the terms and conditions of the contracts.

(b) The Project Officer and staff are expected to do the planning and program control. The duties involved include:

- (1) Establishing program objectives
- (2) Developing requirements
- (3) Scheduling
- (4) Estimating
- (5) Budgeting
- (6) Developing controls
- (7) Developing purchase requests, including specifications and work statements
- (8) Developing specific project plans, including financial status
- (9) Coordinating project planning with the procurement and contracting office
- (10) Evaluation of proposals (technical evaluation and realism of cost proposals)
- (11) Participation in the source selection process
- (12) Monitoring work progress; identifying delays, determining needed changes, and suspensions; and providing assistance wherever it is necessary for the completion and acceptance of the product or service.

**M-1.103-4 Limits on the Authority of the Project Officer (PO)**

(a) A certified Project Officer (PO) with less than eighteen (18) months of experience as a Government PO on Federal contracts is permitted to perform as a PO only on contracts (including options) with a potential value of less than \$1 million.

(b) A certified PO must have three (3) years of experience to be the PO on contracts exceeding \$5 million.

(c) Project Officers designated to administer contracts do not have the authority to:

- (1) Award, agree to, or execute any contract or contract modification;
- (2) Obligate, in any way, the payment of money by the Government;

(3) Make the final decision on any matter that would be subject to appeal under the Disputes clause; and

(4) Terminate, for any cause, the contractor's right to proceed.

(d) Limitations on the PO's authority are in accordance with the concept that contract administration is limited to the monitoring of the contract terms and to ensuring that the contract is carried out. Contract administration does not deal with changing agreed terms or halting performance of the contract.

#### **M-1.103-5 Competition Advocate**

(a) The Competition in Contracting Act (Title VII of Public Law 98-369) requires that heads of executive agencies shall designate a competition advocate. The responsibilities of the agency competition advocate are, among others, to:

(1) Be responsible for challenging barriers to and promoting full and open competition in the acquisition of supplies and services by the agency;

(2) Review the contracting operations of the agency and identify and report to the agency senior procurement executive -

(i) Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency; and

(ii) Any condition or action that has the effect of unnecessarily restricting competition in the contract actions of the agency.

(3) Prepare and submit an annual report to the agency senior procurement executive, in accordance with agency procedures, describing -

(i) Such advocate's activities under this subpart;

(ii) New initiatives required to increase competition;

(iii) Any barriers to full and open competition that remain; and

(iv) Other ways in which the agency has emphasized competition in areas such as acquisition training and research.

(4) Recommend to the senior procurement executive of the agency goals and plans for increasing competition on a fiscal year basis; and

(5) Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers and others in authority to promote competition in acquisition.

(b) The Competition Advocate is the approving authority for Justifications for Other Than Full and Open Competition on proposed contracts with a potential contract value over \$100,000 but not exceeding \$1,000,000. The Competitive Advocate is an official in the Policy and Quality Assurance Branch of the Procurement and Contracts Management Division at Headquarters.

#### **M-1.104 Ratification**

##### **M-1.104-1 Introduction**

(a) As previously discussed, only Contracting Officers who are formally designated as such may obligate the Government for acquisition of personal property and nonpersonal services (including construction). Periodically, actions are taken by personnel without formally delegated contracting authority. When such an action occurs, it does not obligate the Government for the expenditure of funds. However, under certain circumstances, unauthorized actions may be ratified. Ratification of an unauthorized action can only occur when the acquisition would have been valid had the action been authorized by a formally designated Contracting Officer. If an unauthorized action is otherwise improper, a Contracting Officer cannot ratify it and the Agency must deny legal liability, in which case, the person committing the unauthorized action may be personally liable.

(b) Proposed ratification of unauthorized actions must be approved at designated management levels. The Chief of the Contracting Office (CCO) is the ratifying official provided he/she has redelegable contracting authority. In regional offices or laboratory sites, the Chief of the Contracting Office to whom the activity reports is the ratifying official, provided that he/she has redelegable contracting authority. The Head of the Contracting Agency (HCA) is the ratifying official for actions which arise in regional or laboratory sites which do not functionally report to a contracting office. The HCA reviews all ratification actions of \$250,000 or more. It should be noted that unauthorized paid advertisements cannot be ratified.

##### **M-1.104-2 Procedures**

When an unauthorized action has been revealed, the following procedures apply:

(a) The program office will notify the cognizant contracting office by memorandum of the circumstances surrounding the action. The memorandum will include:

- (1) All relevant documents and records;
- (2) Documentation why the work was necessary to and for the benefit of the Government;

- (3) A statement of steps taken or proposed to prevent reoccurrence of the unauthorized action;
  - (4) Approval of the division director (or equivalent) of the responsible office;
  - (5) If expenditure of funds are involved, the notification will also include a Procurement Request/Order (EPA Form 1900-8) with sufficient funds to cover the supply or service involved;
  - (6) If the service or supply was beyond the scope of the existing contract, the notification will include a justification for noncompetitive procurement (JNCP).
- (b) After receipt of the notification, the Contracting Officer shall:
- (1) Make a determination and finding regarding ratification of the unauthorized act. Additional information may be required from the contractor and an opinion from the General Counsel.
  - (2) Inform (at the Contracting Officer's discretion) the Inspector General through the HCA.
  - (3) Prepare memorandum from the Assistant Administrator for Administration and Resources Management to the Assistant, Associate or Regional Administrator advising of the person committing the unauthorized action.
  - (4) Accomplishment of (3) above for actions that would entail small purchase procedures is at the discretion of the Chief of the Contracting Office or a Management Division Director or equivalent at a regional or field activity.

#### **M-1.105 Business Ethics and Conflicts of Interest**

##### **M-1.105-1 Introduction**

The Code of Federal Regulations (see 40 CFR Chapter 1 Part 3) sets forth personal behavioral requirements for individuals, whether program managers, Project Officers, Contracting Officers, contract specialists, or others involved in the acquisition process. These include business ethics and conflict of interest matters that must be observed by all Agency personnel. Personal behavior must be impeccable, and the requirements of EPA, which reflect those of the Government as a whole, must be thoroughly understood and observed.

##### **M-1.105-2 Business Ethics**

(a) Government business must be conducted in a manner above reproach, and with complete impartiality. The official conduct of Government personnel must be such that they would have no reluctance in making a full public disclosure of their actions. It is important that all EPA personnel observe proper standards of conduct in the discharge of their official duties, especially those duties involved in acquisition programs.

**(b) Because of their importance in acquisition programs, you should be familiar with the following summary of selected standards.**

- (1) No employee shall receive any salary or compensation for services as a Federal employee from any source other than the Government of the United States, except as may be contributed out of the treasury of a State, county, or municipality.**
- (2) Employees are not permitted to engage in any outside employment or other outside activity in conflict with the full and proper discharge of the duties and responsibilities of their Government employment.**
- (3) Acceptance of gifts, entertainment, or favors, no matter how innocently tendered and received, from those who have or seek business with EPA, may be a source of embarrassment to the Agency and to the employee involved. It may affect the objective judgment of the recipient and impair public confidence in the integrity of the business relations between EPA and industry. Therefore, employees shall not knowingly solicit or accept any gifts, entertainment, or favors (including complimentary meals and beverages), either directly or indirectly, from any interested party. For the purpose of this standard, gifts, entertainment, and favors include any benefits, gratuities, loans, discounts, tickets, passes, transportation, accommodations, or hospitality given or extended to or on behalf of the recipient.**
- (4) All employees are subject to the basic political activity restrictions outlined in the Hatch Act. Employees are individually responsible for refraining from prohibited political activity.**
- (5) An employee must not use, directly or indirectly, or allow the use of, Government property of any kind for other than officially approved activities. An employee has a positive duty to protect and conserve public property, including equipment, supplies, and other property entrusted or issued to the employee.**
- (6) Employees must not directly or indirectly use official information obtained through the employee's Government employment if the information has not been made available to the general public.**
- (7) Employees should pay their financial obligations in a proper and a timely manner.**
- (8) Employees are prohibited from endorsing in an official capacity the proprietary products or processes of manufacturers or the services of commercial firms for advertising, publicity or sales purposes. Use of material products or services by the Agency does not constitute official endorsement.**
- (9) Credentials and other EPA identification devices are for use only in establishing identity or authority in connection with official**

business. Such credentials and identification devices, or an employee's official position, status, or designation, are not to be used by employees to exert influence or obtain, either directly or indirectly, privileges or rewards for themselves or others.

- (10) An employee shall not engage in criminal, infamous, dishonest, immoral, notorious, or disgraceful conduct, or other conduct prejudicial to the Government.

(c) The maintenance of public confidence in EPA employees clearly demands that each employee take no action which would constitute the use of official position to advance personal or private interests.

#### **M-1.105-3 Personal Conflicts of Interest**

(a) It is most essential and equally important that technical and contracting personnel observe standards of conduct and avoid conflicts of interest with suppliers or potential suppliers of the Government, to obviate any possible inference that the Agency may be compromised to any degree by an employee's actions.

(b) As in the case of standards of conduct, the matter of conflicts of interest is thoroughly covered in EPA regulations. A few of the key points covered in these regulations relating to acquisition matters are:

- (1) Employees are not permitted to have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the employee's Government duties and responsibilities.
- (2) Employees are not permitted to engage, directly or indirectly, in a financial transaction as a result of, or primarily relying on, information obtained through Government employment which has not been made available to the general public.
- (3) Unless authorized to do so, no employee shall participate as a Government employee in any matter in which the employee knowingly has a financial interest.
- (4) After Government employment has ceased, no Government employee may knowingly act as an agent or attorney for anyone other than the United States in connection with any judicial proceedings or other matter, involving a specific party or parties, in which the United States is a party and in which the former employee participated personally and substantially for the Government through decision, approval, disapproval, recommendation, rendering of advice, or investigation.
- (5) No employee may represent anyone before a court or Government agency in a matter in which the United States is a party or has an interest.

(c) The published regulations (see 40 CFR Chapter 1 Part 3) on the conduct of employees detail reporting procedures for income and other special matters with which all personnel should be familiar. The regulations included here were selected because of their potential impact on relationships with organizations or persons that may be involved in doing business under the acquisition programs of EPA.

## **M-1.106 The EPA Organization**

### **M-1.106-1 Introduction**

Exhibit 1-2 depicts the overall organization of the Agency and sets forth the various environmental program areas in which EPA is involved.

### **M-1.106-2 Organizational Structure for Contracting Operations**

The Assistant Administrator for Administration and Resources Management is responsible for procurement. Within the Office of Administration and Resources Management is located the Procurement and Contracts Management Division. That Division (see Exhibit 1-3) is comprised of five elements: (i) Policy and Quality Assurance Branch; (ii) Contract and Management Support Branch; (iii) Planning and Cost Advisory Branch; (iv) Procurement Branch A; and (v) Procurement Branch B.

(a) The Policy and Quality Assurance Branch is responsible for the establishment of EPA-wide acquisition policy and the review of Agency contracting practices.

(b) The Contract and Management Support Branch provides management and control support services to Procurement Branches A and B; handles small purchases; handles terminations, claims, and appeals under contracts, and handles contract closeouts.

(c) Procurement Branch A is responsible for procurements for the Office of Solid Waste and Emergency Response.

(d) Procurement Branch B is responsible for ADP Procurements, procurements for Office of the Administrator and the Office of Administration.

(e) The Planning and Cost Advisory Branch performs several functions. It reviews the reasonableness of offerors' cost proposals; establishes contract policy regarding the handling of contract costs; negotiates indirect cost rates with organizations conducting business with EPA; and is responsible for the Agency's advance planning and Contract Information System.

(f) In addition to the structure of the Procurement and Contracts Management Division, Exhibit 1-3 sets forth other organizational elements which provide procurement support. These elements are shown by dotted line to be reporting to the Director of the Procurement and Contracts Management Division for policy guidance and review purposes only.

(g) The Durham Contract Operations is responsible for procurements for the Office of Research and Development, the Office of Pesticides and Toxic Substances, the Office of Air Quality Planning and Standards, and the ten regional offices.

(h) The Cincinnati Contract Operations is responsible for procurements for the ORD Laboratories in Cincinnati, the Office of Water, and various ORD field laboratories.

#### **M-1.107 The Acquisition Cycle**

##### **M-1.107-1 Introduction**

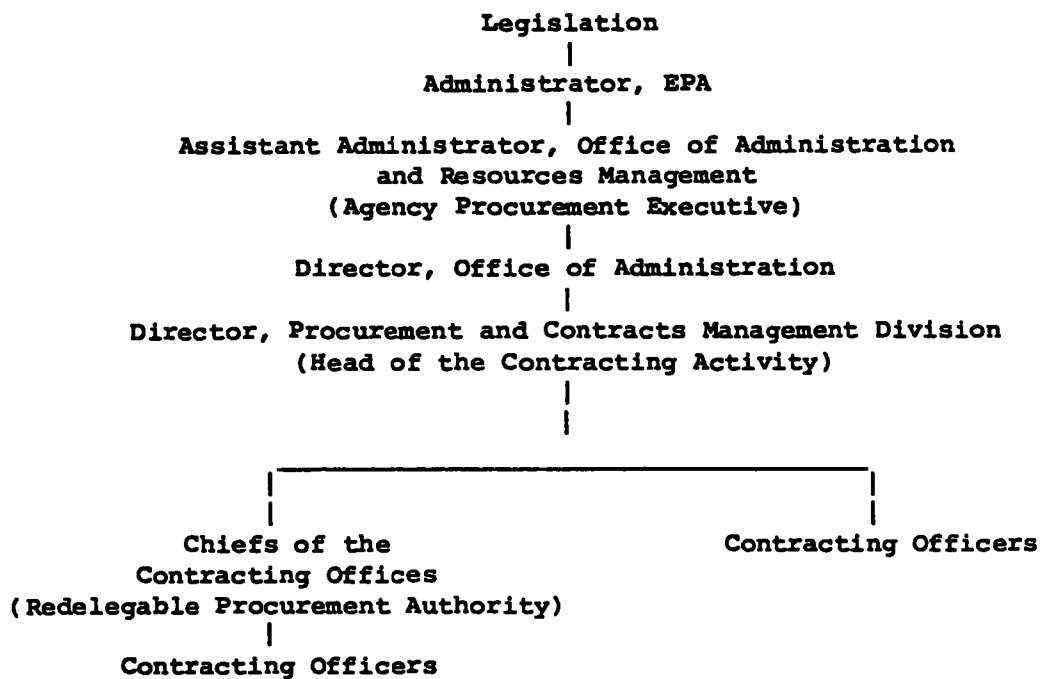
The acquisition cycle is recognized as having three phases: the pre-solicitation phase; the solicitation/award phase; and the post-award administration phase. The first of these phases primarily involves the development of the Procurement Request; the second involves you in working with the contracting office in soliciting and awarding the contract; and finally, in post-award administration you, a representative of the Contracting Officer, monitor the contract.

##### **M-1.107-2 Major Activities and Project Officer Responsibility**

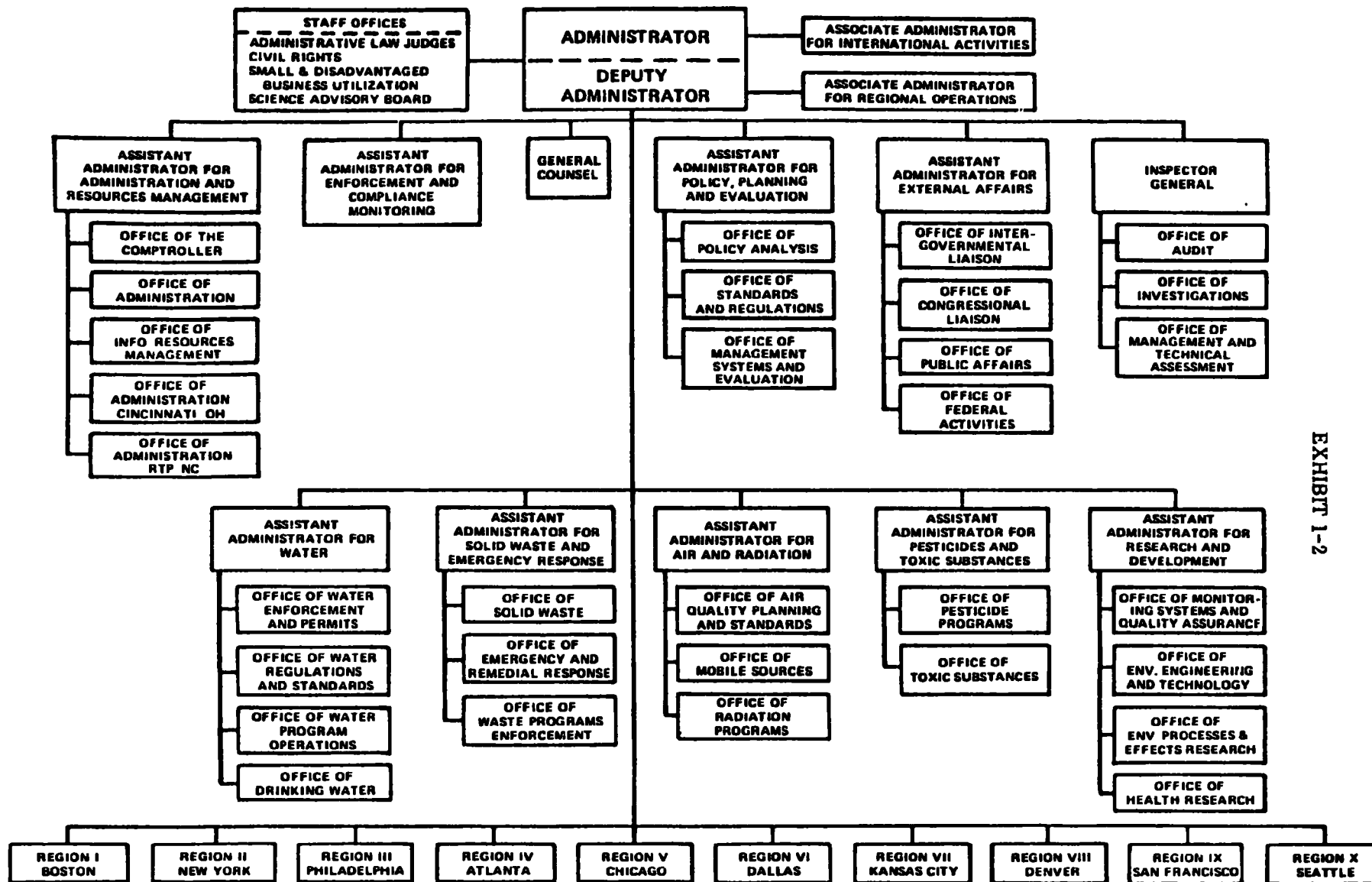
Exhibits 1-4 and 1-5 sequentially set forth the key activities in the acquisition cycle by phase. Exhibit 1-4 lays out the major steps in the Cycle and references chapter coverage within the manual. Exhibit 1-5 delineates responsibility of the Project and Contracting Officer by activity. In the columns to the right side of the Exhibit, each activity has been annotated as either a total responsibility (TR) or participatory activity (PA) of the Project Officer. Responsibilities of the Contracting Officer have been so indicated in the "CO Resp." column. The "Text Ref." column contains a paragraph reference in this manual where additional coverage may be found.

EXHIBIT 1-1

FLOW OF CONTRACTING AUTHORITY



# U.S. ENVIRONMENTAL PROTECTION AGENCY



1-13

EXHIBIT 1-2

Second Edition  
April 1984

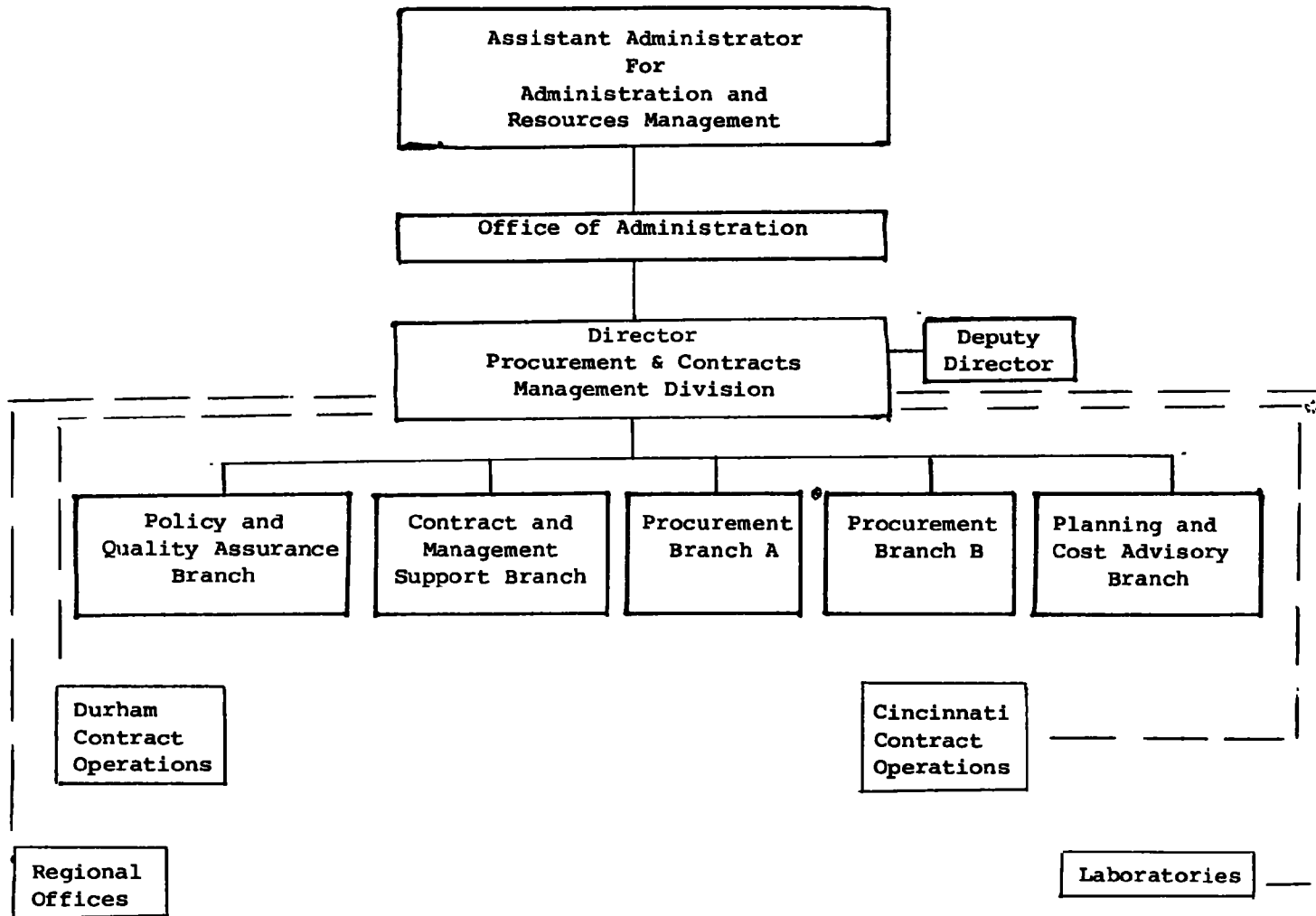
OC 4 1983

Date

*William D. Ruckelshaus*  
William D. Ruckelshaus  
Administrator

EXHIBIT 1-3

ORGANIZATIONAL STRUCTURE FOR PROCUREMENT



Note: Dotted line shows these elements reporting for Policy & Review purposes only.

## EXHIBIT 1-4

	<u>The Acquisition Cycle</u>	<u>See Chapter</u>
<b>Pre-Solicitation Phase</b>	● Development of the Requirement	2
	● Advance Acquisition Planning	2
	● Individual Acquisition Planning and Scheduling	3
	● Development of the Procurement Request/Order	4
<b>Solicitation and Award Phase</b>	● Development and Issuance of the Solicitation IFB/RFP	5
	● Evaluation of Bids/Proposals	5
	● Negotiations	5
	● Source Selection	5
	● Award	5
<b>Post-Award Administration Phase</b>	● Contract Administration	6/7
	● Termination for Convenience or Default	7
	● Contract Closeout	7

# EXHIBIT 1-5

## Major Acquisition Cycle Activities and Project Officer Responsibilities

<u>No.</u>	<u>Activity</u>	<u>P.O.</u>		<u>C.O. Resp.</u>	<u>Text Ref.</u>
		<u>TR*</u>	<u>PA*</u>		
1	Budgeting and Planning:		X		M-2.102
	<u>Pre-Solicitation Phase:</u>				
2	Decision to Solicit Proposals		X	X	M-2.202
3	Acquisition Planning		X	X	M-2.300
4	Establishing the Source Selection Team		X	X	M-4.101
5	Preparing the Procurement Request/Order	X			M-3.102
	- Support Documentation	X			M-4.103
	- Proposed Budget/In-House Cost Estimate	X			M-3.106-12
	- Recommended Project Officer	X			M-3.106-1
	- Funding	X			M-3.106-13
	- Justification for Other Than Full and Open Competition	X			M-3.106-8
	- Technical Evaluation Criteria and Weights	X			M-3.106-5
	- Clearance and Approvals	X			M-3.106-20
	- Statement of Work	X			M-3.106-3
	- Delivery Schedule/Period of Performance	X			M-4.104-2
	- Reporting Schedules	X			M-3.106-18
	- Government-Furnished Property	X			M-3.106-16
	- Determination of QA/QC Requirements	X**			M-3.106-17

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

\*\* Subject to the approval of the Quality Assurance Officer

**EXHIBIT 1-5 (Continued)**

	<u>TR</u>	<u>P.O.</u> <u>PA</u>	<u>C.O.</u> <u>Resp.</u>	<u>Text</u> <u>Ref.</u>
<b><u>Solicitation/Award Phase:</u></b>				
6			X	M-3.106-20
7			X	M-3.106-19
8			X	M-3.106-8
9			X	M-3.106-8
10		X	X	M-3.106-9
11			X	M-5.001
12			X	M-5.201-2
13	X			M-5.501
14		X	X	M-5.501
15		X	X	M-5.502
16		X	X	M-5.601
17		X	X	M-5.602
18			X	M-5.701
19		X	X	M-5.702

**EXHIBIT 1-5 (Continued)**

		<b><u>TR</u></b>	<b>P.O. <u>PA</u></b>	<b>C.O. <u>Resp.</u></b>	<b>Text <u>Ref.</u></b>
	<b><u>Post-Award Administration Phase:</u></b>				
<b>20</b>	<b>Managing Contracts After Award</b>		<b>X</b>	<b>X</b>	<b>M-6.100</b>
<b>21</b>	<b>Monitoring Activities of the Contractor</b>		<b>X</b>	<b>X</b>	<b>M-6.200</b>
<b>22</b>	<b>Contract Termination</b>		<b>X</b>	<b>X</b>	<b>M-7.400</b>

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## **CHAPTER M-2.000**

### **ORIGIN OF REQUIREMENTS AND ADVANCE ACQUISITION PLANNING**

#### **M-2.101 Introduction**

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

#### **M-2.102 Budgeting and Planning**

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

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

##### **M-2.102-1 The Budget Year (Outyear Budget)**

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

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

(c) In addition to the narrative justifications, the Budget Requests include funding levels for "intramural" costs (the costs of supporting staff such as salaries, travel, supplies, equipment, and ADP support costs) and "extramural" costs (acquisition and assistance).

(d) During the summer of FY 1984, the Administrator holds budget hearings with each of the National Program Managers, querying them on issues raised in their budget requests. In attendance are the lead Deputy Regional Administrators, representing the coordinated regional view. As a result of the hearings and reviews of manager's requests, the Administrator makes final decisions on the shape and funding levels of the FY 1986 budget.

(e) The Office of the Comptroller coordinates the preparation of the final FY 1986 Budget Request with the National Program Managers and transmits it to OMB by September 15. This budget request includes a justification of resources for various levels of programs, and an "object class" distribution of the intramural and extramural costs in each program element (i.e., specific amounts for contracts and grants for each program element are now identifiable).

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

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

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

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

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

#### **M-2.102-2 The Operating Year**

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

- (1) Phase I provides for the distribution of the headquarters budgets to an "allowance holder" level of detail. "Allowance holders" are usually Office Directors within an Assistant Administrator's Office, who have the authority to obligate funds. In the Regions, each Regional Administrator is an Allowance Holder.
- (2) Phase II provides all offices the opportunity to propose "reprogrammings" of resources between programs and object classes as defined in the President's Budget. Since the Operating Plan is created almost one full year after initial conceptualization of the President's Budget, some priorities and resource needs may have changed. This is the stage during which those adjustments can first be proposed.
- (3) Phase III provides for the distribution of operating plan resources through the four quarters of the fiscal year; offices develop contract plans by informing the Contracts Management Division with whom and when they plan to obligate their contract resources; and, offices develop plans indicating how they plan to use their ADP resources.

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

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

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

#### **M-2.102-3 The Current Year**

(a) On October 1 of the new fiscal year, the Office of the Comptroller issues "Advices of Allowance" to EPA Allowance Holders based on the Operating Plan (or some other level of funding if under a continuing

resolution). The Advice of Allowance allows each office to incur obligations against the amount set in the allowance, usually derived from the operating plans.

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

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

- (1) Funds appropriated under the Salaries and Expenses Appropriation currently last for only one year; funds not obligated during the fiscal year revert back to the Treasury Department. Contracts typically charged to this appropriation are administrative in nature, i.e., janitorial services, landscaping services, economic consultants.
- (2) Funds appropriated under the Abatement, Control and Compliance Appropriation are available for two years; funds not obligated the first year are "carried over" into the second year. The Office of the Comptroller issues "carryover" allowances the second year. Carryover funds may also be reprogrammed, subject to the same restrictions as new authority. Contracts funded under this appropriation are generally program-related, i.e., contracts to perform laboratory analyses of water or hazardous waste materials, or contracts to perform environmental impact studies.
- (3) Research and Development Appropriation funds are also available for two years. The Office of Research and Development manages most of this appropriation and issues a variety of research grants and contracts under its aegis.
- (4) The Superfund Appropriation is a "no-year" appropriation; the funds are available until obligated and do not lapse back to Treasury. The majority of the Superfund appropriation is managed by the Office of Solid Waste and Emergency Response. Contracts are issued for a variety of purposes, including laboratory analyses, cleanup of hazardous waste, and construction of containment facilities.
- (5) There are a number of other appropriations which are smaller than those mentioned above, are specified for much narrower purposes, and are usually managed by a single office.

(d) Allowance Holders may change their Operating Plans only by submitting change requests to the Office of the Comptroller. When reviewed and if approved, the Office of the Comptroller issues a revised Advice of Allowance reflecting the revised Operating Plan.

## **M-2.200**

### **THE DECISION TO CONTRACT OUT**

#### **M-2.201 Introduction**

It is clear that EPA's programmatic needs are set forth considerably in advance. Whether a need is met through in-house resources or through contracting is in part dependent upon legislative mandate, availability of in-house resources, time, and other considerations. One major determining factor is the Office of Management and Budget Circular A-76.

#### **M-2.202 Impact of OMB Circular A-76**

##### **M-2.202-1 Policy**

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

##### **M-2.202-2 Governmental Functions**

An inherently Governmental function is one which must be performed in-house due to a special relationship in executing Governmental responsibilities. Such Governmental functions can fall into several categories. The first is the discretionary function of Governmental authority, including: investigations, prosecutions, and other judicial functions; management of Governmental programs requiring value judgments; directing the national defense; management of armed services; conduct of foreign relations; selection of program priorities; direction of Federal employees;

regulation of the use of space, oceans, navigational rivers and other natural resources; direction of intelligence and counter-intelligence operations; and, regulation of industry and commerce. The second Governmental function is monetary transactions and enticements, including: Government benefits programs; tax collection and revenue disbursements as part of the Government; and, control of the public treasury, accounts, and the administration of public trust. The August 16, 1983 version of OMB Circular A-76 exempts research and development (R&D) entirely from the requirements of the Circular. However, severable commercial activities in support of R&D are subject to the provisions of the Circular.

#### **M-2.202-3 Commercial Activity**

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

#### **M-2.202-4 Government Performance of a Commercial Activity**

Government performance of a commercial activity is authorized under any of the following conditions:

(a) No satisfactory commercial source is capable of providing the needed service or product or use of such a source would cause unacceptable delay or disruption of an essential program.

(b) Government performance of a commercial activity is required for national defense reasons in accordance with criteria established by the Secretary of Defense.

(c) Commercial activities performed at hospitals operated by the Government if the agency head determines that in-house performance would be in the best interest of direct patient care.

(d) Government performance of a commercial activity is authorized if a cost comparison demonstrates that the Government is operating or can operate an activity on an on-going basis at an estimated lower cost than a qualified commercial source.

#### **M-2.202-5 Inventory of Activities**

(a) EPA is required to ensure that initial reviews of all existing in-house commercial activities are completed in accordance with the supplement to OMB Circular A-76.

(b) No later than March 15 of each year, EPA, along with other Federal agencies, is required to submit to the Office of Federal Procurement Policy a report on the implementation of OMB Circular A-76.

**M-2.202-6 A-76 Acquisition Process**

(a) Part II of OMB Circular A-76 provides information on the preparation of Statements of Work. It sets forth the steps needed to develop, write, and administer a performance work statement and a quality assurance plan for both in-house or contractor operation of a commercial activity. Part II is particularly helpful in developing Statements of Work for facility maintenance or operation type activities. Once a Statement of Work has been completed, it becomes the basis for conducting an in-house cost study by Government personnel to determine the estimated cost of providing the service required. The cost study is performed in accordance with the OMB Cost Comparison Handbook, Part IV of OMB Circular A-76. The Handbook was developed to ensure that all agencies use a consistent methodology for conducting in-house cost comparisons. It sets forth definitive guidelines for determining which is the most economical mode of performance; that is, in-house or contract.

(b) The August 16, 1983 revision of OMB Circular A-76 eliminated the dollar thresholds and established a full-time equivalent (FTE) threshold for determining whether cost comparisons are required. Activities of 10 FTEs or less may be contracted out without a cost comparison study. Activities over 10 FTEs must undergo a cost study unless a waiver is granted.

(c) The contracting process in many cases takes place simultaneously with the cost study phase. It requires the Statement of Work to become the foundation for the issuing of solicitations for bids by the Contracting officer and synopsisizing the solicitations.

(d) Solicitations and synopses of solicitations issued to obtain offers for comparison purposes are required to state that they will not result in a contract if Government performance is determined to be more advantageous.

(e) In making cost comparisons, in-house personnel prepare an estimate of the cost of Government performance based on the same work statement and level of performance as applies to offerors and the total cost of Government performance is compared to the total cost of contracting with the potentially successful offeror. Within the OMB A-76 guidelines, the lowest estimate wins, except that an in-house activity is not to be converted to contract performance unless the projected cost advantage to the Government is at least 10 percent of the in-house personnel-related cost for the performance period.

(f) If the contractor appears to win, the Government normally conducts a preaward survey to evaluate the Contractor's ability to perform. A time period is set aside for review and appeal by the affected parties. Upon satisfactory completion of the preaward survey, the contract is awarded. If the Government's cost study proves to be lower, then a series of similar steps takes place--i.e., a period of time is set aside for review and appeal, followed by a possible cancellation of the solicitation.

(g) Each cost comparison should be reviewed by an activity independent of the activity which prepared the cost analysis to ensure conformance with the instruction to the supplement to OMB Circular A-76.

**M-2.202-7 Project Office Responsibilities**

Where the provisions of A-76 are being applied, your responsibilities may be varied. In addition to the possible participation in the review process (see M-2.202-5 above), you may participate in: (i) the inventory; (ii) Statement of Work development; (iii) the quality assurance plan which will be utilized to ensure acceptable performance by the organization that wins the contract—i.e., Government or industry, and (iv) the evaluation of the bids or proposals received in response to the solicitation. If you have prepared or participated in the development of the Government's cost estimate to perform the work—i.e., the Government's bid—you cannot be involved in the evaluation of bids or proposals of commercial organizations.

## **M-2.300**

### **ADVANCE ACQUISITION PLANNING**

#### **M-2.301 Definition and Purpose**

(a) Advance Acquisition Planning is accomplished by using the EPA Acquisition Planning System.

(b) The Acquisition Planning System has three primary purposes. (1) As an integral part of the Operating Plan, it is used by program offices to prioritize contracting needs for the upcoming fiscal year and allocate contract funds. (2) It is also one of the means by which the contracting offices (Procurement and Contracts Management Division (PCMD) and the Cincinnati and RTP Contracts Management Divisions) estimate annual workload and staffing requirements. The contracting offices also use the plans to identify potential socioeconomic set-asides and high priority awards. (See Exhibits 2-1 and 2-2 at the end of this chapter.) (3) Finally, it is used to promote and provide for full and open competition and to ensure that the Government meets its needs in the most effective, economical and timely manner.

(c) The system places major emphasis on increased interaction/communication between program offices and contracting offices. The level of interaction necessary will be dependent upon the volume of contracting activity anticipated for each program office. While this system applies primarily to assistant administrator organizations, similar procedures will be followed for regions, associate administrator organizations, and headquarters staff offices, as necessary, based on anticipated activity.

#### **M-2.302 Requirements**

(a) With the exception of small purchases, or orders under GSA or other agencies' contracts, acquisition planning must be performed for each contract procurement transaction (new contract, renewal, or modification) to be obligated during a fiscal year.

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

### **M-2.303 Procedures**

#### **M-2.303-1 Preliminary Meetings**

(a) Preliminary meetings will take place between program office and PCMD personnel prior to preparing initial acquisition plans in preparation for the forthcoming fiscal year. Meetings should take place in the July/August time frame (or as mutually agreed upon by PCMD and the program office), with the initial plans due in September. PCMD will schedule these meetings with the planning contact (a senior level planning official) for each Assistant Administrator and with such other organizations as appropriate. The purpose of these preliminary meetings will be to discuss the program office's contracting activity for the upcoming year. The agenda for the first meeting should include at least the following:

- (1) Program office's contracting priorities;
- (2) Program office's volume of contracting activity for the upcoming year;
- (3) Unresolved problems between the contract offices and program office, along with proposed solutions;
- (4) Contract resources level assigned to the program office--whether it is sufficient to process expected workload;
- (5) Ways to maximize competitive contract awards and socioeconomic set-asides;
- (6) How to prepare annual and first quarter plans;
- (7) How to coordinate the submission and processing of actions to assure maximum responsiveness and minimum leadtimes; and,
- (8) Arrangements for discussions between PCMD and program offices to discuss on-going contracting activity and problems.

(b) The initial meetings should include the following attendees (if available): Senior official(s) in charge of planning for the organization and similar officials from individual offices within the organization as deemed necessary; the PCMD Director and the PCMD Branch Chief/Section

Head/contracting officers who will be handling the specific program area (including representatives from the ADP Procurement Section if the program office has significant ADP contract dollars); and other PCMD staff as appropriate. The Contract Management Division offices at RTP and Cincinnati will participate in the meetings with programs which they service. Both program office and contract office personnel should come out of these preliminary meetings with a good understanding of what to expect on the contract plans and for submissions during the first quarter of the upcoming fiscal year.

#### **M-2.303-2 Preparation, Submission and Review of Contract Plans**

(a) After the preliminary meetings are held, allowance holder representatives will prepare the initial plans and submit them to their Assistant Administrator, Regional Administrator, Associate Administrator, Inspector General, or General Counsel, or executive officer for review and approval. The plans will then be sent to PCMD (with a courtesy copy to the Comptroller). PCMD representatives (Planning and Analysis staff plus the appropriate contracting officers) will acknowledge receipt of the plans, review them and notify the program office if there are questions. Such questions will be discussed with the program representative, who will then contact individual allowance holders for any necessary changes/revisions.

(b) As indicated above, initial plans should be submitted in September for the upcoming fiscal year (starting October 1). There will be two planning forms to complete: an annual summary plan and a detailed quarterly plan. These forms including instructions are attached as Exhibits 2-1 and 2-2. Below are brief descriptions of each planning form.

- (1) **Annual Plan** - This plan provides a quarter-by-quarter summary of all planned contract actions and dollars (excluding small purchases) for the entire year, broken down by transaction category and by contracting office. In addition, new contract awards must be shown by dollar ranges. Separate annual plan forms should be prepared for funded actions, nonfunded actions (planning purpose PRs), and ADP actions (funded and nonfunded). The sum of these three plans will represent the entire contracting workload for the program office for the year. See Exhibit 2-1 attached for more details.

The plan should be prepared and submitted concurrently with the 1st quarter detailed plan (see (2) below). It should be updated only when significant changes occur to the program's contract funds level. For example, if an allowance holder who originally planned \$10 million in contract actions receives another \$2 million in contract funds from Agency reserves during the 3rd quarter, the annual plan should be updated to reflect the additional funds. Likewise, if an allowance holder reprograms funds to significantly impact the planned contract total, the annual plan should be updated. Any anticipated update to the annual plan should be discussed by the program office and PCMD at the quarterly/monthly meetings to assure PCMD's ability to provide satisfactory service in response to changing requirements. (See M-2.303-3 Quarterly/Monthly Meetings below.)

- (2) Quarterly Plan - This form provides for detailed data on every contract action (excluding small purchases) to be submitted to the contracting offices during the subject fiscal quarter. A separate plan must be prepared and submitted to PCMD during the month preceding the next fiscal quarter (the 1st quarter plans should be submitted with the annual plan in September, the 2nd quarter plan in December, and so on). See Exhibit 2-2 for specific instructions and data elements.

Although PCMD prefers that all plans be prepared on the standard EPA planning forms, alternate forms using a different format are acceptable, provided that all of the required data elements are shown.

#### **M-2.303-3 Quarterly/Monthly Meetings**

(a) Once the initial plans are submitted and agreed upon, PCMD and the program offices should decide where, when and how often they will meet to discuss contracting activity and who will attend. At the very least, quarterly meetings should be held to discuss the upcoming quarterly plan and any problems either party is experiencing. The agenda for these meetings should include discussions on:

- (1) Upcoming actions to be submitted and submission goals;
- (2) Problems with actions in-process;
- (3) Identifying delays/slippages in submissions of planned actions;
- (4) New workload which would cause an adjustment to the annual plan;
- (5) The present actual level of submissions;
- (6) Preparation of the next quarterly plan; and,
- (7) Other items of concern to the program or contracting personnel.

(b) PCMD and the designated planning contact for each Assistant Administrator will be jointly responsible for scheduling these quarterly/monthly meetings. PCMD will hold joint meetings with other organizations as needed based on their expected contracting volume. In cases where the program office and the contracting staff are in different locations (for example, the Assistant Administrator office for the Office of Research and Development is in Washington, but the contracting activity is handled by the RTP and Cincinnati contracting offices), the meetings will probably only take place once a quarter. The RTP and Cincinnati contracting officers will be able to meet the local individual lab representative/project officers on a monthly basis (if not more frequently).

(c) In other cases, the meetings should be held at least quarterly, while the staff members who use the plans on a day-to-day basis should meet monthly or as often as necessary. The frequency of these meetings will

depend upon the contracting activity level and availability of the involved parties, and will be a mutually reached decision. Regular and frequent communication and interaction is necessary to the success of the planning process.

#### **M-2.304 Planning Purpose PRs**

Non-funded actions (Planning Purpose Procurement Requests - PPPRs) should be shown on both the annual and quarterly planning forms. A separate annual planning form summary should be completed for PPPRs, based on the quarters in which the actions will be submitted. Details on the actions should be shown on the quarterly planning form. Program offices should include only those non-funded requirements for which they are highly certain that funding will be provided. Actions where funding is less certain should not be planned or submitted.

#### **M-2.305 Submission Goals and Tracking**

##### **M-2.305-1 Submission Goals**

PCMD will analyze the mix of planned actions reflected on the annual plan (see Exhibit 2-1) for each program office and agree on submission goals for each fiscal quarter. The objective will be to provide an even contracting workload throughout the fiscal year. This may result in different percentage goals for each program office (or even each allowance holder), which will be based on the program office/allowance holder's individual plan and the PCMD staff's workload. The individual goal levels will be negotiated between the planning contact and the PCMD at one of the meetings held after the initial plans have been submitted and reviewed.

##### **M-2.305-2 Tracking of Actual Submissions**

Actual submissions will be tracked on the Contracts Information System (CIS). The actual submission level data, will be discussed at the monthly/quarterly meetings following the end of each fiscal quarter. Program offices will be able to obtain this information from PCMD on request.

#### **M-2.306 Cut-Off Dates**

PCMD establishes deadline dates for submission of specific classes of actions that must be awarded before year end. These dates take into account the leadtime PCMD will need to award actions by September 30. Cut-off dates apply to all actions and all program offices, and should not be confused with submission goals (see M-2.305-1 above), which may vary by program office.

##### **M-2.306-1 Submission of Procurement Requests**

(a) The cut-off date for receipt of procurement requests (EPA Form 1900-8) (see Chapter 4) by the contracting offices for obligation before the end of the fiscal year are as follows:

<u>Type of Procurement</u>	<u>Cut-Off Date</u>
(1) All contracts except extensions as noted below	April 30
(2) Extension of existing service contracts which expire on September 30	June 30

Note: Cut-off dates for small purchases transactions (procurements under \$25,000) or delivery orders under GSA Federal Supply Schedule is September 1, except for renewal of leases or maintenance agreements on equipment for which the cut-off date is June 30.

(b) Contracting offices make every effort to complete obligation of all procurements received by the cut-off date before the end of the fiscal year. However, PCMD cannot guarantee that those actions received by the cut-off dates will be obligated by year-end. Processing times depend on the contractor, program office, audit office, as well as on contracting office action.

#### **M-2.306-2 Unobligated Procurements**

Unobligated procurements that were received by the cut-off date are given first priority for obligation in the ensuing fiscal year under the following conditions:

(a) Transactions have been properly recorded as commitments in the Financial Management System year-end report;

(b) Documents are properly executed procurement requests received by a contracting office; and,

(c) The Office of the Comptroller has recertified funds availability and issued allowances.

#### **M-2.307 Review of Commitments and/or Obligations**

##### **M-2.307-1 Comptroller Review**

Using information supplied from the Financial Management System (FMS) and the Contract Information System, the Office of the Comptroller reviews the current commitments/obligations for contracts as of April 30 of each fiscal year. The comptroller's office determines, for the Responsible Planning and Implementation Officer (RPIO), the uncommitted/unobligated balances which are available. The Office of the Comptroller completes its review during May, or as soon as possible thereafter.

##### **M-2.307-2 Status of Transactions**

RPIOs determine that commitments reflected in the Financial Management System are accurate and that the contracting offices have the necessary documents to process. Monthly Contract Information System reports are provided to show the status of all transactions.

**M-2.307-3 End of Fiscal Year Commitment/Obligation Reconciliation**

(a) As a final step in the contract planning process, the Financial Management Division provides Allowance Holders with special reports listing all committed items received by September 30 in finance offices for entry into the FMS. PCMD provides allowance holders with a status report on unobligated procurements received for processing during the fiscal year.

(b) The allowance holder must compare these reports to his/her own records identifying all contracts which were committed as of September 30. Any missing items or corrections must be transmitted to the appropriate Accounting Operations Office within five (5) work days of receipt of the special report. In addition, the RPIO sends an updated commitment listing to the Financial Management Division, Financial Reports and Analysis Branch.

(c) The Financial Management Division compares the RPIO listing with its own commitment listing, and in conjunction with the Responsible Planning and Implementation Officers, prepares a consolidated listing of all outstanding commitments which it certifies for carryover to the Office of Comptroller. The Office of the Comptroller reviews the commitment listing with the RPIO, prepares a consolidated listing of the status of all outstanding actions of each RPIO, negotiates reductions in commitments if insufficient funds are available to the RPIOs, and issues carryover Advices of Allowance.

<b>CONTRACT PLANNING SUBMISSION (FY      ) ANNUAL PLAN</b>										DATE		
PREPARED BY			TELEPHONE NUMBER		ALLOWANCE HOLDER NO.		ORGANIZATION					
APPROVED BY (AA or designee)			REVIEWED BY (P&CMD)				ACTIONS ARE: (Check one)					
							<input type="checkbox"/> Funded <input type="checkbox"/> Nonfunded <input type="checkbox"/> ADP Funded <input type="checkbox"/> ADP Nonfunded					
TRANSACTION CATEGORY			ACTIONS BY FISCAL QUARTER OF SUBMISSION									
			1		2		3		4		TOTAL	
			NO. OF AC- TIONS	DOLLAR AMOUNT (000)	NO. OF AC- TIONS	DOLLAR AMOUNT (000)	NO. OF AC- TIONS	DOLLAR AMOUNT (000)	NO. OF AC- TIONS	DOLLAR AMOUNT (000)	NO. OF AC- TIONS	DOLLAR AMOUNT (000)
NEW AWARDS												
\$10K – \$500K												
\$500,001 – \$1 M												
\$1,000,001 +												
Incremental Funding/ Exercise of Option Actions												
Other Contract Modifications												
<b>TOTAL</b>												
ALLOCATION BY CONTRACTING LOCATION												
Headquarters												
RTP												
Cincinnati												
Regions												

2-17

EXHIBIT 2-1

## INSTRUCTIONS – ANNUAL PLAN

**GENERAL:** Please fill in the fiscal year at the top of the form. A separate Annual Plan form should be completed for –

- 1) All Funded Actions – contract actions to be submitted to the Procurement and Contracts Management Division (P&CMD) with funds, DCNs, and ACCOUNT numbers that can be obligated (excluding ADP actions),
- 2) Non-Funded Actions – (Planning Purpose PRs) to be submitted to P&CMD before accounting data/funds are available (excluding ADP actions),
- 3) ADP Funded Actions, and
- 4) ADP Non-Funded Actions.

Small purchases should be excluded from the plans.

Please include only those Non-Funded (Planning Purpose PR) Actions for which there is a high certainty of eventually providing funds to be obligated. If a planning purpose PR is to be submitted in the 1st quarter, to receive funding in the 3d quarter, the action should be included in both the annual Funded plan (as a 3d quarter

action) and the annual Non-Funded plan (in the 1st quarter). Planning purpose PRs submitted in the prior year, which are being funded in the current year, should be included under the quarter in which funding will be provided.

Each procurement action should be counted separately on the summary. One PR could result in multiple actions throughout the year. If so, please estimate the number of anticipated actions and count each one separately in the appropriate fiscal quarter. The dollars to be shown should represent the estimate to be obligated under the specific action.

**TYPES OF ACTIONS:** Summarize the quarterly totals of actions and dollars by New Awards (by \$ ranges, based on the estimated obligation for the solicitation), Incremental Funding/Option Actions (on which the contract has already been awarded), and other contract modifications. If a new contract action will be submitted for award early in the year, and funding/mods on the same contract will be submitted later in the year, only include the initial RFP under New Awards. The additional funding/mods should be shown in the Incremental Funding/Option Actions or Other Contract Modifications, as appropriate.

**BY CONTRACT LOCATION:** Summarize quarterly totals by the contracting office/location which will be processing and awarding the action.

**PLEASE READ INSTRUCTIONS ON BACK BEFORE COMPLETING THIS FORM**

[illegible]

## INSTRUCTIONS – QUARTERLY PLAN

**GENERAL:** Please fill in the Fiscal Year and check the Quarter of the plan at the top of the form. To the extent possible, please group all actions by the contracting office that will process them. For example, list all Washington (HDO) actions first, followed by RTP actions, Cincinnati actions, and Regional actions, with appropriate identification for the contracting office.

This plan should include all contract actions to be submitted to P&CMD during the subject quarter, whether funding is provided or not (see Funding Status code instructions below).

**ID NUMBER:** Provide a unique sequential number format using up to eight characters. ID numbers must be shown on PRs submitted, and should be traceable back to the plan.

**TITLE/DESCRIPTION:** Provide a concise descriptive title unique to this procurement action. Please specify if this is an ADP action.

**PROJECT OFFICER/TELEPHONE NUMBER:** Give the EPA project officer for this action, along with his or her telephone number.

**TRANSACTION CODE:** Describe the type of transaction, using one of the following codes:

- C New Competitive Contract
- S New Sole Source Contract
- B Basic Ordering Agreement
- MA Modification – added work scope
- MO Modification – exercise of an option
- MI Modification – incremental funding action
- O Some other class of action – identify in Project Description column

**FUNDING STATUS CODE:** Used to identify a Funded (F) or a Planning Purpose (P) PR and year of expected obligation.

Examples –

P/84 = Planning Purpose PR for obligation in FY84

F/83 = Funded action for obligation in FY83

**CONTRACT NUMBER:** Only fill out if known – for mods, options, funding actions.

**SET-ASIDE STATUS:** Used to identify –

- S = Small business award
- SS = Small business set-aside
- 8 = 8(A) award

**POTENTIAL CONTRACT VALUE:** Show estimated potential contract value of this procurement. If transaction is a modification, show the estimated increase in contract value (only for transactions where additional work is being added). This amount may include money to be obligated over several years if the action will result in award of a new contract.

**MULTIFUNDED:** Show if other allowance holder(s) are providing funding on this action; if so, list other allowance holder numbers in the Title/Description column.

**ESTIMATED DOLLAR AMOUNT:** Expected amount of the obligation to be made for this transaction (RFP). If this transaction represents the initial award of a new contract, this column should only show the initial RFP's anticipated obligation. The potential value of the entire contract should be shown under *Potential Contract Value* (see above).

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**CHAPTER M-3.000**  
**INDIVIDUAL ACQUISITION PLANNING**  
**AND SCHEDULING**

**M-3.101    Introduction**

Chapter 2 of this manual sets out the process by which an Agency need is identified, budgeted, method of acquisition determined, and how the advance procurement planning process takes place at the beginning of each fiscal year. This Chapter delves into the process of individual acquisition planning and scheduling.

**M-3.102    Definition**

(a) Advance acquisition planning, also called contract planning, is the formal function of establishing a plan that schedules certain types of anticipated contractual expenditures during a fiscal year. It is an activity that takes place before the beginning of a fiscal year and involves allowance holders, the Office of the Comptroller, and the Procurement and Contracts Management Division. The primary purpose of advance acquisition planning is to enable PCMD to establish a plan for meeting the demands for its services.

(b) Individual acquisition planning and scheduling is a two-step function. The first step, individual acquisition planning, takes place prior to the development of the Procurement Request (PR) (see Chapter 4) and is an activity that involves the initiator of the requirement (usually later appointed as the Project Officer) and the Contracting Officer. During this activity, the Project and Contracting Officers discuss all of the Project Officer's duties and responsibilities related to the new requirement. After this meeting, the Project Officer will, with the assistance of the Contracting Officer as needed, develop the PR package, taking into account these discussions.

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

### **M-3.103 Sequence of Advance and Individual Acquisition Planning and Scheduling**

Exhibit 3-1 sets forth the sequencing of these activities, participants, and reference to manual coverage.

### **M-3.104 Policy for Individual Acquisition Planning and Scheduling**

(a) Individual acquisition planning should take place for all procurements in excess of \$25,000 (including money bearing change orders and modifications) with the exception of orders to be placed under GSA requirements or schedule contracts and contracts with other agencies. Exhibit 3-2 contains a suggested individual acquisition planning form. In addition, the form contains references to paragraphs within the Handbook where information may be obtained on the subjects set forth on the form.

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

### **M-3.105 Procedure for Individual Acquisition Planning**

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

(b) Prior to development of any aspect of the Procurement Request/Order (EPA Form 1900-8), the Project Officer must consider all the items contained in Exhibit 3-2. As an aid, this Exhibit contains responses to those parts of this Chapter that must, as applicable, be considered prior to the actual development of a Procurement Request (see Chapter 4). Subsequent to a review of these considerations, a meeting should be established with the Contracting Officer or designee to cover the Project Officer's plan for development of the requirement and to ensure all required steps are understood and will be taken.

NOTE: The contents of Exhibit 3-2 and this chapter expand upon the EPA "Procurement Request Rationale Checklist." Exhibit 3-2 contains more than the checklist requires and will result in the complete assembly of all information needed to prepare the PR and supporting rationale. See Chapter 4 for guidance on the execution of the PR—EPA Form 1900-8.

### **M-3.106 Acquisition Planning Considerations**

Each of the following topics must be considered and discussed with the Contracting Officer in planning the development of the requirement. Topics sequentially follow the considerations listed under "Planning Considerations" in Exhibit 3-2.

#### **M-3.106-1 Project Officer Qualifications**

A Project Officer must be identified who is qualified to serve as a Project Officer on the contract. Preferably it should be an individual who has previous experience as a Federal Government Project Officer and has been certified under the Project Officer certification program.

#### **M-3.106-2 Conflicts of Interest: Personal/Organizational**

##### **M-3.106-2(a) Requirements**

In planning the acquisition, consideration should be given to the following potential conflicts of interest:

- (1) The Project Officer should explore the possibility that an organizational conflict of interest problem could exist.
- (2) For individual conflicts of interest, the Project Officer should identify any regular and special EPA employees (i.e., those appointed to serve not more than 130 days in a 365-day period) who are or are planned to be involved in: establishing the need for the proposed contract; preparing the Statement of Work; preparing the evaluation criteria; participating in the proposal evaluation process; or otherwise participating in the Agency's management of the contract. This list of personnel should be brought to the attention of the Contracting Officer.

##### **M-3.106-2(b) Organizational Conflicts of Interest (OCI) Defined**

- (1) Organizational conflict of interest exists when the nature of the work to be performed under a proposed Government contract and a prospective contractor's organizational, financial, contractual, or other interests (including the interests of its chief executives, directors, consultants, or subcontractors) are such that:
  - (i) award of the contract may result in an unfair competitive advantage; or
  - (ii) the contractor's objectivity in performing the contract work may be impaired.
- (2) The determination as to whether an organizational conflict of interest exists should be made through the exercise of common sense and good business judgment. The Contracting Officer is responsible for identifying OCI early in the acquisition process and taking appropriate steps to avoid, neutralize, or mitigate it.

In doing so, the CO is expected to seek the advice of legal counsel, as well as technical assistance, from appropriate program specialists in the application of the general rules set forth below. If the CO initially decides that a particular acquisition involves a significant OCI, the CO must, prior to issuing the solicitation, submit a written analysis, a draft solicitation provision, and, where appropriate, a proposed contract clause to the HCA for review and approval.

General rules to be applied in determining actual or potential existence of OCI are as follows:

- (i) A contractor that provides systems engineering and technical direction for a system, but does not have overall contractual responsibility for its development, integration, assembly, or production, shall not be awarded a contract to supply the system or any of its major components or be a subcontractor or consultant to a supplier of the system or any of its major components.
- (ii) If a contractor prepares and furnishes complete specifications covering nondevelopmental items for use in a competitive procurement, that contractor shall not be allowed to furnish these items either as a prime contractor or a subcontractor for a reasonable period of time, including, at least, the duration of the contract containing the furnished specification. This rule does not apply to:
  - Contractors that furnish at Government request specifications or data regarding a product they regularly provide, even though the specifications or data may have been paid for separately or in the price of the product; or
  - Situations in which contractors, acting as industry representatives, help the Government prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by Government representatives.
- (iii) If a contractor prepares or assists in preparing a work statement to be used in competitively acquiring services or a system, or if the contractor provides material leading directly, predictably, and without delay to such a work statement, then that contractor shall not supply the services, system, or major components of the system unless:
  - The contractor is the sole source; or
  - More than one contractor has been significantly involved in preparing the work statement.

- (iv) Contracts involving technical evaluations of other contractors' products or consulting services shall not be awarded to a contractor that would evaluate or advise the Government concerning its own products or activities, those of a competitor, or those of other organizations in which it has a substantial interest.
- (v) A contractor that gains access to confidential business information of other companies in performing advisory services for the Agency must protect the information from unauthorized use or disclosure, must refrain from using the information for any purpose other than that for which it was furnished, and must otherwise comply with the special requirements of 40 CFR Part 2 and the provisions of its contract relating to the treatment of confidential business information. This rule does not apply to information available to the Government or the contractor from other sources without restriction.

**M-3.106-2(c) Personal Conflicts of Interest**

- (1) All employees are subject to two types of requirements in connection with apparent or actual conflicts of financial interests. One is a criminal statute, 18 U.S.C. 208, which prohibits participation by any employee in official activities where he or she has a conflicting personal financial interest. The other requirement is of an administrative nature that has been established by the Administrator.
- (2) The statutes generally referred to as "conflict of interest" statutes apply to all regular Government employees (defined as those who are appointed or employed to serve more than 130 days in 365). They provide that such an employee may not:
  - (i) Except in the discharge of official duties represent anyone else before a Court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another.
  - (ii) Participate in his or her governmental capacity in any matter in which a spouse, minor child, outside business associate, or person with whom he or she is negotiating for employment, has a financial interest.
  - (iii) Receive any salary or supplementation of his Government salary from a private source as compensation of services to the Government.
- (3) Failure to comply with these laws is punishable by fine or imprisonment or both.

### **M-3.106-3 Statement of Work (Specification)**

#### **M-3.106-3(a) Definition of Specification**

- (1) The Federal Acquisition Regulation (FAR) defines a specification as "the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements have been met."**
- (2) FAR Part 10 sets forth policy with respect to specifications on Federal purchases. It stipulates that with certain exceptions, use of specifications and standards listed in the Index of Federal Specifications and Standards is mandatory.**
- (3) The regulations recognize that a standing specification can not be established nor would it be appropriate to establish such a specification for all conceivable requirements. Consequently, the regulations provide an Agency the right to develop its own specifications given the lack of an existing Federal specification. The requirement being expressed may be called various names—i.e. specification, Statement of Work (SOW), work statement, etc. The terms are used virtually interchangeably. If any differentiation is to be made, one could say that a specification generally refers to a tangible item whereas a Statement of Work describes (is the specification for) a service. The information in this Chapter referring to a Statement of Work is equally applicable to a "specification."**

#### **M-3.106-3(b) Classification of Specifications**

- (1) Specifications may be divided into two distinct classifications: performance/functional and design. It is possible that a given specification may contain elements of both of these classifications.**
  - (i) A performance (sometimes referred to as a functional) specification is one that tells the contractor "what" the Government wants but not "how" to do the work. When a performance specification is used, the contractor will be required to either perform a service or construct an item that meets a specified level of performance. An example of a performance specification would be to provide services to study and report on the mineral content of rain water that fell during the month of May in Washington, D.C. A hardware example would be a requirement to build a heavier than air flying machine. Successful completion of the work in the first example would be judged on whether the report substantiated the quality of work required to be performed. In the case of the aircraft, success or failure would hinge on whether it flew and was heavier than air. In both cases, the "how" of performance is left to the contractor's discretion. In a performance/functional specification, the Government allows the contractor to use its creative and innovative skills to their maximum.**

- (ii) A design specification tells the contractor both "what" the Government wants and "how" to do it. Thus in the rain water study in (b) above the Government would, if it chose to express the requirement from a design standpoint, have told the contractor where to take the samples, how many, the protocol used to evaluate them, etc.
- (2) Most Statements of Work contain elements of both classifications. However, in drafting a specification one must be careful to ensure that the design elements do not conflict with the performance requirements.

#### **M-3.106-3(c) How the Requirement May Be Expressed**

- (1) One may express a Statement of Work in one of two forms—i.e. term or completion. They are two separate methods of expression and both may include the incorporation of design or performance specifications.
- (2) A term form expresses the requirement from the standpoint of a level-of-effort during a period of time. For example, a requirement to provide two senior analysts, one hydrologist, etc. during the month of May for purposes of studying rain water would reflect a term form requirement. This form focuses in on the expenditure of effort by given types of labor for a period of time with no requirement that a "job" be completed.
- (3) A completion form is one that describes the requirement from the standpoint of the contractor taking on the job and providing the completed product/service that has been described. Using the rain water study as an example, the contractor would be given a SOW (either performance or design in nature) that would require the performance of all work needed to provide the Government with the needed study.

#### **M-3.106-3(d) Considerations in Determining How to Delineate the Requirement**

- (1) Whether you develop the Statement of Work on a design or performance basis and express the requirement from a term or completion viewpoint is dependent upon such factors as: knowledge of the field of expertise; understanding the Government's need; the nature of the requirement; contemplated contract type; and interest in providing the contractor an opportunity to be creative. These factors are all interrelated and should be pondered prior to SOW development.
- (2) When the initiator of the requirement has limited knowledge or is not up-to-date in the field of expertise in which the requirement exists, it would be advisable to either: (i) obtain in-house assistance and/or (ii) express the requirement in terms of performance. Tell the potential offerors what you want and what will comprise successful performance.

- (3) Sometimes it is not clear to the SOW initiator what the problem is that management has perceived to exist (and thus budgeted funds for) or the area to be investigated is not clear. In this case it may be advisable to issue a performance-based term form SOW. Use of this type of SOW would enable the relatively easy termination of the requirement if needed. However, expressing your requirement in this format is discouraged in that resultant Level-of-Effort contracts are costly to administer and provide no cost incentive to the contractor.
- (4) The nature of the requirement is a critical factor in determining how to express the requirement. For example, a research and development SOW would not be written as a design Statement of Work; it should be written on a completion basis. A requirement for a waste water treatment plant, however, would be expressed on a design basis. In an instance where there is a need for a high-level subject matter expert to review a critical scientific protocol, the requirement would be written on a performance basis; and due to a genuine inability of the Government to know what is involved in doing the work and the fact that it is a short-term service, the requirement would most likely be expressed on a term basis.
- (5) If the intent of the drafter of the Statement of Work is to maximize the contractor's opportunity to creatively solve the problem or otherwise perform the work, then a performance-based Statement of Work should be utilized. It should be remembered at this point that a definitive, well written SOW may well be suited for use with a fixed-price contract (see 3.106-4 Contract Types).

**M-3.106-3(e) Guidance on Preparation of the Statement of Work**

- (1) An adequately stated requirement or description of the scope of work is the most important attachment to the Procurement Request. The Statement of Work tells the prospective contractor what work will be required, the conditions under which the work must be conducted, how achievements will be assessed, what the obligations will be, and enables the contractor to assess its capabilities in light of the contract requirements. The wording in the Statement of Work as it appears in the Request for Proposals should be precise and suitable for use in the resulting contract. An inadequate or poorly written Statement of Work may result in: (i) unreasonable prices; (ii) failure to obtain competition that might otherwise be achieved; (iii) failure to obtain the desired effort from the contractor; (iv) a lengthening of the procurement process; and (v) poor technical proposals and divergent cost proposals. In addition, the work statement affects the number of sources willing to submit proposals, the evaluation of proposals, the type of contract that will be written, and the administration of the contract.

**(2) General guidance for developing the Statement of Work is as follows:**

- (i) Describe the scope of work to be done as a clearly-defined task, or tasks, with a definite goal, objective, or target expressed. You may also establish a minimum goal, objective, or target and a desired goal or objective for which the prospective contractor should strive.**
- (ii) Establish meaningful parameters of measure. The parameters will serve three purposes: to prevent the contractor from expending effort not pertinent to the goal, objective, or target; to measure the results of the completed work; and to assist in defining whether subsequent changes or redirection of effort fall within the original scope of work.**
- (iii) For commercial activities subject to OMB Circular A-76 (refer to 2.202 in Chapter 2) the guidance contained in Part II of the Circular Supplement should be followed.**
- (iv) For basic or applied research projects, allow sufficient flexibility to permit proposers some degree of latitude in structuring a technical approach to solve the problem.**
- (v) For advanced development, hardware requirements, testing, or survey services, the Statement of Work should describe the work as a clearly defined task or job with a definite goal or target expressed and with an end-product specified.**
- (vi) For basic or applied research and exploratory development, there will be some instances in which it will not be possible to define the scope of work with any degree of precision, and the Statement of Work can only be written in general terms. In such cases, the resultant contract may be a type that obligates the contractor to devote a specified level-of-effort for a stated period of time, and is the term form of a cost-reimbursement type contract (see 3.106-4 Contract Types).**

In accordance with the Federal Acquisition Regulation, this form of contract should not be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite period of time. Renewals for further periods of performance are new acquisitions and involve new fee (if with a profit-making organization) and cost arrangements. This form of contract is one of the least desirable types for the reason that there is no assurance that a definite target or goal can be reached by the level of effort specified in the contract. Therefore, this form of contract should be avoided when possible, but when used should be confined to only research and exploratory development work. When a level-of-effort contract is contemplated by the initiator, the hours to be specified will be cited in conjunction with period of performance, and not in the Statement of Work.

- (vii) Originators of Statements of Work are encouraged to solicit assistance in the preparation of the Statement of Work from their appropriate procurement activity.
- (3) Appendix C includes a listing of key words that may be utilized in preparing Statements of Work.

**M-3.106-3(f) Writing Specifications for Commercial Products**

- (1) A commercial product is an item of supply that is sold to the general public in the course of normal business operations at prices based on catalog or market prices. Since most commercial products are produced in significant quantities and generally under highly competitive environments, the price of such products are lower than items produced to meet a specific specification and in small quantities. Commercial products are distributed through the commercial marketing/distribution systems and are generally available from local wholesale and retail outlets. For these reasons, Government agencies are required to use commercial products and the commercial distribution system whenever such products adequately satisfy the Governments needs.
- (2) Acquisition of commercial products begins with a description of the Government's needs stated in functional terms (see 3.106-3(b)(1)(i)) so that a market research can be conducted to determine whether commercial products are available to meet Government needs. The function description of the required product must be in sufficient detail so that commercial firms can determine whether their product meets the Government requirement.
- (3) A market research involves obtaining and analyzing the following type information:
  - (i) The availability of products and an analysis of their specifications;
  - (ii) Catalog identification;
  - (iii) The volume of sales and the number of years the products have been sold to determine their stability in the market place and product reliability;
  - (iv) The distribution and support (maintenance and parts) capabilities of potential suppliers;
  - (v) Product warranty;
  - (vi) Any laws or regulations relating to the control and use of the product.

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

- (i) Catalogs published by manufacturer, distributors, and dealers;
- (ii) Source list for items of a similar nature maintained at contracting activities;
- (iii) GSA Federal Supply Schedules;
- (iv) Informational requests for quotations;
- (v) Other Federal agencies.

#### **M-3.106-4 Contract Types**

Although the determination of contract type is the responsibility of the Contracting Officer, it is important that the drafter of the requirement understand the basic differences between the two contract families (fixed-price and cost-reimbursement) and their relationships to the Statement of Work. The primary difference between these two families of contracts is that in the fixed-price arrangement the contractor is assuming the cost risk of performance, whereas in the cost-reimbursement contract the Government assumes the risk. Another important observation is that the fixed-price contract is utilized only when a definitive design or performance specification exists. However, cost-reimbursement contracts are to be utilized when definitive requirements do not exist, as in R&D, and the cost uncertainties of performance are high. Thus, if the drafter of the SOW desires to ensure performance within available dollars through the use of a fixed-price contract, a definitive Statement of Work would have to be developed. Remaining paragraphs describe contract types frequently utilized within EPA.

##### **M-3.106-4(a) Firm Fixed-Price Contract**

- (1) The firm fixed-price contract provides for a price which is not subject to any adjustment by reason of the cost experience of the contractor in the performance of the contract. This type of contract, when appropriately utilized, places the maximum risk upon the contractor. Because the contractor assumes full responsibility, in the form of profits or losses, for all the costs under or over the firm fixed price, it has a maximum profit incentive for effective cost control in contract performance. Use of the firm fixed-price contract imposes a minimum administrative burden on the contracting parties.
- (2) The firm fixed-price contract is suitable for use in procurements when reasonably definite design or performance specifications are available and whenever fair and reasonable prices can be established at the outset.

#### **M-3.106-4(b) Cost-Reimbursement Type Contract**

- (1) The cost-reimbursement type of contract provides for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of obligation of funds which represents a ceiling which the contractor may not exceed (except at its own risk) without prior approval of the Contracting Officer.**
- (2) The cost-reimbursement type contract is suitable for use only when the uncertainties involved in contract performance are of such magnitude that the cost of performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, it is essential that (i) the contractor's cost accounting system is adequate for determination of costs applicable to the contract, and (ii) appropriate surveillance by Government personnel during performance will give reasonable assurance that inefficient or wasteful methods are not being used.**

#### **M-3.106-4(c) Cost-Plus-Fixed-Fee Contract**

- (1) The cost-plus-fixed-fee contract is a cost-reimbursement type of contract which provides for the payment of a fixed fee to the contractor. The fixed fee once negotiated does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract. Because the fixed fee does not vary in relation to the contractor's ability to control costs, the cost-plus-fixed-fee contract provides the contractor with only a minimum incentive for effective management control of costs.**
- (2) Application. The cost-plus-fixed-fee contract is suitable for use when:**
  - (i) the parties agree that the contract should be fee-bearing;**
  - (ii) the contract is for the performance of research, or preliminary exploration or study, where the level of effort required is unknown; and where measuring achievements in contract performance does not lend itself to the subjective evaluation required in cost-plus-award-fee contracts (see M-3.106-4(d)); or**
  - (iii) the contract is for development and test where the use of a cost-plus-incentive-fee contract is not practical (see Exhibit 3-3).**
- (3) This type of contract normally should not be used once prerequisite preliminary exploration, studies, and risk reduction have indicated a high degree of probability that the development is achievable and the Agency generally has determined its desired performance objectives and schedule of completion.**

- (4) 10 U.S.C. 2306(d) provides that in the case of a cost-plus-fixed-fee contract the fee shall not exceed ten percent (10%) of the estimated cost of the contract. A fee not in excess of fifteen percent (15%) of such estimated cost is authorized in a CPFF contract for experimental, developmental, or research work. A fee inclusive of the contractor's cost and not in excess of six percent (6%) of the estimated cost of construction, exclusive of fees, as determined by the Administrator at the time of entering into the contract, is authorized in contracts for architectural or engineering services relating to any public works or utility projects.
- (5) The cost-plus-fixed-fee contract can be drawn in one of two basic forms: completion or term.
- (i) The completion form is one which describes the scope of work to be done as a clearly defined task or job with a definite goal or target expressed and with a specific end-product required. This form of contract normally requires the contractor to complete and deliver the specified end-product (in certain instances, a final report of research accomplishing the goal or target) as a condition for payment of the entire fixed fee established for the work and within the estimated cost if possible; however, in the event the work cannot be completed within the estimated cost, the Government can elect to continue the work without increase in fee provided it increases the estimated cost.
  - (ii) The term form is one which describes the scope of work to be done in general terms and which obligates the contractor to devote a specified level of effort for a stated period of time. Under this form, the fixed fee is payable at the termination of the agreed period of time upon certification by the contractor that it has exerted the level of effort specified in the contract in performing the work called for, and such performance is considered satisfactory by the Government. Renewals for further periods of performance are new procurement and involve new fee and cost arrangements.
  - (iii) The completion form of contract, because of differences in obligation assumed by the contractor, is preferred over the term form whenever the work itself or specific milestones can be defined with sufficient precision to permit the development of estimates within which prospective contractors can reasonably be expected to complete the work, as is usually the case in advanced development and engineering development. A milestone is a definable point in a program when certain objectives can be said to have been accomplished.
- (6) In no event should the term form of contract be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite period of time.

#### **M-3.106-4(d) Cost-Plus-Award-Fee Contract**

- (1) The CPAF contract is a cost-reimbursement type of contract with special fee provisions. It provides a means of applying incentives in contracts which are not susceptible to finite measurements of performance necessary for structuring incentive contracts. The fee established in a CPAF contract consists of two parts: (1) a fixed amount which does not vary with performance, and (2) an award amount, in addition to the fixed amount, sufficient to provide motivation for excellence in contract performance in areas such as quality, timeliness, ingenuity, and cost effectiveness. Award fee may be earned by the contractor in whole or in part. The amount of award fee to be paid is based upon a subjective evaluation by EPA of the quality of the contractor's performance, judged in the light of the established criteria. The number of criteria used and the requirements which are represented will differ widely from one contract to another. Therefore, when establishing criteria and rating plans, you should be flexible and select a plan which will motivate the contractor in a positive way to improve performance. A copy of the proposed award fee plan is required to be included in each solicitation.
- (2) The contract provides for evaluation at stated intervals during contract performance, so that the contractor will periodically be made aware of the quality of its performance and will know in which areas improvement is expected. EPA currently encourages the use of four-month evaluation periods in lieu of the three-month period commonly used in the past. Partial payment of fee will generally correspond to the evaluation periods. This makes the incentive which the award fee creates effective by inducing the contractor to improve poor performance or to continue good performance.
- (3) Evaluations are furnished to the contractor to afford it an opportunity to comment on the evaluation findings. The decision that award fee has been earned is based on the reports of performance made by an EPA evaluation team whose members are knowledgeable with respect to the contract requirements. This decision is a unilateral determination made by the Government not subject to the Disputes clause of the contract.
- (4) The award fee decision referred to in (3) above is made by the Award Fee Determination Official, i.e., the Chief of the Contracting Office at the contracting activity. The EPA evaluation team is known as the Performance Evaluation Board and is chaired by the Laboratory or Division Director of the program initiating the requirement. All appointments of participants in the award fee process are to be approved by the Head of the Contracting Activity (HCA) (Director, Procurement and Contracts Management Division).
- (5) The CPAF contract is suitable for:

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

- (ii) work which would have been placed under another type of contract if the performance objectives could be expressed in advance by definite milestones, targets or goals susceptible of measuring actual performance; and
- (6) The CPAF contract will not be used:
  - (i) as an administrative technique to avoid CPFF contracts when the criteria for CPFF contracts apply, nor will a CPAF contract be used to avoid the effort of establishing objective targets so as to make feasible the use of a Cost-Plus-Incentive-Fee (CPIF) type contract.
  - (ii) where the contract amount, period of performance, or the benefits expected are insufficient to warrant the additional administrative effort or cost.

**M-3.106-4(e) Time and Materials Contract**

- (1) The time and materials type of contract provides for the procurement of supplies or services on the basis of (i) direct labor hours at specified fixed hourly rates (rates include wages, overhead, general and administrative expense, and profit), and (ii) material at cost, and, in addition, where appropriate, material handling costs as a part of material cost. Material handling costs may include all indirect costs, including general and administrative expense, allocated to direct materials in accordance with the contractor's usual accounting practices. Material handling cost includes only costs clearly excluded from the labor hour rate. This type of contract does not afford the contractor any positive profit incentive to control the cost of materials or to manage its labor force effectively.
- (2) The time and materials contract is used only where it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of accuracy. Particular care should be exercised in the use of this type of contract since its nature does not encourage effective management control. Thus it is essential that a T&M contract be used only where provision is made for adequate controls, including appropriate surveillance by EPA personnel during performance to give reasonable assurance that inefficient or wasteful methods are not being used. This type of contract may be used in the procurement of (i) engineering and design services, (ii) repair, maintenance, or overhaul work; and (iii) work to be performed in emergency situations.
- (3) A time and materials contract does not encourage effective cost control and requires almost constant Government surveillance; it should be used only after the Contracting Officer determines that no other type of contract will suitably serve.

#### **M-3.106-4(f) Labor-Hour Contract**

The labor-hour type of contract is a variant of the time and materials type contract, differing only in that materials are not supplied by the contractor.

#### **M-3.106-4(g) Indefinite Delivery Type Contract**

One of the following indefinite delivery type contracts may be used for procurement where the exact time of delivery is not known at time of contracting.

- (1) **Definite Quantity Contracts.** This type of contract provides for a definite quantity of specified supplies or for the performance of specified services for a fixed period with deliveries or performance at designated locations upon order.

This type of contract is particularly suitable for use where it is known in advance that a definite quantity of supplies or services will be required during a specified period and are regularly available or will be available after a short lead time.

- (2) **Requirements Contracts.** This type of contract provides for filling all actual purchases requirements of specific supplies or services during a contract period with deliveries to be scheduled by the placement of orders to the contractor. A realistic estimate of total quantity is stated for the information of prospective contractors. The estimate may be obtained from the records of previous requirements and consumption, or by other means. The contract states the maximum limit of the contractor's obligation to deliver and appropriate provisions limiting the Government's obligation to order. It may also specify the maximum quantities which may be ordered under each individual order during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered. Funds are obligated by each order and not by the contract itself.

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

- (i) flexibility with respect to both quantities and delivery scheduling; and
- (ii) supplies or services need be ordered only after actual need has materialized.

Generally, the requirements contract is appropriate for use when the item or service is commercial or modified commercial in type and when a recurring need is anticipated.

#### **M-3.106-4(h) Indefinite Quantity Contract**

- (1) This type of contract provides for the furnishing of an indefinite quantity of specified supplies or services, with deliveries to be scheduled by the placement of orders to the contractor. The contract provides that the Government will order a stated minimum quantity of the supplies or services and that the contractor will furnish the minimum and any additional quantities not exceeding a stated maximum. The maximum quantity (or amount expressed in dollars) should represent the Government's best estimate of potential usage. The evaluation of proposals to select the source is accomplished at this level. During contract performance, the contractor is not required to accept orders above the maximum. Pertinent contract clauses provide for a number of days for the contractor to accept orders above the maximum. In appropriate cases the maximum may be raised during the contract period using noncompetitive procedures. The minimum must be more than a nominal quantity; yet it should not exceed the amount which is fairly certain to be ordered. The contract may also stipulate minimum and maximum quantities applicable to each order. The recommended practice is for the first order for the minimum quantity to be placed simultaneously with contract award. EPA Form 1900-8 or OF 347 may be used in placing orders.**
- (2) An indefinite quantity contract may be used where it is impossible to determine in advance the precise quantities of the supplies or services that will be needed by EPA during a definite period of time and it is not advisable for the Agency to commit itself for more than a minimum quantity. Advantages of this type of contract are:**

  - (i) discrete funding with each order;**
  - (ii) flexibility with respect to both quantities and delivery scheduling;**
  - (iii) placing orders only as the need arises;**
  - (iv) flexibility in the types of pricing arrangements selected for use;**
  - (v) Government's legal obligation is limited to contract minimums and delivery orders as issued.**
- (3) Traditionally, fixed-price arrangements have been used in indefinite quantity contracts. In such cases the solicitation provides for fixed prices per item specified, and evaluation of proposals for award is based on respective offerors' bid prices per item times the maximum quantity. Other forms of pricing arrangements may be used; however, they must be clearly spelled out in the solicitation and contract to form the basis for contract award and subsequent placement of orders. These methods include: (i) fixed loaded labor rates in the time and material (T&M) or labor-hour (LH) mode and (ii) cost-reimbursement. The contract arrangements and**

funding principles used may be either job (completion) or term (continuing type service), depending on the nature of the requirement.

#### **M-3.106-4(i) Matrix of Contract Types**

In addition to the most frequently used contract types described above, Exhibit 3-3 contains a description of additional contract types available for use by the Contracting Officer.

#### **M-3.106-5 Technical Evaluation Criteria**

##### **M-3.106-5(a) Purpose and Basic Requirements**

- (1) The basic function of technical evaluation criteria is to help determine in a most objective and fair method which one of the technical proposals is most advantageous to the Government.
- (2) Although the initiator of EPA Form 1900-8, Procurement Request/Order, is responsible for the development of the technical evaluation criteria, the Technical Evaluation Panel (TEP) and Business Evaluation Panel (BEP) are additionally responsible for ensuring that the evaluation criteria are adequately stated and applicable to the procurement action (see M-5.103-3 and -4).
- (3) Evaluation criteria must be developed on a case-by-case basis after taking into consideration each of the salient features of the specific procurement action. The number of evaluation criteria developed should be that needed to properly discriminate between the relative technical merit of proposals. It should be kept in mind, however, that a large number of criteria will make the evaluation process extremely difficult, especially where numerous proposals have been received.
- (4) All offerors must be able to readily determine from an examination of the criteria included in the solicitation the basis upon which their offers will be evaluated. In order to accomplish this, the evaluation criteria must be published in the solicitation package in elements and sub-elements. The importance of each element and sub-element must also be published in the solicitation package. You must assign a numeric weight to each major element and sub-element which shows the relative importance of the criterion.
- (5) In addition to the technical evaluation criteria, the solicitation should describe the importance of price or cost in the selection decision as well as any other factors which may influence the selection decision which are foreseen at the time the solicitation is issued. Both price or cost and other factors are elements for the Source Selection Official (SSO) to consider (see M-5.103-2).

##### **M-3.106-5(b) Types of Evaluation Criteria**

There are basically two types of evaluation criteria: go-no-go and variable criteria.

- (1) A go-no-go criterion is a mandatory criterion which when compared to what the offeror is proposing will clearly show whether the requirement has or has not been met. This type of criterion will, when applied, always result in a "yes" or "no"; there are no "maybes." An example of the use of this type of criterion would be where contractors are required to either have at their facility or have immediate access to a given type of equipment.
- (2) Variable (sometimes referred to as scorable) criteria are used to determine the degree of acceptability of a proposal. When using variable criteria, the evaluator is asking such questions as "To what degree?" "How much?" "How well" has the offeror proposed and assigns a score.

#### **M-3.106-5(c) What Is To Be Evaluated**

What is to be evaluated breaks down into two areas: What is offered and the offeror. The drafter of the criteria for what is offered should be able to isolate and describe those items which will best determine how well the product/service will meet EPA's needs. In establishing criteria to evaluate the offeror, the types of questions to ask are: What attributes must offerors have to perform well? What does an offeror need to perform successfully?

In some cases, the proposed scope of work will involve environmentally related measurements and, consequently, Agency Quality Assurance requirements will be applicable. For such projects, the offeror's capabilities to implement and perform a QA program successfully should be assessed. The EPAAR has solicitation provisions requiring offerors to submit a QA Program Plan or a QA Project Plan as part of the offeror's proposal. The Project Officer may request the appropriate provision for inclusion in the solicitation.

#### **M-3.106-5(d) Developing and Weighting Evaluation Criteria**

(a) Developing evaluation criteria is primarily a matter of determining what aspects of the requirement are important and establishing criteria weights which reflect relative importance. The following points should be kept in mind in developing the evaluation criteria.

- (1) Offerors must be given clear notice of what factors are actually going to make a difference in selection.
- (2) Does the criterion articulate what you have in mind?
- (3) Has the criterion been narratively expressed in action words that are clear?

(b) The numeric weights assigned must coincide with the relative importance of each technical evaluation criterion element and sub-element. Weighting evaluation criteria and the sub-elements of the criteria, if they have been established, involves nothing more than the following:

- (1) Determining the total weight that all criteria combined are to represent (e.g., 100, 150, 200 points, etc.);
- (2) Identifying what is considered as the most important criterion;
- (3) Allocating points in light of the total remaining criteria; and
- (4) Allocating points establishing importance of sub-elements if such are used.

(c) For work involving environmentally related measurements, the QA/QC capabilities of the offeror should be included in the evaluation criteria. The numeric weights assigned to each QA element should reflect consideration of the importance of the measurements activities to the overall project goals. At least 5 percent of the total numeric weight for all criteria should be assigned to Quality Assurance. There is no specific maximum, but 30 percent would appear to be the upper limit.

#### **M-3.106-5(e) Relationship of Price/Cost to Technical Evaluation Criteria**

In addition to being provided an indication of the importance of technical criteria, offerors should be told the relative importance of price/cost to technical considerations. Stated another way, is EPA more interested in the technical excellence of the offeror's proposal than cost (within reason)? The relationships between these elements depends upon the type of contract to be utilized. Actual weighting of importance is arrived at by the Project Officer and concurred in by the Contracting Officer.

#### **M-3.106-5(f) Sample Evaluation Criteria**

- (1) Exhibit 3-4 sets forth a sample of well-constructed technical evaluation criteria. You will note in examining Exhibit 3-4 that this set of criteria clearly explains to the potential offeror the types of factors that will be addressed in making the evaluation and what is meant by each criterion. These criteria will clearly enable evaluation to delve into relative value of proposals. In addition, each criterion does not overlap other criteria.
- (2) Characteristics of the good evaluation criteria to be considered include:
  - (i) Categories to be evaluated should be identified with an overall statement such as "Technical Review Categories" to make it abundantly clear that these are the precise categories to be technically reviewed in evaluating proposals received. Headings such as "Demonstrated Level of Experience" would also be beneficial to assure a better understanding of the purpose of the criteria.
  - (ii) The format should be designed to provide independent weighting for each category to be rated. For example, where performance of the company and its personnel are to be rated based on similar previous experience, separate weight and ratings should be provided.
  - (iii) Criteria for evaluation should be clear and meaningful, not imprecise and indefinite. This must be done to assure fair and impartial proposal evaluation.
  - (iv) Choice of words should be such that they reflect the evaluative action that will be taken by the technical proposal evaluation team—e.g., demonstrated depth of experience in . . . , etc.
  - (v) Questions used to formulate evaluation criteria should not be redundant and overlapping. When they are redundant and overlapping, the effect is to make the result of the evaluation uncertain and ineffective. The dictum for preparing appropriate evaluation criteria should be to state it in clear, concise, and positive terms.

- (vi) Issues relative to the responsibility of the contractor—i.e., past performance, financial capability, etc. are not weightable criteria; rather, they are go-no-go decisions which are the Contracting Officer's responsibility to determine.
- (vii) Use a numbering system for criteria that is logical and orderly. Avoid use of the same numeric designator for the paragraph and subparagraph, followed by an alpha designator. For example, a system which used A.4.4a is confusing and should be avoided.
- (viii) The number of criteria to be used should not be excessive. Criteria should be well thought out, properly worded, and should include only those criteria needed to differentiate between proposals.

#### **M-3.106-6 Technical Proposal Instructions (TPIs)**

(a) Solicitations contain both general and specific instructions concerning the preparation and submission of business and technical offers. General solicitation instructions and business proposal instructions are developed, for the most part, independently by contracting personnel. However, technical proposal instructions (where submission of technical input is required from the contracting community) should be developed and included within the text of the requisition by the program official.

(b) Technical proposal instructions inform offerors of the type, quantity, and format of the data that should constitute their technical proposal. The proposal in turn is evaluated against the technical evaluation criteria contained in the solicitation. The Project Officer must give careful consideration to the development of technical proposal instructions that tie into the technical evaluation criteria and provide clear instructions on the type of data needed for evaluation. TPIs not contained in the standard solicitation package but considered desirable should be provided to the CO for inclusion in the RFP.

#### **M-3.106-7 Classified Information**

(a) The Project Officer should consider whether the requirement will involve access to classified national security information by contractor employees. In such cases, the following information must be set forth in the PR rationale checklist.

- (1) Level of access to classified information required—i.e., Top Secret, Secret, or Confidential, and statement as to whether or not access to Atomic Energy Act of 1954 Restricted Data will be required; and
- (2) A statement as to whether or not the facility is to receive and store classified information in connection with the proposed contract.

(b) Periodically the Agency has requirements that call for a contractor to review or analyze proprietary data that has been submitted to EPA by another firm. Where a requirement of this nature exists, complete details regarding the nature of the data, the extent of review, and other pertinent information must be included in the PR rationale.

#### **M-3.106-8 Source Considerations**

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

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

#### **M-3.106-8(a) Availability of Work Resulting From Other Sources**

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

#### **M-3.106-8(b) Small Business Set-Asides**

##### **(1) Introduction**

It is the policy of the Government to aid, counsel, assist, and protect, insofar as possible, the interests of small business concerns in order to preserve free competitive enterprise; and to place with small business a fair proportion of the total Government contracts for property and services.

In accordance with the Small Business Act (15 U.S.C. 637), EPA is required to establish and conduct programs to increase small business

enterprise participation in Government procurement. A major program used to accomplish these goals is the small business set-aside program.

**(2) Set-Asides for Small Business**

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

**M-3.106-8(c) Socially and Economically Disadvantaged Business Enterprise Program--8(a) Contracts**

**(1) Policy**

It is the policy of the Environmental Protection Agency to enter into contracts with the SBA so as to assist in the growth of small minority business concerns as designated by the SBA. The Office of Small and Disadvantaged Business Utilization is responsible for implementing this policy and stands ready to assist all Agency personnel in furtherance of the small and disadvantaged business utilization program. Due to the Agency's obligation to all small businesses, EPA activities do not seek 8(a) contracts where one or more of the following circumstances exist:

- (i) The percentage of procurements considered for 8(a) contracting is excessive in relation to the total purchases of like or similar products or services procured by the Federal Government.**
- (ii) The procurement has been synopsisized or publicized or if public solicitation has already been issued under a small business set-aside for the specific procurement in question.**
- (iii) The procurement is of such magnitude or complexity as to be incapable of performance by 8(a) concerns or is otherwise inappropriate for performance by 8(a) concerns.**
- (iv) The contracting office can make a noncompetitive award directly to a small minority business concern, or there is a reasonable probability that an award can be won by such a small minority business concern through normal competitive procedures.**

- (v) It is determined by the SBA that a small business concern may suffer a major hardship if the procurement is removed from competition, thereby denying the concern, otherwise historically dependent on such recurring procurement(s), the opportunity to compete.

## **(2) Responsibilities**

- (i) The Agency's Project Officers have the primary responsibility for identifying suitable procurements for 8(a) awards. In fulfilling this responsibility, Project Officers are to identify procurements for potential 8(a) awards during the planning stages of the procurement.
- (ii) The Small and Disadvantaged Business Utilization Specialist (SDBUS), at each procurement operation, is responsible for providing guidance and assistance to EPA contracting and program offices concerning Section 8(a) contracting. The SDBUS screens purchase requests for the purpose of identifying those requirements which may be considered for 8(a) contracting.

## **(3) Recommending 8(a) Contractors**

- (i) Project Officers are to screen procurement plans and existing requirements for potential awards under the Section 8(a) negotiated contracting approach. The resultant list of selected 8(a) procurement requirements are then forwarded to the Chief of the Contracting Office at the contracting activity on a quarterly basis. The contracting activity then matches the procurement actions with the capabilities of eligible, approved 8(a) firms and will then forward its recommendation to the SBA for further processing. Project Officers request the assistance of the Minority Business Enterprise Representative (MBER) in carrying out their responsibilities.
- (ii) The recommendation of an 8(a) contractor for contract award may be made either by the Contracting Officer or the Project Officer after appropriate consultation with the Small and Disadvantaged Business Utilization Specialist. Upon the request of the Contracting Officer and the SDBUS, the SBA determines and advises as to whether the proposed firm is 8(a) approved.
- (iii) Sole-source offerings are acceptable for 8(a) contracts for personal property and nonpersonal services, including professional services and Certified Public Accountant (CPA) audit services. Sole-source offerings for architect-engineering (A-E) services are unacceptable. When only one 8(a) firm is approved for consideration by SBA, the Contracting Officer will issue the solicitation to the 8(a) firm requesting it to submit a cost proposal for the proposed 8(a) procurement.

#### **M-3.106-8(d) Labor Surplus Area Set-Asides**

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

#### **M-3.106-8(e) Sources-Sought Synopsis**

##### **(1) Used as an Advance Notice**

- (i) To support the future contracting needs of research and development programs, the Commerce Business Daily is used to publish an "advance notice" of the Government's interest in specific fields. These notices are not a synopsis of a Request for Proposals—rather, are notices of future requirements. Through this mechanism, potential sources learn of the Government's requirements and are given an opportunity to submit information demonstrating their capabilities in a specific field.
- (ii) In using the sources-sought synopsis as an advance notice, it is necessary to develop general criteria for potential sources—criteria that will set forth the capabilities needed. Such qualification criteria consist of special experience, capability, facilities, or other factors that are critical to the program performance aspects of the procurement. However, care must be exercised to restrict qualification criteria to those that are absolutely essential to the successful completion of the contract work.
- (iii) The Project Officer should develop an outline of the major tasks to be accomplished under the contemplated acquisition and the qualification criteria to be utilized in evaluating prospective source capabilities. The Contracting Officer will forward the synopsis to the Commerce Business Daily. Information received in response to the advance notice will be transmitted to the Project Officer for evaluation and rating of each respondent's technical capabilities. The Project Officer will be requested to prepare an evaluation memorandum which recommends technically qualified sources for subsequent solicitation by the Contracting Officer. When additional sources are known to program personnel, they should also be furnished to the Contracting Officer along with those responding to the synopsis. All sources deemed fully qualified will be invited to submit proposals when Requests for Proposals are issued.

**(2) Used to Perform Market Surveys**

- (i) The Federal Acquisition Regulation (FAR) and the EPAAR require that market surveys be conducted in justifying sole source acquisitions and acquisitions using other than full and open competition that exceed \$25,000. The publication of either a synopsis of a proposed noncompetitive procurement, or a sources-sought synopsis as described above, that is detailed enough to permit submission of meaningful responses and subsequent evaluation by the EPA, constitutes an acceptable market survey. Further discussion is contained in M-3.106-(f) below.
- (ii) The synopsis must contain the following (see (1)(ii) and (iii) above):

  - (A) A clear description of the supplies or services being procured;
  - (B) Required Contractor capabilities, experience, and any other factors salient to the requirement; and
  - (C) Criteria and weighting of the criteria to indicate relative order of importance to be used in the evaluation of responses.
- (iii) It should be noted for planning purposes that:

  - (A) The market survey should be conducted as soon as practicable after the requirement is known.
  - (B) Synopses for making market surveys are not required for acquisitions resulting from unsolicited research proposals if to do so would disclose the originality of thought or innovativeness of the proposal.

**(3) Synopsis of Proposed Contracts**

- (i) Agencies are required to furnish for publication in the Commerce Business Daily (CBD) notices of proposed contract actions of \$10,000 and above. Exceptions are set forth in paragraph (iii) below.
- (ii) The synopsis of a proposed contract must be published in the CBD at least 15 days in advance of issuance of the solicitation. Thirty (30) days response time is to be allowed for receipt of bids or proposals from the date of issuance of the solicitation.
- (iii) A proposed contract need not be synopsisized if the Contracting Officer determines that (1) the contract action is of a classified nature, (2) the requirement is urgent, (3) the

requirement is for utility services available from only one source, (4) the contract action is an order under a requirements contract, (5) the action results from an unsolicited proposal and publication of any notice would improperly disclose the originality of thought or innovativeness of the proposal, (6) purchases of perishable subsistence, (7) purchase of brand name commercial items for resale, (8) the contract is for a foreign government and that government directs the source and funds the requirement, or (9) the contract is authorized or required by statute to be made through another Government agency such as 8(a) acquisitions from SBA under the Small Business Act.

**M-3.106-8(f) Justifications for Other Than Full and Open Competition (JOFOC)**

**(1) Introduction**

This section covers the procedure for justifying a noncompetitive or a limited competition acquisition.

**(2) Policy**

- (i) In the fulfillment of national policy, acquisitions by EPA shall be conducted utilizing full and open competition with all responsible sources. However, it is recognized that one or more of the circumstances which permit other than full and open competition may apply where it is in the interest of the Government and EPA to solicit limited sources or only one source. (See Exhibit 3-5.) In such instances, the initiating program office may recommend that the supplies or services be obtained from a limited number of sources or only from one source. This recommendation is subject to review and approval as provided in (5) below.
- (ii) A written justification for other than full and open competition that documents the facts and circumstances substantiating the infeasibility of full and open competition must be prepared by the initiating office for each limited source or sole source acquisition except for those few types of acquisitions specifically excepted by regulation. (See the Contracting Officer to ascertain the applicability of these exceptions to your particular requirement.)
- (iii) The justification for sole source acquisition of any small purchase (\$1,000 to \$25,000) must be submitted by the Program Office submitting the procurement request in the form of a brief written statement attached to the EPA Form 1900-8, Procurement Request/Order. The statement must cite one or more of the circumstances which permit sole source acquisition and the necessary facts to support each circumstance. Although Program Offices may not cite the

authority in FAR 6.302-7, the public interest may be used as a basis to support a sole source acquisition. If the acquisition has been synopsisized, the statement must include the results of the evaluation of responses to the synopsis. Justifications are not required for: (1) acquisitions under mandatory Federal Supply Schedules or mandatory ADP or TSP schedules; or (2) acquisitions required by statute to be obtained from a specific source, such as the National Industries for the Blind or Other Severely Handicapped or Federal Prison Industries. The Contracting Officer is the approving official for all sole source acquisitions using small purchase procedures.

- (iv) For acquisitions over \$25,000, the recommendation for limited or sole source acquisition must be entitled "Justification for Other Than Full and Open Competition" and must be signed by the programmatic Division Director or comparable office level prior to submission with the Procurement Request/Order (EPA Form 1900-8). The JOFOC must contain a full and complete justification in accordance with the instructions prescribed in (3) and (4) below.

**(3) Conduct of Market Surveys To Determine Availability of Capable Sources**

- (i) The Project Officer should notify the Contracting Officer as soon as requirements become known to maximize the time available to conduct the market survey. The Contracting Officer determines the extent of the market survey. In making this decision, the Contracting Officer may consider such factors as the type and size of the acquisition, the results of recent competitive acquisitions for similar supplies or services, or other recent market surveys.
- (ii) The Contracting Officer, with input from the Project Officer, will determine the market survey strategy and decide who is responsible for accomplishing various aspects of the survey. For example, the Contracting Officer may choose to have discussions with offerors who had proposed on previous similar requirements. For market surveys involving discussions with, or inquiries from, commercial firms, the Contracting Officer must conduct or participate in such discussions or inquiries.
- (iii) As stated in 3.106-8(e)(2) above, Commerce Business Daily (CBD) synopses of proposed sole source acquisitions or acquisitions using other than full and open competition or sources-sought synopses that are detailed enough to permit submission of meaningful responses and subsequent evaluation of the responses by EPA constitute an acceptable market survey. If the FAR requires a synopsis, other methods of conducting market surveys may not be substituted.

- (iv) Under those circumstances when market surveys are conducted to assist in determining the existence of competition for purchases over \$10,000, the Contracting Officer, with the assistance of the Project Officer, must evaluate responses to such surveys in accordance with the general criteria included in the synopses. If the evaluation indicates that full and open competition can be provided for, the Contracting Officer must issue a new synopsis and a competitive solicitation. If the Contracting Officer determines, after evaluation of responses, that a sole source acquisition or limited competition should be conducted, the evaluation document must be incorporated into the JOFOC. This documentation must include:
  - (A) A copy of the CBD synopsis;
  - (B) A listing of respondees to the synopsis;
  - (C) A written evaluation of the responses; and
  - (D) The basis for the Contracting Officer's conclusion that competitive procurement is impractical.
- (4) Preparation of the Justification for Other Than Full and Open Competition (JOFOC)
  - (i) The Project Officer will prepare a draft of the JOFOC for the Contracting Officer's review and comment prior to finalization using the format in Exhibit 3-6. The JOFOC shall fully explain the circumstances which make full and open competition infeasible. The JOFOC shall:
    - (A) Identify the project and describe the supplies or services required to meet EPA's needs;
    - (B) Identify the statutory authority permitting other than full and open competition. (See Exhibit 3-5 for applicable statutory authorities.)
    - (C) Provide the facts supporting the citation of the statutory authority that permits other than full and open competition. Demonstrate that the proposed contractor's unique qualifications or the nature of the acquisition require use of the authority cited. Provide specific support for each statutory authority used. Provide other facts which support the justification (see ii below);
    - (D) Describe the efforts made to ensure that offers were solicited from as many potential sources as practicable.

- (E) Describe the market survey that was conducted, including whether a sources-sought synopsis was published in the Commerce Business Daily, and the results of the survey.
- (F) If applicable, describe the reasons why a market survey was not conducted.
- (G) Any other facts supporting the use of other than full and open competition, e.g.,
  - (I) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.
  - (II) If follow-on acquisitions are cited as the basis of the JOFOC, give an estimate of the costs that would be duplicated if the award were to be made to other than the original source, and give the basis for your estimate.
  - (III) If unusual and compelling urgency is cited as the basis for the JOFOC, explain the circumstances that led to the need for an urgent contractual action and explain why the requirement could not have been processed in sufficient time to permit full and open competition. The existence of legislation, court-order, or Presidential mandate is not, of itself, a sufficient basis for a JOFOC. However, the circumstances necessitating legislation, court order, or Presidential mandate may justify contractual action on an other than full and open competition basis.
- (H) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.
- (I) A statement of the actions, if any, EPA may take to remove or overcome any barriers to competition before any subsequent acquisition.
- (ii) Each JOFOC must reflect the degree of consideration that has been given to other sources in the particular field and the reasons they lack the capability evidenced by the proposed contractor. The following questions represent factors that should be considered, and when appropriate, discussed in the JOFOC:
  - (A) What unique capability applicable to the specific effort does the proposed contractor have which is essential to satisfaction of the Government's minimum requirements?

- (B) Is the effort a continuation of a previous effort performed by the proposed contractor; and to what degree is such previous effort critical to the current acquisition? Such questions as the following should be considered and addressed if pertinent:
- (I) Is the added effort a minor supplement to a completed project requirement? Of what significance is this fact?
  - (II) Is the added effort a major supplement to a completed project requirement? Of what significance is this fact?
  - (III) Is the added effort essential to the continuing project requirement? Of what significance is this fact?
- (C) Does the proposed contractor have exclusive access to personnel who are considered preeminent experts in the particular fields necessary to perform the work? If so, identify the expert(s) and the basis for the person's or persons' expertise.
- (D) What facilities, equipment, or data does the proposed contractor have which are specialized, vital to the effort, and which no other company can provide? Can the Government furnish such resources as Government-furnished equipment or data?
- (E) Is urgency the basis for the JOFOC? Urgency means that the need is so compelling that the Government would be injured financially or otherwise if the property or services to be acquired were not furnished by a certain time. There may be valid reasons for obtaining required goods or services on an urgent basis, and although there may be other firms capable of delivering the required goods or services, no other firm could deliver within the required performance period, even if expedited competitive procedures were employed. Explain the circumstances that led to the need for an urgent contractual action.
- (F) If the basis for the JOFOC is an unsolicited proposal, M-3.106-8(g) provides guidance for justification of noncompetitive procurement.
- (iii) The following factors, according to decisions of the Comptroller General, cannot be used to justify noncompetitive procurements:

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

(B) 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).

**(5) JOFOC Certification Requirements**

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

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

**(6) Review and Approval of the JOFOC**

The review and approval of JOFOCs is conducted by contracting officials at the levels specified in Exhibit 3-7. The review must assess the quality of consideration given those factors discussed in (4)(ii) above and the approval must be based upon the validity of the justification offered in support of the proposal to contract on an other than full and open competition basis.

**M-3.106-8(g) Unsolicited Proposals**

(1) An unsolicited proposal is a voluntary offer submitted by an individual or an organization that has a scientific or technological idea which the offeror believes has a value to the agency. EPA encourages the submission of unsolicited proposals as part of its efforts to utilize all sources of scientific and technical expertise.

**(2) Control and Processing**

(i) A centralized control point has been established in the Grants Administration Division, Office of Administration, to process unsolicited proposals regardless of where they are received in the Agency. After acknowledging receipt, the Grants Administration Division assigns to each proposal a control number and transmits the proposal to a program office for purposes of evaluating its relative technical merit.

- (ii) If the program office decides to fund the proposal as a grant or cooperative agreement, the proposal will be returned to the Grants Administration Division for further processing. Where a contract is the appropriate instrument, a procurement request must be prepared and forwarded to the Procurement and Contracts Management Division, Office of Administration.
- (iii) Some important points to remember are:
  - (A) An unsolicited proposal is exactly that: "unsolicited." Project Officers should not involve themselves in suggesting or requesting that a firm submit an "unsolicited proposal."
  - (B) Ethical/legal considerations impose restrictions on the disclosure and use of data submitted with a proposal.
  - (C) Unless precluded by (B), a market search will be conducted to assist in determining whether the substance of the proposal is available to the Government without restriction from another source.
  - (D) Only the Grants Administration Division is authorized to copy, photograph, or reproduce any parts of unsolicited proposals.
  - (E) Approval of an unsolicited proposal does not in and of itself justify noncompetitive procurement. A Justification for Other Than Full and Open Competition (JOFOC) must be prepared and submitted with the PR for the unsolicited proposal.
  - (F) EPAAR provides for mandatory cost sharing for most unsolicited proposals, except in cases where there is no measurable gain to the performing organization.

#### **M-3.106-9 Pre-Proposal Conferences**

(a) A pre-proposal conference is a collective meeting of all prospective offerors that is held by the Government for purposes of clarifying any questions offerors may have regarding the work required in the solicitation. Pre-proposal conferences may form an important part of the solicitation process. Although the final determination to conduct a pre-proposal conference is normally made by the Contracting Officer, you may suggest in your PR Rationale Checklist that one be held. Considerations to address in making your recommendations are as follows.

(b) A pre-proposal conference would be advantageous to the Government and prospective offerors in order to:

- (1) Clarify or explain complex specifications, Statement of Work, or proposed contractual provisions—e.g., patent rights and data requirements;
- (2) Discuss or emphasize the importance of any qualification requirements that have been set forth in the synopsis and solicitation—e.g., offerors' capabilities, experience, facilities, and resources that are required to perform the Statement of Work;
- (3) Disclose any ambiguities, inconsistencies, and gaps within or between the solicitation schedule, Statement of Work, specifications, and evaluation criteria; and
- (4) Provide additional background material to prospective offerors—e.g., reports or other documents that are too voluminous to include with the solicitation, a site tour, or visits to the place of performance.

#### **M-3.106-10 Site Visits**

Most large support services contracts, such as Government-owned contractor-operated (GOCO) facilities contracts and other complex projects, include a Government-conducted tour of the work site. Prospective bidders have full opportunity to inspect the work site and observe the unique conditions which may hinder or facilitate their performance if awarded the contract. The tour is most often conducted by the Project Officer or a designee. During the tour, the PO identifies sections or language in the specifications peculiar to the work site and responds to specific questions. However, no additional information of a substantive nature is provided by any EPA representative during the inspection tour. If substantive issues arise during a site visit, answers are deferred until a formal addendum to the solicitation can be issued. The Project Officer should promptly bring such matters to the CO's attention.

#### **M-3.106-11 Reference Materials**

Many requirements procured by EPA tie into previous contracts or pertain to a body of research or data. Consideration should be given to identifying reference materials that directly relate to the work to be performed that will provide prospective offerors both a better understanding of the requirement and will define EPA's needs. Typical reference materials are: General Accounting Office reports, previous contract findings, standards, etc.

#### **M-3.106-12 Cost Estimate**

(a) The estimated amount of the proposed contract must be established along with (i) an estimate of the labor hours required by category (senior engineer, technician, etc.); (ii) an estimate of travel costs (number of trips, destinations, and duration); and (iii) listing of other anticipated direct charges, such as equipment, consultants, and computer time. When a solicitation will

be developed on a term basis (level of effort), it is important that the estimate be made utilizing the same labor categories that will be set forth in the solicitation.

(b) The estimate must be an independent in-house estimate and not obtained from private firms or other outside sources. Independent Government estimates are to be handled as privileged information and may not be released or otherwise disclosed to persons outside the Government or to any person without a compelling need to know. However, in solicitations for construction contracts an estimated price range is furnished.

**M-3.106-13 Funding**

**M-3.106-13(a) Basic Concept**

- (1) The basic rule on availability of appropriations made for a specific fiscal year is that they lapse at the end of the year unless otherwise provided by law. The obligation of funds against such appropriations is valid only if it relates to an actual need existing within such fiscal year. This criterion is commonly referred to as the bona fide need principle.
- (2) With respect to the proper obligation and expenditure (payments to contractors) of fiscal year funds, each requirement must be viewed from the standpoint of when the need arose or when the requirement is needed. In some situations, such as requirements for supplies or "job type" (completion form) services, a need may arise and be contracted for in one fiscal year, but deliveries made the following fiscal year because of lead time. The bona fide need principle may be violated here, however, if, for example, too long a period exists between contract award and delivery, especially for items which are available on the market at the time needed for use.
- (3) The question of meeting the bona fide need principle becomes more acute in the purchase of services. Services of a continuing nature which are severable can only be contractually obligated and funds expended against the appropriation in effect at the time the service was performed.

**M-3.106-13(b) Cost-Reimbursement Term Form Contracts (Level of Effort)**

- (1) Where cost-reimbursement term form contracts are used in EPA, the following policies apply with respect to funding. This policy applies to new contracts awarded after February 10, 1984, and options of previously awarded contracts.
  - (i) All hours within a given contract period of performance must be completed within that period. Work assignments which task specific directions and/or order hours of effort must be ordered and completed within the same contract period to be valid charges to the appropriation of that period.

- (ii) Work assignments which contemplate or actually extend beyond the contract period in which the order is placed must be ended concurrently with the expiration of the contract period in which the order is placed. A new work assignment to conclude such efforts must be issued so that funds and hours available in the new period are charged for the work accomplished during that subsequent period.
- (iii) Performance beyond the contract base period may be accomplished by the use of options or extended by appropriate noncompetitive procedures. The exercise of options originally priced in solicitations is not new procurement. As such, follow-on work assignments for work begun in the previous contract period may begin with the issuance of a new work assignment concurrent with the effective date of the option period. Cost-reimbursement term contracts may include a provision stating that, when an option to extend the contract term is exercised, work assignments initiated in a previous period are extended into the option period. The provision must clearly state that hours performed and associated costs incurred during the option period are charged to that option period. Work assignments must have a specific completion date and if this date extends into the option period, the work assignment must refer to the provision discussed above. An administrative modification may be issued to existing contracts to incorporate the provision.
- (iv) Any extensions to the term of the contract, i.e., to the base or any of the option periods of performance, is by regulation defined as new procurement. As such, extensions can only be accomplished competitively or justified through current, appropriate noncompetitive procedures. Each period of performance (base and each option) is separate and distinct and these procedures apply separately for extensions to each period. Work assignments for follow-on or new work may only be issued upon approval and execution of the term extension. These work assignments may be issued concurrent with the effective date of any such contract modification.
- (v) To ensure that obligations in each contract period of performance (base and each option) are proper, such periods of performance shall be established consistent with the known period of the appropriation(s) to be encumbered. For example, the base period of the contract could extend from the date of award to the expiration date of a two-year appropriation. For a contract awarded October 1, 1983, or thereafter against a two-year appropriation, the base period could be until September 30, 1985. Option periods beyond this base period may also be established consistent with anticipated periods of

future appropriations. However, considering pricing uncertainties beyond three years in the future, good contract management would strongly suggest that option periods beyond the base period be written for one year at a time.

- (vi) The contract base and each option period of performance are separate and distinct. Hours not ordered and unexpended funds from expiring appropriations remaining at the end of each period are not available for use in the subsequent contract period. Funds from expiring appropriations should be deobligated to the extent they exceed the Government's liability. To definitively ascertain all actual allowable, allocable, and reasonable costs requires a final audit. Contracting Officers could order audits and close each year separately. It is generally more efficient to only order final audits after the conclusion of the last option period. Normally, funds should be deobligated only after settlement of the final contract audit.
- (vii) Funds properly obligated by a Contracting Officer generally can only be deobligated by a Contracting Officer. Deobligation occurs when all actual costs, determined to be allowable, allocable, and reasonable, are known and then only to the extent beyond these valid Government liabilities. In appropriate situations, excesses in any contract period may be deobligated by a Contracting Officer in other ways prior to final contract audit:
  - (A) Mutual agreement between the Government and the contractor to reduce the obvious funding in excess of anticipated approved final costs executed by bilateral contract modifications.
  - (B) Settlement of an interim final audit on a particular contract period. Settlements of these and any final audit are executed by a bilateral (mutual agreement) contract modification. However, should a mutual agreement not be obtainable, settlement may be effected by a final decision of the Contracting Officer.
  - (C) Termination for convenience (total or partial) where the remaining hours are no longer needed. However, settlement procedures require a final audit to determine the Government's actual liability. Settlements are executed by a bilateral contract modification or Contracting Officer's final decision.
- (viii) Contract performance periods involving appropriations with indefinite obligation terms, commonly referred to as no-year funds or x-year appropriations, should be consistent with sound program and contract management needs. Contract periods

(base and options) may be established for terms as long as these needs dictate. Generally contract periods of up to two years approach the limit of sound contract management. Periods for more than two years must be approved by the Chief of the Contracting Officer prior to issuance of the solicitation.

**(2) Suggested alternate contract methods, in lieu of cost-reimbursement term form contracts, are as follows:**

- (i) Smaller contracts with definitive SOWs that can be priced as either cost-reimbursement completion type or fixed-price completion contracts. These types of contracts constitute nonseverable services and may cross fiscal years, charged to the year in which the contract was executed.**
- (ii) Indefinite delivery-indefinite quantity type contracts under which severable or nonseverable delivery orders can be written. These contracts can provide for various pricing arrangements including fixed rates, cost-reimbursement with completion or term forms. If the delivery orders are written as either fixed-rate completion or cost-reimbursement completion, they are considered nonseverable, and may cross fiscal years. Term or LOE orders can also be written as necessary, but these would be subject to the same restrictions as the current LOE work assignment contracts. Creative use of indefinite quantity contracts could be the most flexible contractual vehicle for quick response actions against a general SOW--similar to current work assignment LOEs. However, the only way funds with expiring appropriations can be obligated in one fiscal year and cross validly to a succeeding year is by completion (nonseverable) type delivery orders. The obligation occurs, and the Government's legal commitment arises (beyond the contract minimum guarantee), at the time the delivery order is issued. This is in contrast to the LOE (term form) contract in which the obligation occurs, and the entire estimated cost and fixed fee of the contract is recorded as an obligation, at the time of contract award. The issuance of work assignments then "draw down on" this initial contract obligation. No obligation of contract funds occurs by issuing a work assignment. The servicing Contracting Officer can provide further details as applied to individual requirements.**
- (iii) In those circumstances in which a cost-reimbursement term (LOE) contract with work assignments is necessary, the best way to mitigate the effect of severable services is to write the base contract period for the longest period possible. In those instances where two-year funds are available, the base period should be established from the time of award through the available period of the appropriation(s). Option periods beyond this base period may also be established consistent**

with anticipated periods of future appropriations. However, considering pricing uncertainties beyond three years in the future, good contract management would strongly suggest that option periods beyond the base period be written for one year at a time. Contracts with no-year appropriations should be set up consistent with sound program and contract management principles and needs.

- (iv) By far the best way to minimize the effect of compliance with the bona fide needs principle is planning requirements with as definitive SOWs as possible. With a little more planning and effort, SOWs may be written as cost-reimbursement completion contracts. The test of which appropriation(s) period or contract period that may be validly charged is whether the contract requirement is a nonseverable need of that period. Usually, completion efforts have SOWs that require delivery of an end item, e.g., delivery of a report, by a specific date. This date could validly be in a future appropriation period if the need is clearly established and apparent during the contract period in which the work is ordered. The differences between a completion and term form contract are basically that the term form contract only provides for the contractor's best efforts at a specific number of hours for a definite period of time. Extensions to the term for further work is always considered new procurement and involves cost and fee. A completion form requires a specific end product at a required delivery date. If more time is necessary to provide the end product, extensions are only at cost with no fee paid. In many instances where planning and circumstances can establish such definitive requirements, completion form cost-reimbursement contracts may, in fact, be better contract instruments than the LOEs.

#### **M-3.106-13(c) Availability of Funds**

- (1) **Fiscal Year Contracts.** To effect procurements promptly upon the beginning of a new fiscal year, it may at times be necessary to initiate a procurement properly chargeable to funds of the new fiscal year prior to the availability of such funds. In such cases an Availability of Funds clause is included in the solicitation and/or contract. This procedure generally is used only for operation and maintenance and continuing services (such as rentals, utilities, etc.) which are necessary for normal operation and for which the Congress consistently appropriates funds.
- (2) **Contracts Crossing Fiscal Years.** A one-year requirement or indefinite-quantity contract for services funded by annual appropriations may extend beyond the end of the fiscal year in which it was awarded provided a minimum amount is established for the indefinite quantity portion of the contract. The minimum must be ordered during the period in which the appropriation is available. However, if severable delivery orders are issued against the

minimum, the minimum must be consumed during the period of the appropriation's availability. Also, a contract for expert or consultant services calling for an end product which cannot feasibly be subdivided for separate performance in each fiscal year may cross fiscal years.

#### **M-3.106-13(d) Commitments**

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

#### **M-3.106-13(e) Funding Cost-Type Contracts**

When a cost-reimbursement term contract is funded by more than one appropriation, the following procedures apply:

- (1) The Project Officer must document the rationale for use of multiple appropriations and include in the rationale an estimate of the costs to be charged each appropriation. All program offices contributing funds to the procurement must indicate on the rationale their concurrence with this estimate. The Director, Headquarters Financial Management Division, or designee, must approve the rationale. The Project Officer must include a copy of the approved rationale with the procurement request submitted to the Contracting Officer.
- (2) In general, a work assignment should benefit a single appropriation.
- (3) The Project Officer shall indicate on the cover of each work assignment the account number against which payments are to be made and the basis for the finance office to charge vouchered costs to each account number if more than one account number appears on the work assignment.
- (4) The Project Officer must assure that:
  - (i) The account number(s) on the work assignment is the same as that cited on the contract, and
  - (ii) The aggregate of funds on work assignments does not exceed amounts obligated on the contract for a particular account number.
- (5) It may be possible that a contract includes sufficient funding for the total contract value, yet inadequate funds to cover costs billed against work assignments associated with a particular account number. In these cases, the Project Officer should inform the finance office in writing which account number to charge the excessive billed costs. The Project Officer should assure that the program office funding the excess agrees that its account number

will be used. The finance office will make the adjustment internally so there is no need for the Contracting Officer to issue an administrative contract modification. The Project Officer should notify the Contracting Officer in writing of the adjusted amounts per account number.

- (6) The Project Officer should notify the Contracting Officer when increases in the total contract value are expected.
- (7) Prior to the end of each fiscal year covered by the contract, the Project Officer should review the contract's funding to determine whether the ratio of obligated funds, including any previous adjustments, coincides with the value of the work benefiting each appropriation. The Project Officer should inform the finance office in writing of any adjustments that should be made to the established ratios. The procedures in subparagraph (5) above apply when making these adjustments, as well as when, at any time during performance, the Project Officer anticipates the need for an adjustment. These adjustments must be made no later than the end of the fiscal year in accordance with the actual or best estimate of the benefit to each appropriation.

#### **M-3.106-14 Planning Purpose PRs (Unfunded Procurement Requests)**

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

#### **M-3.106-15 Options**

##### **(a) Introduction**

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

##### **(b) Use of options**

- (1) The use of options for increased quantities of supplies or services which exceed 50 percent of the base quantity specified in the contract for a particular period require advance approval by the Head of the Contracting Activity (HCA). For supply contracts, the 50 percent limit applies only to contracts with a base quantity of more than one.
- (2) The use of option periods which, when combined with the base contract period, results in a total contract period of performance exceeding thirty-six (36) months require advance approval by the Chief of the Contracting Office. In no event, can the total of the base and option periods exceed sixty (60) months in duration.

**(c) Exercise of options**

- (1) Unless otherwise approved by the Chief of the Contracting Office, all service contracts employing option periods require that a preliminary written notice of the Government's intention to exercise the option be furnished to the Contractor a minimum of sixty (60) calendar days prior to the date for the exercise of the option. Failure to provide such preliminary notice within the timeframe established in the contract waives the Government's right to unilaterally exercise the option and requires the negotiation of a bilateral contract modification in order to extend the period of performance, where such an extension is authorized.**
- (2) When the term of the service contract coincides with the fiscal year and delays in receipt of authority to obligate funds for the new fiscal year are anticipated, the Contracting Officer, if the contract so provides, may, within 60 days after the end of the fiscal year, unilaterally exercise an option to extend the term of the contract. The option may be exercised only if funds become available within the 60-day period. In the event that sufficient funding is not available within the 60-day period, the Government waives the right to unilaterally exercise the option, thereby rendering any additional requirements subject to normal competitive procurement procedures.**
- (3) The Contracting Officer, if the contract so provides, may, subject to the conditions in FAR 17.204(d), 32.703-2, and 32.705-1(a), exercise an option contingent upon the availability of funds. To exercise such an option, the contract must contain the clause in FAR 52.232-18, Availability of Funds. Under no circumstances shall any action be taken which could be construed as creating a legal liability on the part of the Government until a formal notice of availability of funds in the form of a contract modification has been issued by the Contracting Officer.**

**M-3.106-16 Government Property**

**M-3.106-16(a) Introduction**

**This section provides specific guidance on: (1) determining whether to include in the procurement request rationale a request that the contractor be allowed to either: (i) be provided with Government property under the contract; (ii) obtain Government property under the contract; or (iii) use Government property in its possession and (2) other considerations to be addressed when the contractor will have use of Government property. Further discussions on administration of Government property are discussed in M-6.300.**

**M-3.106-16(b) Definitions**

**Government property is classified into two main categories: real property and personal property. Real property pertains to buildings and land. Personal**

property relates to all other types of property including such items as equipment, desks, etc. Personal property is further subdivided into two categories: expendable and nonexpendable. Expendable is the type of property that is consumed in use—e.g., paper, pencils, etc. Nonexpendable property has a continuing value and is usually considered a capital asset. Whether the Agency has acquired property and furnished it to a contractor or the contractor acquired property through purchase made under a cost-reimbursement contract, EPA is concerned that funds are properly expended, unnecessary duplication of acquisitions is avoided, and that Government assets are controlled and accounted for. Consequently, procedures have been established to control both the acquisition of nonexpendable personal property by cost-reimbursement contractors and the furnishing of such property by EPA.

- (1) **Accessory Items:** Items which facilitate the operation of capitalized nonexpendable equipment, but which are not essential for its operation. (Example: remote control devices)
- (2) **Accountable Property:** All Government-furnished or contractor-acquired property which must be accounted for by the contractor. Contractor records of Government property established and maintained under the contract are the Government's official property records.
- (3) **Auxiliary Items:** Items without which the basic unit of capitalized nonexpendable equipment cannot operate. (Example: motors)
- (4) **Condition Codes:** An appraisal of current condition of accountable property.
- (5) **Contaminated Property:** Equipment/supplies that become contaminated with toxics or other chemicals which render them unsafe.
- (6) **Expendable Property (Supplies):** Property that may be consumed or expended in the performance of a contract. It includes such items as: raw and processed materials, supplies, parts, small tools and components that generally cost less than \$100. Expendable property remaining at the end of the contract must be accounted for and listed on the final inventory.
- (7) **Government Property:** All real and/or personal property owned by the Government or acquired for the Government under the terms of a contract. It includes both Government-furnished property and contractor-acquired property as defined below:
  - (i) **Government-furnished property:** property in the possession of, or acquired directly by the Government and subsequently delivered or otherwise made available to the contractor; and
  - (ii) **Contractor-acquired property:** property purchased or otherwise provided by the contractor using contract funds.

- (8) **Nonexpendable Property: CAPITALIZED:** Property which has a unit cost of \$500 or more including accessories; is complete in itself; does not lose its identity or become a component part of another item when placed in use; is of a durable nature with an expected life of 1 year or more; and must be accounted for by the contractor and reflected in EPA property records. **NONCAPITALIZED:** Property which has a unit cost of less than \$500, is of a durable nature with an expected life of 1 year or more and must be accounted for by the contractor at the conclusion of the contract.
- (9) **Property Administrator:** An EPA employee designated by the Contracting Officer to administer property for contracts under which Government property is involved. The Property Administrator is responsible for evaluating the adequacy of the Contractors' property policy and procedures concerning receiving and inspecting accounting and control, obligation, maintenance, scrap and salvage, and disposal.
- (10) **Real Property:** Includes land and rights therein, ground improvements, utility distribution systems, buildings and structures.
- (11) **Sensitive Items:** Supplies and equipment which cost less than \$500, and because of their nature and portability are particularly susceptible to misappropriation. These items are accounted for by the contractor and reflected in EPA records. (Examples: cameras, binoculars, portable typewriters, tape recorders and calculators.)

**M-3.106-16(c) Property To Be Furnished and/or Acquired Before Contract Award**

- (1) Before preparation of the contract package, the Project Officer should review equipment requirements. If equipment will be needed, whether furnished by the Government and/or acquired by the contractor with contract funds, the Contract Negotiator should be advised so that property can be discussed during negotiations and subsequently incorporated into the official contract.
- (2) If title to the property is to be vested with an organization other than EPA, the Contracting Officer should be advised so that it can be stated in the contract property article.
- (3) If the property being furnished and/or acquired is to be physically installed at the contractor's facility which may result in subsequent restoration and/or problems in removal after performance of the contract, a determination regarding disposal should be made and incorporated into the official contract at the same time the property is authorized in the contract. Various factors concerning restoration should be considered. For example, will the contractor's premises be restored at Government expense? Or will the property be abandoned?

**M-3.106-16(d) Considerations for Purchase Versus Rent/Lease Determinations**

- (1) Consideration should be given whether to lease or purchase equipment based on a case-by-case evaluation of comparative costs and other factors. Evaluation will indicate which of the acquisition methods will provide greater savings to the Government while satisfying user requirements.**
- (2) The following factors, as a minimum, should be considered. Estimated length of the period the equipment is to be used and the extent of use within that period; financial and operating advantages of alternate types and makes of equipment; cumulative rental payments for the estimated period of use, net purchase price, transportation and installation costs; and potential obsolescence of the equipment because of imminent technological improvements.**
- (3) The following additional factors should be considered, as appropriate, depending on the type, cost, complexity and estimated period of use of the equipment: availability of purchase options, potential for use by other agencies after its use by the acquiring agency is ended, trade-in or salvage value, imputed interest, and availability of a servicing capability especially for highly complex equipment.**
- (4) Acquisition methods**
  - (i) Generally the purchase method is appropriate if the equipment will be used beyond the point in time when cumulative leasing costs exceed the purchase price.**
  - (ii) The lease method is appropriate if it is to the Government's advantage under such circumstances. The lease method may also serve as an interim measure when the circumstances require immediate use of equipment to meet program or system goals, but do not currently support acquisition by purchase. If a lease is justified, at least with option to purchase may be preferable. Generally, a long-term lease should be avoided.**

**M-3.106-16(e) Required Sources of Supplies and Services**

- (1) Federal agencies shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority unless specified otherwise. Contractors holding cost-reimbursement contracts may use the Federal sources of supply and services when authorized to do so by the terms of the contract.**
  - (i) Supplies**
    - (A) Agency inventories**
    - (B) Excess from other agencies**
    - (C) Federal Prison Industries, Inc.**

- (D) Procurement lists available from the Committee for Purchase from the Blind and Other Severely Handicapped
- (E) Wholesale supply sources, such as stock programs of the General Services Administration, the Defense Logistics Agency, the Veterans Administration and military inventory control points
- (F) Mandatory Federal Supply Schedules
- (G) Optional Use Federal Supply Schedules
- (H) Commercial sources, including educational and nonprofit institutions

**(ii) Services**

- (A) Procurement lists of services available from the Committee for Purchase from the Blind and Other Severely Handicapped
- (B) Mandatory Federal Supply Schedules and mandatory GSA term contracts for personal property rehabilitation
- (C) Optional Use Federal Supply Schedules and optional GSA term contracts for personal property rehabilitation
- (D) Federal Prison Industries or other commercial sources, including educational and nonprofit institutions

**M-3.106-16(f) Acquisition of Excess Property**

- (1) If GFP is needed for contract performance, in-house property sources within the Project Officer's sponsoring program should be checked first for availability. If the item is available, both the Contracting Officer and Property Administrator should be notified so that the contract and property records can be modified. The Accountable Officer should also be notified to arrange with the Property Administrator a detailed description of the item. Those Project Officers at locations other than the Property Administrator's station should first contact their Accountable Officer for a review and then forward it to the Property Administrator. The Property Administrator will first review the EPA excess catalog for availability within EPA. If the items are not available within EPA, the Property Administrator will coordinate with GSA regional offices in an attempt to locate and transfer the items to EPA. GSA Form 1539, "Request for Excess Personal Property," is prepared by the Property Administrator in locating excess from GSA. This method is more satisfactory than reviewing GSA excess property catalogs as it enables property transfer before it appears in the excess catalogs. If

the item is available through GSA, a Procurement Request/Order will then be required with accounting information and approvals. This requisition will then be used as an authorization to prepare SF-122, "Transfer Order Excess Personal Property." The accounting information is required in the event any packing, crating, and shipping charges arise from the physical transfer of this property.

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

#### **M-3.106-16(g) Procedure**

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

#### **M-3.106-16(h) Content of Needs Justification**

- (1) The Contracting Officer will not authorize a contractor to (i) acquire property at Government expense, (ii) obtain Government-furnished property, or (iii) use Government-owned property in its possession until the Chief Officer, at Division level or above, responsible for management of the program/project involved, submits to the Contracting Officer a written justification of need to provide the property.
- (2) As a minimum, the justification of need must:
  - (i) Identify the specific program and project for which the property is required.
  - (ii) Identify the type, quantity and estimated cost (including any transportation or installation costs) of each item of property required.
  - (iii) Explain why the property is essential for contract performance.
  - (iv) Explain why it is in the interest of the Government to provide the property rather than to require the Contractor to provide the property at no direct cost to the contract.
  - (v) Identify the location, if known, of the Contractor's facility at which the property will be used, and the Contractor's personnel responsible for acquisition and management of the property.

- (vi) For property to be acquired by the Contractor at Government expense, include a certification that no in-house excess property is available and include the concurrence of the local property office.
  - (vii) For equipment to be acquired by the Contractor at Government expense, include a lease vs. purchase analysis (see Federal Acquisition Regulation Subpart 7.4).
- (3) A justification of need is required regardless of whether the need for the property is determined:
- (i) at development of the requirement;
  - (ii) at proposal evaluation or contract negotiations; or
  - (iii) after contract award.

#### **M-3.106-16(i) Vesting Title to Educational Institutions**

EPA is authorized pursuant to Public Law 95-224 to transfer title of equipment purchased with research contract funds to educational institutions or nonprofit organizations whose primary purpose is the conduct of scientific research. (This situation does not apply to Government-furnished property.) EPA may vest title of property in an educational institution for items with an acquisition cost of less than \$1,000 if the appropriate Government property clause is incorporated into the contract. During the contract, EPA will retain title to items with an acquisition cost greater than \$1,000. Shortly after contract expiration, the Project Officer will be requested to advise the Property Administrator whether equipment should be transferred to the contractor or retained by the Government. The appropriate Government property clause permits the Contracting Officer to transfer title of contractor-acquired equipment to the contractor at any time during the term of the contract or upon its completion/termination. The Property Administrator will request the Contracting Officer's recommendation/concurrence for the transfer of title of the item(s). Written notification will be provided to the contractor by the Contracting Officer. If the appropriate Government property clause is not incorporated into the original contract to allow for this type of transaction, normal disposal regulations will govern disposal procedures.

#### **M-3.106-16(j) Joint Use of Property by Contractor and EPA**

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

### **M-3.106-16(k) Use of Property Purchased with Funds of Another Agency**

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

### **M-3.106-16(l) Contractor Use of Government Vehicles**

Contractors can be authorized to use Government vehicles from the GSA Interagency Motor Pool when a special clause is included in the contract. The Project Officer must submit to the Contracting Officer, with a copy to the Property Administrator, a determination and findings and a justification of need for the use of such vehicle. The Property Administrator or the appropriate Accountable Officer will arrange with the GSA Interagency Motor Pool for assignment of the vehicle. The Project Officer must assure that all contract employees using the vehicle obtain Government driver's licenses. A list of those employees should be forwarded to the Contracting Officer and the Property Administrator.

### **M-3.106-16(m) Contractor Use of GSA Self-Service Stores and Depots**

Contractors who have cost-reimbursement type contracts can be authorized to acquire materiel from GSA, Federal Supply Service, (see M-3.106-16(e)) when a special clause is included in the contract. The Federal Supply Service is responsible for the procurement and supply of a wide range of common-use items that are available to customer agencies from a network of supply depots and self-service stores. Upon notification from the Contracting Officer, the Property Administrator will obtain the necessary codes, and GSA will supply the contractor with catalogs and instructions for use.

### **M-3.106-17 Quality Assurance**

A review of all extramural project procurements must be conducted in order to determine the applicability of Agency Quality Assurance requirements for all contracts in excess of \$25,000 which have the following object classification codes in the accounting and appropriation data:

- 25.32 Research and Development Contracts
- 25.35 Program Contracts
- 25.47 Occupational Health Monitoring
- 25.49 Occupational Health and Safety Sciences
- 25.70 Other Interagency Agreements
- 26.01 Laboratory Supplies
- 31.01 Scientific and Technical Equipment

The determination of QA applicability shall be certified on a Quality Assurance Review (QAR) Form as shown in Exhibit 3-8 or equivalent. The QAR Form shall contain the signatures of the Quality Assurance Officer (or designee) and the Project Officer, and the completed Form must accompany the Procurement Request. The Contracting Office will not process a Procurement Request unless the signed QAR Form is included.

The QAR Form will tell the Contracting Officer if a QA Program or QA Project Plan is required as part of the offeror's proposal and if a pre-award audit is to be part of the evaluation process. Based upon the information provided, the Contracting Officer will include the appropriate EPAAR provisions on Quality Assurance in the solicitation.

#### **M-3.106-17(a) Quality Assurance Program Plans**

The Quality Assurance Program Plan is a qualitative statement of the offeror's capability to conduct a viable QA program and should be submitted as a separate and identifiable part of the technical proposal. It should address the following:

- (a) A statement of policy concerning the organization's commitment to implement a Quality Control/Quality Assurance program to assure generation of measurement data of adequate quality to meet the requirements of the Statement of Work.
- (b) An organizational chart showing the position of a QA function or person within the organization. It is highly desirable that the QA function or person be independent of the functional groups which generate measurement data.
- (c) A delineation of the authority and responsibilities of the QA function or person and the related data quality responsibilities of other functional groups of the organization.
- (d) The type and degree of experience in developing and applying Quality Control/Quality Assurance procedures to the proposed sampling and measurement methods needed for performance of the Statement of Work.
- (e) The background and experience of the proposed personnel relevant to accomplish the QA specifications in the Statement of Work.
- (f) The offeror's general approach for accomplishing the QA specifications in the Statement of Work.

#### **M-3.106-17(b) Quality Assurance Project Plans**

The Quality Assurance Project Plan (QAPP) defines the data quality objectives for a project, identifies the critical measurements to be performed, and discusses the various QA/QC activities to be conducted during the measurement portion of the work. The QAPP is quantitative in content and should be a specific delineation of the offeror's approach for accomplishing

the QA specifications in a Statement of Work. As in the case of the QA Program Plan, the QA Project Plan may be required as part of the technical proposal. Alternatively, the QAPP may be required as a deliverable under the contract. The form and content of the QAPP (unless specified otherwise) is as follows:

- (a) Title page with provision for approval signatures.
- (b) Table of contents.
- (c) Project description.
- (d) Project organization(s) and responsibilities.
- (e) Quality Assurance objectives for measurement data in terms of precision, accuracy, completeness, representativeness and comparability.
- (f) Sampling procedures.
- (g) Sample custody.
- (h) Calibration procedures, references, and frequency.
- (i) Analytical procedures.
- (j) Data reduction, validation, and reporting.
- (k) Internal quality control checks and frequency.
- (l) Quality Assurance performance audits, system audits, and frequency.
- (m) Quality Assurance reports to management.
- (n) Preventive maintenance procedures and schedules.
- (o) Specific procedures to be used in routinely assessing data precision and accuracy, representativeness, comparability, and completeness of the specific measurement parameters involved.
- (p) Corrective action.

If the QA Project Plan is required as a contract deliverable, the contract must specify how many copies and when the QAPP must be submitted. The contract must also specify how many days the Government has to review the QAPP. When the QAPP has been approved, the Contracting Officer will incorporate the QAPP by issuance of a change order to the contract. The contractor will submit a request for an equitable adjustment to the contract in response to the change order. Depending on the nature of the change, the equitable adjustment may increase, decrease, or not change at all, the cost of the contract, or impact the delivery schedule.

#### **M-3.106-17(c) Pre-Award Audits**

Offerors determined to be in the competitive range based on the initial evaluation may be required to submit to a qualitative Technical Systems Audit, if required in the solicitation. The purpose of the systems audit will be to assess the adequacy of the offeror's quality control program as related to the scope of work for the contract. The systems audit will be performed by the EPA QA Officer or his designee.

Some or all of the following areas of concern will be addressed, as appropriate, to the contract scope and goals: (1) facilities, (2) equipment, (3) methods, (4) Quality Control Systems, (5) recordkeeping, (6) data validation, (7) maintenance and calibration procedures, (8) reporting, (9) adherence to documented procedures, (10) procurement and inventory procedures, (11) personnel training, and (12) feedback and corrective action.

### **M-3.106-18 Reports**

#### **M-3.106-18(a) Introduction**

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

#### **M-3.106-18(b) Types of Reports**

- (1) The two most commonly utilized reports are progress and financial management reports. Collectively, these reports inform the Project Officer of the expenditure rate under a cost-reimbursement contract and the progress being made towards contract performance. They are what may be referred to as the "universal tools" in the Project Officer's contract monitoring tool box.**
- (2) The Project Officer must be aware that virtually any reporting requirement may be requested of the contractor. Where there is a need for unique content or frequency of reporting, it should be indicated in the procurement request. Reports by task/work assignments as well as charts, graphs, and other written displays may be obtained. The requirement for a work plan may also be specified. The overriding concern that should be addressed in deciding what reports and report content should be obtained is: what are the minimum informational needs I must have to maximize the chances of successful contract completion?**

#### **M-3.106-18(c) Considerations in Use of Reports**

- (1) There are many considerations to address in determining the type and content of reports. However, there are a couple of simple principles that should be kept in mind. The first is: the greater the percentage of cost risk assumed by the Government [e.g., cost-reimbursement contracts (see M-3.106-4)], the greater the need for reports. The second is: financial management reports are not utilized in fixed-price contracts; however, progress reports may be used.**
- (2) Considerations in determining the use, type, and frequency of reports are as follows:**
  - (i) contract type;**
  - (ii) dollar value;**
  - (iii) criticality of the project;**
  - (iv) complexity of the work;**
  - (v) performance records of firms within the industry; and**
  - (vi) internal reporting requirements.**

Plan may then be utilized to track the contractor's quality progress in the tasks assigned. The QA Project Plan contains an element that may be used to require quality control reports to the Project Officer. Periodic review of quality control will be helpful to the Project Officer in assessing the work progress.

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  - (ii) dollar value;**
  - (iii) criticality of the project;**
  - (iv) complexity of the work;**
  - (v) performance records of firms within the industry; and**
  - (vi) internal reporting requirements.**

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

#### **M-3.106-18(d) Specifying Reports**

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

#### **M-3.106-19 Acquisition of Nonseverable Facilities**

##### **M-3.106-19(a) Definition**

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

##### **M-3.106-19(b) Background**

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

##### **M-3.106-19(c) Types of Improvements**

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

- (1) Construction of a facility required to accomplish the objective of the contract;
- (2) Construction of a concrete pad for use as a temporary storage facility.

##### **M-3.106-19(d) Policy**

Environmental Protection Agency cost-reimbursement contracts under which permanent improvements will be affixed to non-Government realty, and all contracts under which Government property will be furnished to or acquired by the contractor and affixed to non-Government realty must be consistent with the standards of either 10 U.S.C. 2353 (if applicable) or 42 Comp. Gen. 480.

**M-3.106-19(e) Determination and Findings (D&F)/Approval Requirements**

- (1) Prior to award of a contract of the nature described in M-3.106-19(d) above, a determination and findings document must be prepared by the Contracting Officer and forwarded to the Director, Procurement and Contracts Management Division.
- (2) D&F and approval requirements do not apply to improvements which are incidental to or essential for the effective accomplishment of removal or remedial "superfund" actions (P.L. 96-510). For all other P.L. 96-510 actions, D&F and approval requirements apply.

**M-3.106-19(f) Project Officer Informational Input to D&F**

The following information must be provided by the Project Officer for inclusion into the CO's Determination and Findings:

- (1) A description of the procurement, including identification of the funds to be used, contract type, property or services being procured, name of Contractor, and any urgency considerations or special circumstances.
- (2) A description of the research, development, or test facilities or equipment, or other improvement to be provided to or acquired by the Contractor at Government expense. This description shall include the estimated cost of the improvement; information regarding ownership of the realty to which the improvement will be affixed; whether the improvement is severable from the realty without unreasonable expense or loss of value; whether the proposed improvement has general utility apart from performance of the instant contract; and an explanation of why the proposed improvement is necessary for performance of the contract.

**M-3.106-20 Procurement Request Approvals**

(a) EPA management has established internal controls whereby certain goods and services require clearances and approvals prior to their acquisition.

(b) It must be kept in mind that from time to time the Chief Executive and other responsible Executive Agencies place temporary moratoriums on specific supplies or equipment. Consequently there may at times be other constraints placed on the acquisition of supplies or equipment. It is advisable to check with your Contracting Officer at the time of PR development to determine if any moratoriums are in existence.

(c) Exhibit 3-9 contains a listing of all current approvals and clearances.

**M-3.106-20(a) Printing and Binding**

- (1) The Government Printing and Binding Regulations, published by the Congressional Joint Committee on Printing, place certain restrictions

on sources that may be considered for obtaining printing and binding services outside the Government Printing Office (GPO). The regulations establish precise definitions for "printing, composition, microfilm, duplicating, and copying" and provide certain numerical thresholds beyond which the approval of the Joint Committee on Printing is required, should the Government or Agency desire to use other than the GPO. An example of provisions for duplicating and copying that require these services to be provided by GPO, unless there are exceptional circumstances, is as follows:

- (i) Work exceeding 5,000 production units of any one page, and work exceeding 25,000 production units in the aggregate of multiple pages, shall not be done without prior authority of: (a) the central printing and publications management organization as provided in the regulation; or (b) the Joint Committee on Printing.
  - (ii) Duplication of documents reproduced in color.
- (2) Provisions also are made for quarterly reporting to the Joint Committee on Printing, describing all work that exceeds the applicable thresholds. In EPA, the central printing and publications management organization is the General Services Branch, PM-215, in the Facilities and Support Services Division.

#### **M-3.106-20(b) Questionnaires - Forms**

As a result of P.L. 90-620, no Federal agency may conduct or sponsor the collection of information on identical items from 10 or more public respondents without the prior approval and clearance of the Office of Management and Budget (OMB). If it is known that a survey will be required under a proposed contract, the initiating project office must undertake clearance action either before or at the same time the Procurement Request/Requisition is forwarded to the Procurement and Contracts Management Division. If an unanticipated survey develops during the period of contract performance, the contractor is prohibited from beginning the survey without OMB approval. All such clearance records must be routed from the initiating office to the EPA Regulation and Information Management Division. A copy of the clearance must be forwarded to the Contracting Officer.

#### **M-3.106-20(c) Automatic Data Processing (ADP)**

##### **(1) ADP Equipment Definition**

ADP Equipment (ADPE) means general purpose, commercially available automatic data processing. These devices are the components and the equipment systems configured from them together with software, regardless of use, size, capacity, or price, that are designed to be applied to the solution or processing of a variety of problems or applications.

Included are:

- (i) Digital, analog, or hybrid computers

- (ii) Auxiliary equipment, such as plotters, data conversion equipment, source data automation equipment, magnetic tape, card or cartridge typewriters, computer input/output microfilm, or memory, either cable connected, wire connected, or stand alone, and whether selected or acquired with a computer or separately

- (iii) Punched card machines

- (iv) Data transmission or communications, including front-end processors, computer terminals, sensors, and other similar devices, designed primarily for use with a configuration of ADPE.

## **(2) Software Definition**

Software means: (i) pre-packaged, commercially available, proprietary computer programs; and (ii) data products specifically designed to make use of and extend the capabilities of ADPE. This encompasses commercially available operating systems or applications programs, computer readable data collections, and directly related technical assistance for installation, training, conversion, documentation, and maintenance of the programs or data products. This definition also includes commercially available programs and data products for word processing equipment as well as office automation or general purpose ADPE.

## **(3) ADP Services and ADP-Support Services Definition**

- (i) ADP services means the computation or manipulation of data in support of administrative, financial, communications, scientific, or other similar Federal Agency data processing applications. It includes teleprocessing (including remote batch) and local batch processing.

- (ii) ADP-support services means source data entry, conversion, training, studies, facility management (other than for central facilities managed by MIDSD, RTP), systems analysis and design, programming, and equipment operations that are ancillary and essential to agency ADP activities.

## **(4) ADP Equipment Maintenance Service Definition**

ADPE maintenance service means those examination, testing, repair, or part replacement functions performed to:

- (i) Reduce the probability of ADPE malfunction (commonly referred to as "preventive maintenance")

- (ii) Restore to its proper operating status a component of ADPE that is not functioning properly (commonly referred to as "remedial maintenance")

- (iii) Modify the ADPE in a minor way (commonly referred to as "field engineering change" or "field modification").

#### **M-3.106-20(d) Foreign Research Contracts**

All proposed contracts involving research projects to be conducted in a foreign country by a foreign contractor must have clearance from the Department of State in order to determine the consistency of such projects with U.S. foreign policy objectives. This clearance should be requested by the initiating project office prior to negotiations. All such requests to the Department of State will be processed by the EPA Office of International Activities.

#### **M-3.106-20(e) Management Consulting Services**

- (1) As defined by FAR 37.202, "consulting services" means services of a purely advisory nature relating to the Governmental functions of agency administration and management and agency program management. These services are normally provided by persons and/or organizations considered to have knowledge and special abilities that are not generally available within the agency. The services of consultants may be used to obtain outside points of view in order to avoid too limited judgment on critical issues or to obtain advice regarding developments in industry, university, or foundation research. Consultants provide only analysis or advice regarding agency or program policy, strategy, performance, or organization. Consultants do not perform operating functions or supervise the performance of operating functions. Operating functions involve work that contributes directly to the achievement of the fundamental goals of the organization, whereas staff or advisory functions contribute indirectly to the achievement of these goals. For those procurements in which several different types of services are required and the primary purpose of the procurement is to obtain services of a consulting nature, as opposed to operationally oriented technical support services, the procurement shall be considered as a management consulting service procurement.
- (2) Examples of management consulting services, as distinguished from other types of services, are set forth in Exhibit 3-10. These examples are provided in order to assist in the identification of a management consulting service procurement.

#### **M-3.106-20(f) Protective Services**

- (1) Protective services include those services or kinds of equipment required for the physical security of a facility or installation: for example, guard protection, security alarms, security filing cabinets (safes), security fences or barriers, monitoring and detection devices, etc.
- (2) Physical security includes those measures employed to provide protection against security hazards for personnel, property,

Government funds and negotiable instruments, classified national security information and material, proprietary information, and facilities.

- (3) Security hazards are conditions which may result in personal injury or loss of life; loss, damage, or destruction of property; loss of Government funds or negotiable instruments; loss or compromise of classified national security information and material, or of proprietary or Governmental information, or disruption of the activities of the Agency or facility.

#### **M-3.106-20(g) Capital Equipment and Fixtures**

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

#### **M-3.106-20(h) Protection of Human Subjects**

Human subjects are to be protected when a study, grant, contract, Public Law 480 Project, or other agreements or extensions thereto or modifications thereof, wholly or partially sponsored or funded by EPA, or in which EPA has an active interest, involves exposing human subjects to the possibility of injury, including physical or psychological injury, as a consequence of participation of a subject in a testing activity in which the subject is purposefully exposed to chemicals, physical conditions, or other environmental conditions being tested. These provisions do not apply to (i) opinions, questionnaires or the solicitation of information about past events, or (ii) the taking of blood, urine, mother's milk, nonviable fetus tissues or human tissue samples for the conduct of any medical observations where such testing is not preceded by and/or is not to be followed by purposeful exposure of the subject.

#### **M-3.106-20(i) Word Processing Equipment**

Although GSA Bulletin FPMR A-79 reclassified word processing equipment from FSC Group 70 (General Purpose Automatic Data Processing Equipment) to FSC Group 74, Class 7435 (Office Information System Equipment), the procurement approvals and clearances requirements established for ADP equipment and services remain in effect for word processing equipment.

#### **M-3.106-20(j) Personal Vis-A-Vis Non-Personal Services**

##### **(1) Definition of Service Contract**

- (i) A service contract is one which calls directly for a contractor's time and effort rather than for a concrete end product. An incidental report is not considered a concrete end product if the primary purpose of the contract is to obtain the contractor's time and effort and the report is merely incidental to this purpose.

(ii) Service contracts are generally found in areas involving the following:

- maintenance, overhaul, repair, servicing, rehabilitation, salvage, and modernization or modification of supplies, systems and equipment;
- maintenance, repair, rehabilitation, and modification of real property;
- architect-engineering;
- expert and consultant services;
- installation of equipment obtained under separate contracts;
- operation of Government-owned equipment, facilities, and systems;
- engineering and technical services;
- housekeeping services;
- transportation and related services;
- training and education;
- medical services;
- photographic, printing, and publication services;
- communications services;
- test services;
- data processing;
- warehousing;
- auctioneering;
- arbitration;
- stevedoring; and
- research and development.

**(2) Personal Services and Nonpersonal Services**

(i) The Civil Service laws and regulations and the Classification Act lay down requirements which must be met by the Government in hiring its employees, and establish the incidents of employment. In addition, personnel ceilings have been established for the Agency. These laws and regulations shall not be circumvented through the medium of "personal services" contracting, which is the procuring of services by contract in such a manner that the contractor or employees are in effect employees of the Government. The Contracting Officer is responsible for assuring implementation of this policy by considering the criteria set forth below, before entering into any service contract.

(ii) On the other hand, contracts for nonpersonal services, properly issued and administered, represent an approved resource for the Agency in the accomplishment of its programs.

**(3) Criteria for Recognizing Personal Services**

There are no definite rules for characterizing particular services as "personal" or "nonpersonal." There are many factors involved, all of which are not of equal importance. The characterization of services

in a particular case cannot be made by simply counting factors, but can only be the result of a balancing of all the factors in accordance with their relative importance. The Contracting Officer will consider the following factors as well as any others which are relevant (some of the following factors include parenthetical explanations or qualifications which indicate the type of judgment that the Contracting Officer will exercise):

(i) the nature of the work:

- to what extent the Government can obtain civil servants to do the job, or whether the contractor has specialized knowledge or equipment which is unavailable to the Government (this is a factor which might be useful in a doubtful case, but should not in itself create doubt about services which are otherwise clearly nonpersonal);
- to what extent the services represent the discharge of a Governmental function which calls for the exercise of personal judgment and discretion on behalf of the Government (this factor, if present in a sufficient degree, may alone render the services personal in nature); and
- to what extent the requirement for services to be performed under the contract is continuing rather than short-term or intermittent (this is a factor which might be useful in a doubtful case, but should not in itself create doubt about services which are otherwise clearly nonpersonal);

(ii) contractual provisions concerning the contractor's employees (in considering the following, it should be noted that supervision and control of the contractor or employees, if present in a sufficient degree, may alone render the services personal in nature)

- to what extent the Government specifies the qualifications of, or reserves the right to approve, individual contractor employees (but granting or denying security clearance and providing for necessary health qualifications are always permissible controls over contractor employees; also, it is permissible to some extent to specify in the contract the technical and experience qualifications of contractor employees, if this is necessary to assure satisfactory performance);
- to what extent the Government reserves the right to assign tasks to and prepare work schedules for contractor employees during performance of the contract (this does not preclude inclusion in the contract, at its inception, of work schedules for the contractor, or the establishment of a time of performance for orders issued under a requirements or other indefinite delivery-type contract):

- to what extent the Government retains the right (whether actually exercised or not) to supervise the work of the contractor employees, either directly or indirectly;
  - to what extent the Government reserves the right to supervise or control the method in which the contractor performs the service, the number of people employed, the specific duties of individual employees, and similar details (however, it is always permissible to provide in the contract that the contractor's employees must comply with regulations for the protection of life and property; also, it is permissible to specify a recommended, or occasionally even a minimum, number of people the contractor must employ, if this is necessary to assure performance—but in that event it should be made clear in the contract that this does not in any way minimize the contractor's obligation to use as many employees as are necessary for proper contract performance);
  - to what extent the Government will review performance by each individual contractor employee, as opposed to reviewing a final product on an overall basis after completion of the work;
  - to what extent the Government retains the right to have contractor employees removed from the job for reasons other than misconduct or security;
- (iii) other provisions of the contract:
- whether the services can properly be defined as an end product;
  - whether the contractor undertakes a specific task or project that is definable either at the inception of the contract or at some point during performance, or whether the work is defined on a day-to-day basis (however, this does not preclude use of a requirements or other indefinite delivery-type contract, provided the nature of the work is specifically described in the contract, and orders are formally issued to the contractor rather than to individual employees);
  - whether payment will be for results accomplished or solely according to time worked (this is a factor which might be useful in a doubtful case, but should not in itself create doubt about services which are otherwise clearly nonpersonal); and
  - to what extent the Government is to furnish the office or working space, facilities, equipment, and supplies necessary for contract performance (this is a factor which might be useful in a doubtful case, but should not in itself create doubt about services which are otherwise clearly nonpersonal); and

**(iv) Administration of the contract:**

- to what extent the contractor's employees are used interchangeably with Government personnel to perform the same functions;**
- to what extent the contractor employees are integrated into the Government's organization structure; and**
- to what extent any of the elements in (i) and (ii) above are present in the administration of the contract, regardless of whether they are provided for by the terms of the contract.**

**M-3.106-20(k) Other Specific Approvals**

**Approvals and clearances are dynamic areas which change regularly. Consequently, it is advisable to query the Contracting Officer as to recent and yet-to-be-documented requirements.**

**M-3.106-20(l) Management Approvals**

**Exhibit 3-9, at the end of this chapter, contains the routing of PRs for specific goods or services and those of particular dollar value that require EPA management consent.**

**M-3.106-21 Rights in Data and Copyrights**

**M-3.106-21(a) Introduction**

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

**3.106-21(b) Policies and Procedures**

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

**3.106-21(c) Acquisition of Data**

**It is important for Project Officers to recognize that acquisition of data involves not only the identification and definition of the data to be acquired and the circumstances of its use, but also the rights of the Government to the**

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

### **3.106-21(d) Definitions**

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

- (1) "Computer software" means computer programs, computer data bases, and their documentation.
- (2) "Data" means recorded information, regardless of form or media and includes computer software. It does not include information incidental to contract administration such as financial, business, or management information.
- (3) "Form, fit, and function data" means data relating to, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.
- (4) "Limited rights" means the rights of the Government in limited-rights data, as set forth in a Limited Rights Notice if included in the data rights clause of the contract.
- (5) "Limited-rights data" means data that embodies trade secrets or is commercial or financial and confidential or privileged to the extent that such data pertains to items, components, or processes developed at private expense, including minor modifications thereof. [Contracting Officers may, with the concurrence of the Project Officer, use the following alternate definition: "Limited-rights data" means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.]
- (6) "Restricted computer software" means computer software developed at private expense and that is a trade secret, or is commercial or financial and confidential or privileged, or is published copyrighted software.
- (7) "Restricted rights" means the right of the Government in restricted computer software as set forth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

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

### **3.106-21(e) Delineating the Government's and the Contractor's Rights**

All contracts which involve the acquisition of data discussed and defined above must contain clauses which define the respective rights of both the Government and the Contractor regarding such matters as the use, duplication and disclosure. The type of contract, the particular subject matter of the contract, or the intended use of the data, must be considered in selecting the appropriate contract clause. It is therefore essential that all Project Officers whose acquisition includes data be familiar with the various clauses so that they may assist the Contracting Officer in selecting the clause which best serves both the Government and the program being supported. Following is a brief general discussion of the various clauses. Their full text is contained in EPAAR Temporary Regulation 1 (effective date: July 15, 1984) and may be obtained by contacting your supporting Contracting Officer. Specific questions regarding the selection of clauses, appropriate to program needs, should be addressed to the Contracting Office early in the pre-solicitation phase of the acquisition process.

#### **(1) Rights in Data - General (EPAAR 1552.227-71)**

- (i) This clause balances EPA's program and mission needs with the Contractor's right to protect property and valid economic interests stemming from private investment. The Contractor is protected from unauthorized use or disclosure of limited rights data or restricted computer software either by withholding delivery or by placing a "Restricted Rights Notice" authorized by the clause on the data to be restricted. Further, the categories or types of data which the Government is to acquire with limited rights are specifically identified along with an enumeration and definition of the use or disclosure rights of EPA. Although the Contracting Officer may revise these purposes consistent with EPA's needs, appropriate purposes include: use by support service contractors, evaluation by non-Governmental evaluators, and use where required by other contractors participating in the same program.
- (ii) Pursuant to this clause, contractors may establish or maintain copyright protection for data first produced and/or delivered under the contract. However, the Government will normally be granted a nonexclusive, irrevocable license, which includes the rights to reproduce, prepare derivative works, and distribute to the public. The Contractor is permitted to establish claim of copyright to scientific and technical articles based on, or derived from, the contract work and published in academic, professional, or technical journals. Such permission may also be granted in other cases.

- (iii) As regards restricted computer software, the means of protection afforded the contractor are the same as those for limited rights data. However, the Contractor may also substitute form, fit and function data or deliver the software with restricted rights relative to its use, disclosure, and reproduction. It is important in circumstances when such software is needed for use in more than one computer that the number be specified in the contract schedule. When EPA acquires software with restricted rights, it may use (or copy for use) in or with the computer or computers for which it was acquired (or with a backup computer in case of inoperability) reproduce for archival or backup purposes, modify, adapt, or combine with other software (the resultant software is subject to the same restriction in rights), and may be disclosed or reproduced by support contractors or their subcontractors, subject to the same restrictions in rights.
  - (iv) In the event EPA questions the Contractor's authority to limit the use of data or restrict the use of software, procedures are provided by the clause.
  - (v) Generally, then, under this clause, EPA acquires unlimited rights to data first produced under the contract (however, see above discussion on copyright data, form, fit, and function data, data constituting manuals or instructional or training materials (such data accompanying restricted computer software may be excluded), and all other data delivered under the contract unless it is limited rights data or restricted computer software.
- (2) Rights in Data - Special Works (EPAAR 1552.227-72)
- (i) Generally, this clause is used in contracts which are primarily for the production or compilation of data (other than limited rights data or restricted computer software) for EPA's internal use, or when there is a need to limit the distribution or use of the data or to obtain indemnity for liability that may arise from the content, performance, or use of the data. It would also be used where "existing works" are being modified.
  - (ii) The following are circumstances under which use of the clause is required:
    - (A) Production of audio-visual works;
    - (B) Agency histories;
    - (C) Recruiting, morale, training, or career guidance works;
    - (D) Works involving instruction or guidance of Government officers and employees;
    - (E) Works intended for use in connection with EPA regulatory or enforcement activities not involving research, developmental or experimental work;

- (F) Collection of data containing personally identifiable information, the disclosure of which would violate rights of privacy or publicity;
    - (G) Investigatory reports; and
    - (H) Works, the early release of which could jeopardize follow-on acquisitions or EPA regulatory or enforcement activities.
  - (iii) Under this clause, EPA has unlimited rights in all data delivered and in all data first produced, the right to limit the Contractor's claim to copyright, and the right to limit the use and release of data except for purposes specifically provided for in the contract.
  - (iv) The contractor indemnifies the Government and its officers, agents, and employees against liability resulting from violation of trade secrets, copyrights, a right of privacy or publicity, provided the Government gives timely notice of its intent to make such a claim.
- (3) Rights in Data - Existing Works (EPAAR 1552.227-73)
- (i) The clause is used in contracts for the acquisition (without modification) of such works as motion pictures, videotapes, sound recordings, literary, pictorial or other similar works. The contract may limit the use of such work in terms of means of exhibition or transmission, time, audience, or geographical locations.
  - (ii) In the case of existing computer software, no special clause is required although the contract must contain terms sufficient to permit EPA to fulfill the need for which the software is being acquired. Care should be exercised to ensure that any vendor's standard commercial lease, license, or purchase agreement be consistent with EPA's purpose for acquisition. As with the acquisition of other computer software, Project Officers should consult early on with the Contracting Officer regarding EPA's intended use and the establishment of the contract language necessary to protect the rights of EPA in that use.
  - (iii) Contracts for other existing works, being acquired off-the-shelf with no intent of reproduction or use which may be prohibited by the author's or publisher's rights, need not contain any of the clauses discussed above.
  - (iv) Modification of existing works is considered to be "special works" for rights in data purposes.

**(4) Additional Data Requirements (EPAAR 1552.227-74)**

In recognition of the fact that in some contracting situations, it may not be possible or appropriate to ascertain all data requirements at the time of contracting, this clause permits the Government to order data any time during contract performance or within three years of acceptance of all contract deliverables any data which was first produced or specifically used in the contract. It provides for compensation to the Contractor for formatting, reproduction, and delivery.

**3.106-21(f) Special Contracting Circumstances**

For contracts to be performed outside the United States, its possessions, or Puerto Rico, contracts for construction work or architect-engineer services, or contracts involving Government-owned contractor-operated facilities performing research, development or production work, the Contracting Officer, in conjunction with the patent attorney and the Project Officer, must develop a suitable clause. Project Officers for such requirements should, therefore, initiate action to begin the development of such clauses as soon as possible after the requirement becomes known.

**M-3.106-22 Pertinent Special Instructions**

On any given requirement there may be special instructions that are not contained in the Handbook, yet should be discussed in the procurement planning process.

**M-3.107 Preparing for the Development of the Procurement Request**

After completion of the individual procurement planning session, during which all Project Officer responsibilities with respect to the development of the requirement were identified, the Project Officer, with the assistance of the Contracting Officer, must prepare the procurement request package. The considerations and guidance outlined in this Chapter, plus the planning discussions, will more than adequately prepare the Project Officer for the preparation of the procurement request package. Guidance on the use and preparation of the Procurement Request/Order, EPA Form 1900-8, is contained in Chapter 4 of this manual.

**M-3.108 Procedure for Procurement Scheduling**

**M-3.108-1 Introduction**

After completion of individual procurement planning, the Project Officer develops the procurement request package and again meets with the Contracting Officer (or contract specialist) to schedule the procurement action.

#### **M-3.108-2 Procedure**

The contract specialist responsible for procurement action prepares a procurement schedule as soon as possible after receiving the Procurement Request. The FAR requires this only for procurements of \$5 million or more. He or she will coordinate with the Project Officer to obtain program office and Procurement and Contracts Management Division approval of the projected contract award date. The specialist maintains the plans so that occurrences are recorded and subsequently reviewed by management.

#### **M-3.108-3 Standard Procurement Leadtimes**

Standard leadtimes expressed in days estimated to complete scheduled events in a procurement cycle are listed in Exhibit 3-10 for the purpose of assisting acquisition personnel and Project Officers in planning.

EXHIBIT 3-1

SEQUENCE OF ACQUISITION PLANNING ACTIVITIES,  
PARTICIPANTS, AND REFERENCES

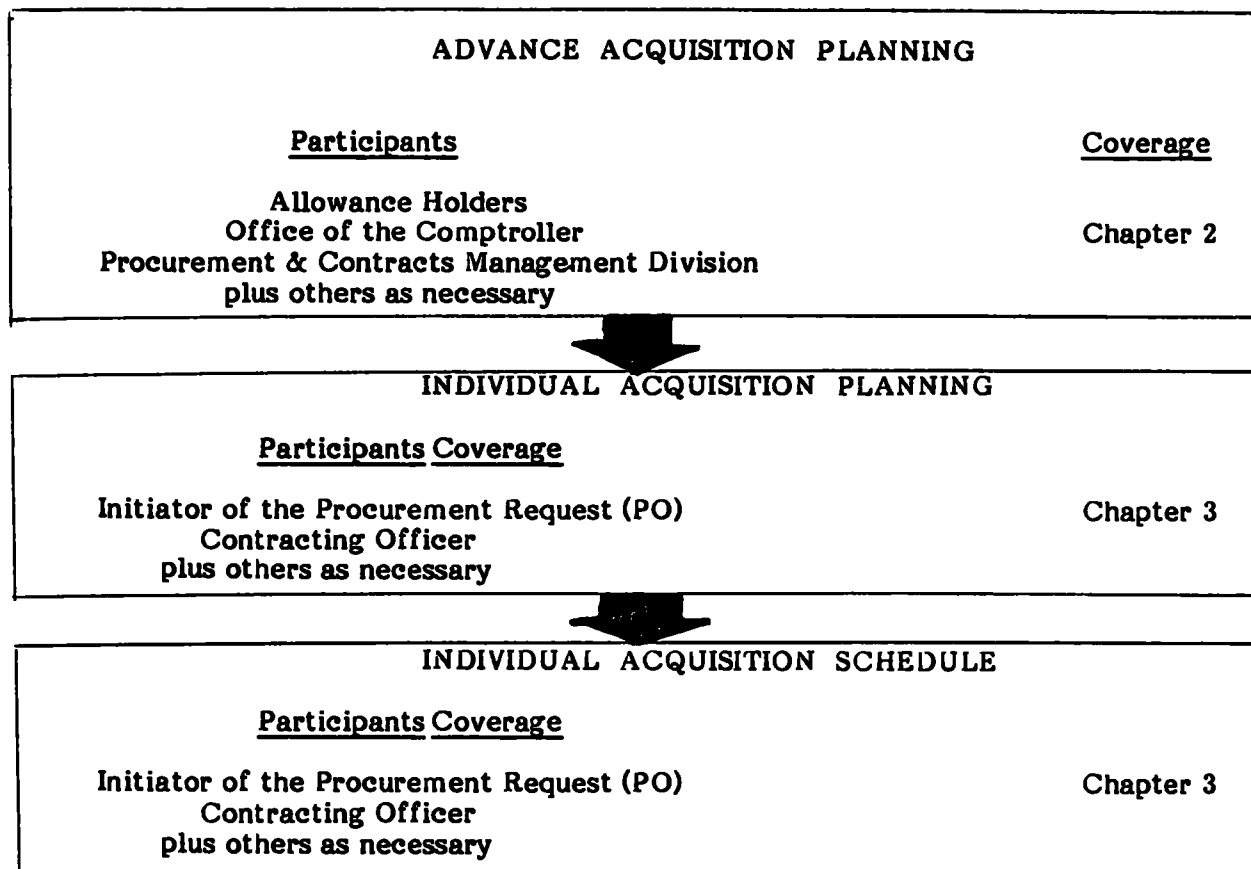


EXHIBIT 3-2

SUGGESTED INDIVIDUAL ACQUISITION PLANNING CHECKLIST

**I. REQUIREMENT**

A. Title & Brief Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Period of Performance: \_\_\_\_\_

C. Estimated Value: \_\_\_\_\_

D. Type of Action:      New Contract      \_\_\_\_\_      Unsolicited Proposal      \_\_\_\_\_  
                                 Modification      \_\_\_\_\_      Other      \_\_\_\_\_

**II. PLANNING CONSIDERATIONS**

Each of the following items should be discussed.

**Manual Ref.**

- M-3.106-1      \_\_\_\_\_ Project Officer Qualifications
- M-3.106-2      \_\_\_\_\_ Conflicts of Interest—Personal/Organizational
- M-3.106-3      Statement of Work (Specification)
- \_\_\_\_\_ Design
- \_\_\_\_\_ Performance
- \_\_\_\_\_ Construction
- \_\_\_\_\_ Completion
- \_\_\_\_\_ Term
- \_\_\_\_\_ Multi-Year
- \_\_\_\_\_ Phased
- M-3.106-4      \_\_\_\_\_ Contract Types \_\_\_\_\_
- M-3.106-5      \_\_\_\_\_ Technical Evaluation Criteria
- M-3.106-6      \_\_\_\_\_ Technical Proposal Instructions (TPIs)
- M-3.106-7      \_\_\_\_\_ Classified Information
- M-3.106-8      Source Considerations
- M-3.106-8(a)      \_\_\_\_\_ Availability of Work Resulting from Other Sources
- M-3.106-8(b)      \_\_\_\_\_ Small Business Set-Asides
- M-3.106-8(c)      \_\_\_\_\_ Socially and Economically Disadvantaged Business
- \_\_\_\_\_ Enterprise Programs—8(a) Contracts
- M-3.106-8(d)      \_\_\_\_\_ Labor Surplus Area Set Asides
- M-3.106-8(e)      \_\_\_\_\_ Sources-Sought Synopsis
- M-3.106-8(f)      \_\_\_\_\_ Justifications for Other Than Full and Open
- \_\_\_\_\_ Competition (JOFOC)
- M-3.108-8(g)      \_\_\_\_\_ Unsolicited Proposals
- M-3.106-9      \_\_\_\_\_ Pre-Proposal Conferences

**EXHIBIT 3-2 (Continued)**

**SUGGESTED INDIVIDUAL ACQUISITION PLANNING CHECKLIST**

- M-3.106-10      ☐ Site Visits
- M-3.106-11      ☐ Reference Materials
- M-3.106-12      ☐ Cost Estimate
- M-3.106-13      ☐ Funding
- M-3.106-14      ☐ Planning Purpose PRs
- M-3.106-15      ☐ Options
- M-3.106-16      ☐ Government Property
- M-3.106-17      ☐ Quality Assurance
- M-3.106-18      ☐ Reports
  - M-3.106-18(a)      ☐ Introduction
  - M-3.106-18(b)      ☐ Types of Reports
  - M-3.106-18(c)      ☐ Considerations in Use of Reports
  - M-3.106-18(d)      ☐ Specifying Reports
- M-3.106-19      ☐ Acquisition of Non-severable Facilities
- M-3.106-20      ☐ Procurement Request Approvals
  - M-3.106-20(a)      ☐ Printing and Binding
  - M-3.106-20(b)      ☐ Questionnaires - Forms
  - M-3.106-20(c)      ☐ ADP
  - M-3.106-20(d)      ☐ Foreign Research Contracts
  - M-3.106-20(e)      ☐ Management Consulting Services
  - M-3.106-20(f)      ☐ Protective Services
  - M-3.106-210(g)      ☐ Capital Equipment and Fixtures
  - M-3.106-20(h)      ☐ Protection of Human Subjects
  - M-3.106-20(i)      ☐ Word Processing Equipment
  - M-3.106-20(j)      ☐ Personal Vis-A-Vis Non-Personal Services
  - M-3.106-20(k)      ☐ Other Specific Approvals
  - M-3.106-20(l)      ☐ Management Approvals (Specify)
- M-3.106-21      ☐ Rights in Data and Copyrights
  - M-3.106-21(a)      ☐ Introduction
  - M-3.106-21(b)      ☐ Policies and Procedures
  - M-3.106-21(c)      ☐ Acquisition of Data
  - M-3.106-21(d)      ☐ Definitions
  - M-3.106-21(e)      ☐ Delineating the Government's and the Contractor's Rights
  - M-3.106-21(f)      ☐ Special Contracting Circumstances
- M-3.106-22      ☐ Pertinent Special Instructions

FIXED-PRICE FAMILY INCREASING CONTRACTOR COST RESPONSIBILITY				COST-RESPURSEMENT FAMILY DECREASING CONTRACTOR COST RESPONSIBILITY				OTHER TYPE SPECIAL USES			
FIRM FIXED-PRICE (FFP)	FIXED-PRICE WITH ECONOMIC PRICE ADJUSTMENT (FP-EPA)	FIXED-PRICE INCENTIVE (FPI)	PRICE REDETERMINATION	COST-PLUS-INCENTIVE-FEE (CPIF)	COST-PLUS-AWARD-FEE (CPAF)	COST-PLUS-FIXED-FEE (CPFF)	COST AND COST SHARING	TIME AND MATERIALS LABOR HOURS	LETTER CONTRACT	INDEFINITE DELIVERY	
<b>DESCRIPTION</b>  Government pays price which is not subject to any adjustment regardless of contractor's cost experience  Places maximum risk on contractor  Contractor has greatest incentive to control costs  Minimum administrative burden on parties  Preferred contract type  Level of Effort: Payment is based on effort expended rather than results achieved Contractor provides specified effort over a stated period for fixed price	The price paid by the government may be revised upward or downward if certain contingencies occur  Provides for price adjustment to protect parties against significant economic fluctuations or changes in contractor's established prices  EPA provisions can be based on established (published) prices, actual costs, or cost index  Adjustments based on established prices restricted to industry wide contingencies  Adjustment based on labor or material costs limited to contingencies beyond contractor's control	Firm Target: Government pays price that is sum of final negotiated cost and final profit. Final profit determined by comparing final negotiated cost to target cost and adjusting target profit IAW formula (share-ratio). Final price cannot exceed ceiling price  Successive Targets: At predetermined price adjustment points, firm target cost is negotiated and firm target profit is determined IAW adjustment formula. Then either an FFP or FPI(P) can be negotiated	Prospective: Government pays fixed price for goods or services for a given period, but price is subject to revision at stated times during performance of contract  Retroactive: Government pays price, subject to ceiling, that is negotiated after contract performance	Government pays allowable cost and incentive fee  Incentive fee determined by comparing actual cost to target cost and adjusting target fee IAW fee adjustment formula (share ratio)  Adjustment in fee is limited by minimum and maximum fees negotiated  Performance incentives should be incorporated if development is feasible and government performance objectives have been determined	Government pays allowable cost, base fee, and award fee  Contractor earns a base fee which does not vary with performance and all or part of an award fee based on subjective evaluation by government of contractor's performance  Amount of the award fee is unilaterally determined by the government and is not subject to Disputes Clause  Evaluation of performance and corresponding partial payment of fee made at stated intervals	Government pays allowable cost and fixed fee  Fixed fee does not vary with actual costs  Fixed fee may be adjusted for changes in work to be performed  Minimum incentive for contractors to control costs  Completion Form: requires contractor to deliver and product (preferred form)  Term Form: requires specified level of effort over stated period of time	Cost: Government pays allowable cost, no fee  Cost Sharing: Government pays only a portion of allowable cost as mutually agreed to by the parties. Contractor absorbs portion of the cost with expectation of gaining other benefits from the effort	Government pays fixed hourly rate for supplies or services with contractor furnished material provided at cost  Labor-Hours: differs only in that no material is supplied by contractor	Preliminary contract instrument which authorizes immediate commencement of effort  Method of payment corresponds to type of contract contemplated when defined	Definite Quantity: Provides for definite quantity of specified supplies or services for a fixed period with deliveries at designated locations upon order  Requirements: Provides for furnishing all actual requirements of specified supplies or services during a specified period as ordered by designated activities  Indefinite Quantity: Provides for furnishing indefinite quantity of specified supplies or services during a specified time but government must order a stated minimum quantity	
	Price	Price EPA Clause	Firm Target: Target Cost Target Profit Ceiling Price Sharing Formula  Successive Targets: Initial Target Cost Initial Target Profit Ceiling Price Target Profit Adjustment Formula	Prospective Price Ceiling (Optional)  Retroactive Ceiling Price	Target Cost Target Fee Target Profit Sharing Formula Minimum Fee Maximum Fee	Estimated Cost Base Fee Award Fee	Estimated Cost Fixed Fee	Estimated cost	Hourly labor rate Ceiling Price		Firm Fixed Price Fixed Price with EPA or Price Redetermination Term Estimated Cost and Fee
	When fair and reasonable prices can be established at outset  Particularly suitable for standard or modified commercial items or military items for which sound prices can be developed  Level of Effort: R&D investigation or study	When contingencies resulting from unstable market or labor conditions can be identified and covered by a separate price adjustment clause	Where assumption of a degree of cost responsibility by contractors will provide incentive for effective cost control  Can combine with incentives on performance and schedule	Prospective: Quantity production or services when a fair and reasonable price can be negotiated for in that period but not on the contract period  Retroactive: When fair and reasonable FFP cannot be negotiated and low value or short period of performance renders other types impracticable	Development and test where a profit incentive is likely to provide motivation for more effective management	Level of effort contracts for services where achievement must be evaluated subjectively  Where time performance objectives can not be established in advance to measure actual performance  Award fee may be used in conjunction with other types of contracts	Research  Preliminary exploration or study  Development and test where CPIF not practical  Cost: Non profit institutions/organizations and facilities contracts  Cost Sharing: R&D efforts with either profit or non profit contractors		Engineering and design services, repair, maintenance, or overhaul, emergency situations	When interests of national defense demand that work commence immediately and insufficient time available to negotiate a definitive contract	Definite Quantity: Where definite quantity of supplies or services required during a specified period are readily available  Requirements: When impossible to determine in advance the precise quantities needed during a definite period of time  Indefinite Quantity: Same as requirements but government is only committed to minimum quantity
Level of Effort: Used only when work can not be clearly defined but effort desired can be agreed upon		Adequate cost or pricing data must be available to establish targets, sole purpose cannot be to shift cost responsibility to government, requires simultaneous agreement on all elements of pricing structure	Prospective: FFP not feasible, price periods conform to contractor's accounting system and assurance that price redetermination will be taken promptly  Retroactive: Reasonable assurance that price redetermination will be taken promptly and requires MCA approval	Fee limits same as CPFF	Base Fee shall not exceed 5% of estimated cost  Maximum Fee limits same as CPFF  Weighted guidelines (for determining profit objectives) shall not be applied  Shall not be used in lieu of CPFF or CPIF when objective measurement is feasible	Fee shall not exceed 15% of estimated cost for R&D or 10% of estimated cost for production contracts  Price of A/E contract shall not exceed 6% of estimated cost of the public work or utility project	Cost Sharing: Not applicable for effort specified by government or which has only minor relevance to commercial activities of the contractor	Determination that no other type of contract is suitable	Written determination that no other type suitable  Price ceiling required if award based on price competition  Must be defined  Maximum government liability cannot exceed 50% of estimated cost		
Negotiated Procurements Only Adequate Contractor Cost Accounting System				Negotiated Procurements Only Adequate Contractor Cost Accounting System				Negotiated Procurements Only Adequate Contractor Cost Accounting System			

# EXHIBIT 3-4

## WELL-CONSTRUCTED TECHNICAL EVALUATION CRITERIA

<u>Technical Review Categories</u>	<u>Weights</u>	
	<u>Company</u>	<u>Personnel</u>
Demonstrated level of experience in the following areas:		
1. A. Industrial plant design, manufacturing processes operation;	25	25
B. Developing sampling plans including sample collection methods for industrial chemical processes and safety plans;	25	75
C. Performing the tests for ignitability, corrosivity, reactivity and EP toxicity;	5	20
D. Implementing quality control and quality assurance programs	50	25
E. Conducting non-routine organic and inorganic characterizations of complicated chemical mixtures by Atomic Absorption (AA) and Spectrometry (GC/MS).		
(1) Experience of company with AA	100	—
(2) Experience of company with GC/MS	150	—
F. Performing tests for detecting mutagens and carcinogens (Ames Test, bioassays); biodegradation and bioaccumulation tests; phytotoxicity and aquatic toxicity bioassays;	50	75
G. Reviewing scientific data relative to potential health and environmental effects;	70	70

EXHIBIT 3-4 (Continued)

WELL-CONSTRUCTED TECHNICAL EVALUATION CRITERIA

	<u>Company</u>	<u>Personnel</u>	<u>Total</u>
H. Preparing descriptions and technical material on bioassay and chemical testing protocols appropriate to waste testing including monitoring, instrumental procedures and statistical tests)	50	75	
L. Gathering and evaluating technical data for use in preparing hazardous waste background documents and health and environmental effects profiles.	25	50	
J. Experience of staff in the use of the equipment listed in the special instructions.	--	<u>100</u>	--
SUBTOTAL Section 1	550	515	1065
2. Availability and quality of necessary equipment (including optional equipment) for conducting characterizations and method evaluations	<u>200</u>	--	--
SUBTOTAL Section 2	200	0	200
3. Offeror's Demonstrated Technical Approach to the Statement of Work areas as follows:			
A. Development of Sampling Plan and Sample Collection System	50	--	
B. Methodology evaluation	50	--	
C. Rulemaking petition review	15	--	
D. Manual preparation	10	--	
E. Hazardous waste background document preparation	<u>10</u>	--	
SUBTOTAL Section 3	<u>135</u>	<u>0</u>	<u>135</u>
TOTAL	<u>885</u>	<u>515</u>	<u>1400</u>

## **EXHIBIT 3-5**

### **CIRCUMSTANCES WHICH MAY PERMIT OTHER THAN FULL AND OPEN COMPETITION**

- The product or services required are available from only one source and no other type of property or services will satisfy EPA's minimum requirements [41 U.S.C. 253[c][1]]. This includes such circumstances as -
  - When only one responsible source can supply EPA's requirements.
  - Follow-on contracts for continued development or production of major systems or highly specialized equipment.
  - Follow-on contracts for services that represent a continuation of a previous effort performed by the proposed source as a result of a competitive acquisition when it is likely that an award to another source would result in substantial duplication of cost to EPA that is not expected to be recovered through competition or unacceptable delays in fulfilling EPA's requirements.
  - Acceptance of an unsolicited research proposal.
  - Data needed are not available to the Government and no alternative exists.
  - Utility services supplied by only one source.
  - When the Administrator has determined that only specified makes and models of technical equipment and parts will meet EPA's requirements for standardization and interchangeability.
- EPA's need for a product or services is of such unusual and compelling urgency that delay in the award of a contract would result in serious financial or other injury to the Government [41 U.S.C. 253[c][2]].
- It is necessary for EPA to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other non-profit institution or a Federally Funded Research and Development Center [41 U.S.C. 253[c][3]].
- When the terms of an international agreement or treaty specify or limit the sources to be solicited [41 U.S.C. 253 [c][4]].
- EPA is authorized or required by statute to award a contract to a specified source [41 U.S.C. 253[c][5]].
- When, in order not to compromise national security, disclosure of EPA's needs must be limited to one or a limited number of sources [41 U.S.C. 253[c][6]].

**EXHIBIT 3-5 (Continued)**

- **The Administrator has determined it is not in the public interest to use competition and has notified the Congress 30 days prior to award [41 U.S.C. 253(c)(7)].**

**Note: With the exception of purchases from Industries for the Blind and Severly Handicapped, under 41 U.S.C. 253(c)(5), all acquisitions require justifications and approvals.**

EXHIBIT 3-6

SAMPLE FORMAT

U.S. ENVIRONMENTAL PROTECTION AGENCY

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

PART I - BACKGROUND

1. Date:
2. Program Office:
3. Project Officer (Name, Mail Code, Telephone Number):
4. Project Identification (Title, Contract Number, etc.):
5. Description of the project (describe the supplies and services required to meet the Agency's needs):
6. Period of performance or delivery date: (List separately the base period and each proposed option periods):
7. Estimated contract value (List separately the base contract value and value of each proposed option period):
8. Proposed Contractor (Name and Address):

PART II - JUSTIFICATION

I recommend that this procurement be negotiated without full and open competition with (name of proposed contractor). The basis for this recommendation is discussed below:

(Address the elements in FAR 6.303-2 and each of the applicable statutory authorities listed in FAR 6.302 permitting other than full and open competition and provide specific support for each authority used. Provide other facts which support the justification, e.g.,

If FAR 6.302-1 is cited, give estimate of costs that would be duplicated and the basis for your estimate.

If FAR 6.302-2 is cited, describe the nature and extent of harm to the Government.

List actions that can be taken by the Government to remove or overcome barriers to competition for subsequent acquisitions of the supplies or services.) See also EPAAR 1506.3.

**EXHIBIT 3-6 (Continued)**

**PART III - PROGRAM OFFICE DIVISION DIRECTOR'S CERTIFICATION**

I certify that the above information is accurate and complete.

\_\_\_\_\_  
Signature of Division Director

\_\_\_\_\_  
Date

**PART IV - CONTRACTING OFFICER'S DETERMINATION**

1. Description of efforts to obtain competition: (Describe the efforts made to ensure offers were solicited from as many sources as practicable, e.g., how was the procurement publicized? What were results of CBD synopsis? Identify firms responding to the synopsis and results of the evaluation of the responses. If a market survey was not conducted, provide a statement of the reasons survey was not concluded.
2. Cost Determination: (Provide a statement that the anticipated cost to the Government will be fair and reasonable).

**PART V - CONTRACTING OFFICER'S CERTIFICATION**

I certify that the above justification is accurate and complete to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Contracting Officer

\_\_\_\_\_  
Date

**PART VI - APPROVAL**

\_\_\_\_\_  
Signature of Approving Official

\_\_\_\_\_  
Date

**EXHIBIT 3-7**

**LEVELS OF AUTHORITY FOR APPROVALS OF JOFOCs**

---

<b>Potential Contract Value</b>	<b>Approving Official</b>
<hr/>	
● \$1,001 - \$25,000	Contracting Officer
● Over \$25,000 - \$100,000	One level above the Contracting Officer
● Over \$100,000 - \$1,000,000 (FY 84)	Competition Advocate*
● Over \$1,000,000 - \$10,000,000	HCA or deputy on a nondelegable basis*
● Over \$10,000,000	Senior Procurement Executive on a nondelegable basis*

---

\* The Contracting Officer shall submit JOFOCs directly to the approving official.

EXHIBIT 3-8

(Example\*)

QUALITY ASSURANCE REVIEW FOR EXTERNAL PROJECTS  
(CONTRACTS)

I. GENERAL INFORMATION

Descriptive Title:

Sponsoring Program Office:

Approximate Dollar Amount:

Duration:

---

II. THIS CONTRACT REQUIRES ENVIRONMENTAL MEASUREMENTS  
(If yes, complete form; if no, sign form and  
submit with procurement request.)

Yes

No

III. QUALITY ASSURANCE REQUIREMENTS  
(Projects involving environmental measurements)

Yes

No

a. Submission of a written quality assurance  
(QA) program plan (commitment of the  
offeror's management to meet the QA  
requirements of the scope of work) is to  
be included in the contract proposal.

b. Submission of a written QA project plan is  
to be included in the contract proposal.

c. A written QA project plan is required as  
a part of the contract.

d. Performance on available audit samples or  
devices shall be required as part of the  
evaluation criteria (see list on reverse  
side).

e. An on-site evaluation of proposer's facili-  
ties will be made to ensure that a QA system  
is operational and exhibits the capability  
for successful completion of this project  
(see schedule on reverse side).

f. QA reports will be required (see schedule  
on reverse side).

\*This form may vary in context depending upon the application and the originating office.

EXHIBIT 3-8 (Continued)

IV. DETERMINATION (Projects involving environmental measurements)

Percentage of technical evaluation points assigned  
to QA \_\_\_\_\_

Project Officer estimate of percentage of cost  
allocated to environmental measurements \_\_\_\_\_

<u>Parameter Measured</u>	<u>QC Reference Sampling or Device Available (Yes or No)</u>	<u>Split Samples for Cross-Comparison (Yes or No)</u>	<u>Required for Preaward (Yes or No)</u>	<u>FREQUENCY During Contract</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

QA System Audits are required: Preaward \_\_\_\_\_; during contract: \_\_\_\_\_

QA Reports are required: with Progress Reports \_\_\_\_\_; with Final Report \_\_\_\_\_

The signatures below verify that the QA requirements have been established.

QA Officer:

Project Officer:

_____	_____	_____	_____
Signature	Date	Signature	Date

After signatures, a copy of this form must be included with the procurement request and sent to the Contracts Office and a copy placed on file with the QA Officer.

## EXHIBIT 3-9

## PROCUREMENT REQUEST APPROVALS

- A. Designated Office Approvals - Note that this matrix in Part A does not restate any approvals from Part B. Offices designated in Part A should be consulted prior to submission of requests for approval since authority may have been redelegated. The Agency objective is to limit Procurement Request approvals strictly to those that are clearly required by proper delegations and official policies.

Item No.	Item Description	Required Local Approvals	Required Headquarters Approvals
1	All purchases, regardless of value, for equipment, supplies or services. (Includes all items listed in the rest of Part A.)	- Program Office Approvals (POA) - Facilities Support Services Division (FSSD) or Equivalent Field Office (EFO) to confirm compliance with property regulations and to screen for excess property. (Delegations Manual # 1-4)	None
2	Printing; duplication; composition	Offices designated in Delegation # 1-5 in Delegations Manual.	None
3	- Real property or any interest therein - Advertisements for acquisition of real property	None	FSSD (Delegations Manual # 1-4)
4	Commercial U-drive credit cards	None	FSSD (Delegations Manual # 1-4)
5	Facsimile equipment	None	FSSD (Delegations Manual # 1-4)

## EXHIBIT 3-9 (Continued)

## PROCUREMENT REQUEST APPROVALS

Item No.	Item Description	Required Local Approvals	Required Headquarters Approvals
6	Communications equipment utilizing the radio frequency spectrum	None	FSSD (Delegations Manual # 1-4)
7	Watercraft over 25 feet or \$15,000 or aircraft of any value	None	FSSD (Delegations Manual # 1-4)
8	Purchase or lease/hire for 60 or more consecutive days of passenger vehicles and light duty trucks	None	FSSD (Delegations Manual # 1-4)
9	Purchase or rental of copying machines and printing equipment	None	FSSD (Delegations Manual # 1-5)
10	Repair and improvement construction	FSSD or EFO (See Delegations Manual # 1-4)	FSSD (For use of Building and Facilities funds)
11	Equipment, services for creation, organization, maintenance and disposition of Agency records and files including micrographic services and systems	Limited offices as designated in the Delegations Manual (see Delegation # 1-1) See also Records Management Manual.	None
12	ADP equipment, software maintenance and services, including those related to computer-related micrographic systems, word processing, time-sharing, feasibility studies and requirements analyses	None	Office of Information Resources Management (Delegations Manual # 1-10)

EXHIBIT 3-9 (Continued)

PROCUREMENT REQUEST APPROVALS

Item No.	Item Description	Required Local Approvals	Required Headquarters Approvals
13	Paid advertising for recruitment of personnel in newspapers and trade journals of national or inter-regional circulation	Local personnel office (Delegations Manual # 1-2)	None
14	Collecting identical information or statistical data from ten or more persons	None	Assistant Administrator for Policy, Planning and Evaluation. (See Delegations Manual # 1-22)
15	Protective services and equipment including guard protection security alarms, safes, and monitoring and detection devices	None	PSSD (See Delegations Manual # 1-6)

EXHIBIT 3-9 (Continued)

PROCUREMENT REQUEST APPROVALS

3. Management Approvals

The following approvals apply to all procurement requests (PRs). (Incremental fundings are excluded.) These approvals are in addition to those listed in A above.

<u>Item</u>	<u>Approval</u>
1. Procurement Requests for management consulting services:	
(a) Small purchases	Program official at least one organizational level above initiating office and, when award is to be made during the fourth fiscal quarter, to program official at least two organizational levels above initiating office.
(b) Other than small purchases	Program official not below level of Associate, Assistant or Regional Administrator, Inspector General, or General Counsel.
2. Requirements not listed above which exceed the small purchase threshold.	Program Official designated by the Associate, Assistant or Regional Administrator, Inspector General, or General Counsel.

## **EXHIBIT 3-10**

### **EXAMPLES OF CONSULTING SERVICES AND OTHER TYPES OF SERVICES**

**A. Examples of services that are considered consulting services are provided below:**

- 1. Advice on the feasibility of instituting a transfer pricing system in the Procurement and Contracts Management Division and advice on how such a system could improve management of contracts by procurement personnel.**
- 2. Analysis of EPA's management and agency services support functions and advice on how to improve the performance of these functions, such as through reorganization of the Office of Administration.**
- 3. Analysis of alternative strategies for implementing the requirements of Hazardous Substance Response Program regulations and advice on resource needs associated with each alternative strategy.**
- 4. Analysis of EPA procedures for drafting and issuing permits to municipal and nonmunicipal dischargers and advice on how to simplify these procedures.**
- 5. Advice on how to coordinate and integrate toxic substance policies and activities with those of other EPA programs.**
- 6. Advice on the different strategies for implementing merit pay at EPA, and conduct of training courses on one of these strategies.**
- 7. External peer review of programs, projects, and publications for the Office of Research and Development (ORD) Laboratories to assure conceptual soundness of scientific methods, and validity of results. The objective of the procurement is to obtain highly competent technical examinations and analyses of the research planned or performed by ORD laboratories in order to obtain the benefit of additional viewpoints and perspectives and to advise the ORD staff on the state of the art in areas that impact laboratory research programs. Three separate types of reviews are required:**
  - a. Program reviews and analyses which include critiques of laboratory research programs and advice on upgrading the program direction or management.**
  - b. Project reviews and analyses which focus on the scientific/technical details of a single project, with an in-depth examination of the project plan and the progress being made in pursuing the plan, a review of the data analyses and an interpretation of the data analyses.**

**EXHIBIT 3-10 (Continued)**

- c. Review and analysis of research results for publication clearance in accordance with the "ORD Technical Information Policy and Guide."**

**B. Examples of services which are not considered consulting services are provided below:**

- 1. Regulatory impact analyses, including economic impact analyses of effluent guidelines on specific industries, such as the organic chemicals industry.**
- 2. Analyses required by the Clean Water Act to determine economically achievable standards.**
- 3. Design and implementation of a computerized management information system for the Office of Administration.**
- 4. Development of sampling and analytical techniques to identify and measure pollutants in the ambient air.**
- 5. Conduct of a training course for Project Officers with particular emphasis on the Project Officer's role in the source evaluation and selection process.**
- 6. Development of a manual on security procedures for handling confidential business information.**
- 7. Conduct of a study to assess the consequences of pollutant loadings in the Chesapeake Bay.**
- 8. Evaluation of the strategy proposed by the Personnel Management Division for implementing merit pay at EPA with the primary purpose being the conduct of fifteen separate 8-hour training sessions on how to draft critical job elements and performance standards.**

# EXHIBIT 3-11

## STANDARD PROCUREMENT LEADTIMES

<u>Category</u>	<u>Leadtime in Calendar Days</u>
1. Contracts:	
A. New Competitive	
● Competitive - Research and Development Under \$500K	185
● Competitive - non R&D under \$500K	170
● Competitive - Research and Development \$500 K or more	240
● Competitive - non R&D \$500K or more	225
B. New Sole Source	
● New Sole Source - under \$500K	120
● New Sole Source - \$500K or more	171
2. Small Purchases:	
A. Competitive Order	
● Oral \$1,000 to \$10,000	5
● Written \$1,000 to \$10,000	19
● Written \$10,001 to \$25,000	60
B. Sole Source Order	
● Oral \$10,000 or less	4
● Written \$10,000 or less	17
● Written \$10,001 to \$25,000	60
C. Blanket Purchase Agreements	17

Federal Supply Schedule orders are included in these categories based on the same criteria as other orders.

NOTE: In EPA Notice 84-3, dated 7/30/84:

The Procurement and Contracts Management Division has developed standard procurement leadtimes for processing small purchase and contract awards. Leadtime is defined as the elapsed time between receipt of an acceptable Purchase Request/Order (EPA Form 1900-8) in the appropriate Procurement Branch and the date of the award. These leadtimes reflect changes in award procedures as directed by the Federal Acquisition Regulation. Some actions may require extraordinary processing steps; others may require delayed award dates to meet special needs of the program offices. In such cases, special leadtimes will be negotiated with the initiators of the actions. Program offices are encouraged to submit advance contract actions, as unfunded "planning purpose procurements," as early as possible to ensure that the award will be made by the desired contract date.

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## **CHAPTER M-4.000**

### **DEVELOPMENT OF THE PROCUREMENT REQUEST AND OTHER RELATED ACTIONS**

#### **M-4.100 Introduction**

Once the decision to contract has been made and procurement planning accomplished, the next step in the acquisition process is the initiation of a procurement request (PR). Procurement requests must be utilized for the acquisition of personal property and nonpersonal services from commercial (i.e., non-Federal) sources of supply. The authorized forms to be used are EPA Forms 1900-8, Procurement Request/Order, and 1900-8A, Continuation Sheet. This Chapter will provide detailed discussion on the content of and format to be used both in the Procurement Request Forms and other required documentation, such as the Procurement Request Rationale Checklist. As the Project Officer, it is your responsibility to determine whether initiation of a procurement request is appropriate; if so, to properly complete the necessary documentation; obtain the required approvals; and forward all documentation to the Contracting Officer for review and appropriate action.

#### **M-4.101 Functional Assignments For Evaluation and Selection**

##### **M-4.101-1 Introduction**

Concurrent with preparation of the Procurement Request or, even more beneficially, prior to its preparation, the Project Officer and Contracting Officer should collaborate for the purpose of establishing the functional assignments for evaluation of proposals and source selection. It is important that this be done in that the effectiveness of the source selection process depends to a large extent on the content and quality of all elements of the solicitation. Through early appointment of the Source Selection Official (SSO), Source Evaluation Board (SEB), Technical Evaluation Panel (TEP), and Business Evaluation Panel (BEP) members, they can become actively involved in the development of the requirements.

#### **M-4.101-2 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. For the purpose of establishing a SEB, the term "dollar value" means the full estimated cost/price of the total planned requirements (including options) of any resulting contract (or contracts when more than one award is planned from a single solicitation).

**(a) In Excess of \$5,000,000:**

- (1) SSO - Head of the Contracting Activity (HCA)**
- (2) SEB Chairperson - Head of the Contracting Activity (HCA) or designee (must be a contracting official)**
- (3) SEB Membership - Chief of the Contracting Office, TEP Chairperson, BEP Chairperson, and other specialists as assigned by the SSO**
- (4) TEP Chairperson - Project Officer**
- (5) TEP Membership - At least two members in addition to the PO\***
- (6) BEP Chairperson - Contracting Officer**
- (7) BEP Membership - Contract specialist and cost/price analyst**

**(b) In Excess of \$500,000 But Not Exceeding \$5,000,000:**

- (1) SSO - Determined by the Chief of the Contracting Office**
- (2) SEB - Established only when requested by the program office or determined necessary by the SSO. If established, the SSO shall determine the membership.**
- (3) TEP Chairperson - Project Officer**
- (4) TEP Membership - At least two members in addition to the PO\***
- (5) BEP Chairperson - Contracting Officer**
- (6) BEP Membership - Contract specialist and cost/price analyst**

**(c) Less than \$500,000**

For procurements under \$500,000, the PO may be the only member of the TEP, and the CO or contract specialist may be the only member of the BEP.

\* If desired by the Program Office, a QA Officer may be a member of the TEP.

#### **M-4.102 Use and Exceptions to the Use of EPA Form 1900-8**

##### **M-4.102-1 Use of EPA Form 1900-8**

EPA Form 1900-8 (see Exhibit 4-1) should be used for initiating procurements of personal property and nonpersonal services requiring the commitment and obligation of appropriated funds, including the following types of actions. It should also be kept in mind that any change in the dollar amount of a contract requires the use of a Procurement Request/Order.

##### **(a) Imprest Funds**

The imprest fund transactions may be used for procurement of \$250 or less (\$500 for emergencies); however, a lower limit may be established by local procedures.

##### **(b) Small Purchases**

Small purchases are those purchases where the aggregate amount involved in any one transaction does not exceed \$25,000. Procurement procedures are simplified for these size procurements. Requirements aggregating more than \$25,000 may not be broken down into several purchases which are less than \$25,000 merely for the purpose of utilizing small purchase procedures (Federal Acquisition Regulation Subpart 13.203). For sole source acquisitions in excess of \$1,000, the Project Officer must submit, as a separate attachment to the Purchase Request/Order, a brief statement supporting a sole source acquisition (see M-3.106-8(f)(2)(iii) and Exhibit 3-5).

##### **(c) Purchases Over \$25,000**

Purchases over \$25,000 require more detailed documentation and certain specific information to be contained in a document entitled "Procurement Request Rationale Checklist," (see Exhibit 4-2). You should submit this document as an attachment to the purchase request unless directed otherwise by the CO. The PO should obtain all required approvals of the final procurement request package before submitting it to the CO, (see M-3.106-20(j) and (k) and Exhibit 3-9).

##### **M-4.102-2 Exceptions to Use of Form**

The EPA Form 1900-8 is not utilized in the following instances:

##### **(a) Requests for Printing**

EPA Form 2340-1 should be used for duplicating and printing services and EPA Form 2340-6, Requisition for Local Duplicating, should be used for local duplicating and printing;

(b) **Employee Training**

Optional Form 170, Request, Authorization, Agreement and Certification of Training, should be used for employee training.

(c) **Local travel**

(d) **Authorized mail other than U.S. Postal Service**

**M-4.103 Supporting Documentation**

**M-4.103-1 Justification**

Each procurement request should contain a justification or supporting documentation as required. The extent of documentation will vary depending on dollar amount and kinds of services or property to be procured. For instance, procurement action cannot be initiated on requirements over \$10,000 until the "Procurement Request Rationale Checklist" (PRRC) is approved from a technical standpoint by authorized program officials.

**M-4.103-2 Exceptions to the Need for a Procurement Request Rationale Checklist**

The PO shall complete a Procurement Request Rationale Checklist for all procurements over \$10,000 unless directed otherwise by the Contracting Officer.

**M-4.104 Basic Items to be Included in the Procurement Request Rationale Checklist**

Chapter 3 listed all possible items to be considered in a PR. For your convenience, the checklist is set forth as in Exhibit 4-2 at the end of this section. The following are some of the basic items that are to be included in every procurement request rationale checklist.

**M-4.104-1 Project Title**

This title should correspond to the title used in EPA Form 1900-8, but need not be limited to the 60 positions as required according to the instruction on the reverse side of EPA Form 1900-8. Titles should always accurately reflect the work which will be performed under the contract.

**M-4.104-2 Performance Period**

The period of performance to be stated is the contemplated period of contract performance expressed in months, excluding any options. Whenever contractual options are desired, the estimated period of performance for each option should be specified.

#### **M-4.104-3 Procurement Abstract**

Describe briefly for public dissemination both program background and scope of work. This abstract will be used to synopsise the procurement in the Commerce Business Daily and may be transmitted internally for information purposes. Each abstract for competitive procurement should, when appropriate, contain remarks about desired qualifications of prospective contractors so that unqualified firms will not become involved. An abstract is not required when an 8(a) contract is to be entered into [see M-3.106-8(c)].

#### **M-4.105 Coordination of Purchase Request/Order**

Purchase requests for management consulting services are routed through the local personnel office to assure the propriety of contracting-out in lieu of using in-house capabilities and contracting-out rather than appointment of a person to perform the service and also assuring that the services are nonpersonal in nature.

## **M-4.200**

### **OTHER CONSIDERATIONS RELATIVE TO PROCUREMENT REQUESTS**

#### **M-4.201 Procurement Requests for Amending a Solicitation or Contract**

When a purchase request is prepared for the purpose of amending a solicitation or contract (no PR is required for administrative change orders which do not effect dollar value), the purchase request should reference the solicitation number or contract number as appropriate. In addition, all considerations normally addressed in preparing a PR--i.e., approvals, clearances, etc. must be considered.

#### **M-4.202 Priority Procurement Requests**

##### **M-4.202-1 Definition**

A Priority Procurement Request is one which contains a requirement which is of such priority that award of the Procurement Request must be made in less than normal procurement leadtime.

##### **M-4.202-2 Procedure**

(a) For procurements over \$10,000, the Procurement Request should include a written justification specifying the necessity for priority processing as it relates to a program. The justification is attached to the EPA Form 1900-8.

(b) The request shall be forwarded to the appropriate Chief of the Contracting Office at the Washington, Research Triangle Park, or Cincinnati contracting activity, who will approve the priority justification and determine priority assignment.

(c) The appropriate contract operations office will keep the program officer advised of the status of the request for priority procurement.

(d) Should an action not previously designated as priority become a priority at a later date, a justification shall be submitted through the same channels and approvals as if it had initially been designated priority.

#### **M-4.203 Socially and Economically Disadvantaged Businesses/8(a) Contracts**

When it is known, prior to the preparation of the purchase request/order, that the purchase is planned to be made from the Small Business Administration (SBA) under Section 8(a) of the Small Business Act, the procurement package need not include a Procurement Abstract or Recommended Source List.

#### **M-4.204 Return and Cancellation of the Procurement Request/Order**

(a) It is the responsibility of the contract specialist to review the procurement request and attachments, if any, to determine if the purchase descriptions, or specifications, are adequate for procurement action; accurately reflect the needs of the Government; that all necessary approvals have been obtained; and such other documents that may be attached and required are complete and accurate. The term "procurement package" is used to describe the procurement request, attachments, and required approvals.

(b) If the contract specialist determines that the procurement package is marginal or unacceptable to initiate procurement action, he or she may return the procurement package to the initiating activity. The procurement package will normally be returned by a memorandum explaining the reason, together with a statement that it is cancelled from the procurement activity's list of active procurements. The package will be returned through the procurement activity's record-keeping function.

(c) A procurement package will not be returned if the deficiencies in the package are such that they can be corrected by an informal discussion with the initiator.

## EXHIBIT 4-1

US ENVIRONMENTAL PROTECTION AGENCY WASHINGTON DC 20460 <b>PROCUREMENT REQUEST/ORDER</b>		Page <span style="border-bottom: 1px solid black; display: inline-block; width: 50px;"></span> of <span style="border-bottom: 1px solid black; display: inline-block; width: 50px;"></span>					
1 NAME OF ORIGINATOR		2 DATE OF REQUISITION					
3 MAIL CODE	4 TELEPHONE NUMBER	5 DATE ITEM REQUIRED					
6 SIGNATURE OF ORIGINATOR		7 RECOMMENDED PROCUREMENT METHOD <input type="checkbox"/> Competitive <input type="checkbox"/> Noncompetitive					
8 DELIVER TO (Project Manager)	9 ADDRESS	10 MAIL CODE	11 TELEPHONE NUMBER				
12 FINANCIAL DATA (a) APPROPRIATION		NOTE: ITEM 12 (c) DOCUMENT TYPE—CONTRACT = "C," PURCHASE ORDER = "P," IGA = "A," OTHER (Misc.) = "X"					
FMO USE (b) (13 digits)	DOCUMENT CONTROL NUMBER (c) (16 digits)	ACCOUNT NUMBER (d) (10 digits)	OBJECT CLASS (e) (4 digits)				
		AMOUNT (g) DOLLARS CTS					
13. SUGGESTED SOURCE (Name, Address, ZIP Code, Phone/Contact)		14 AMOUNT OF MONEY COMMITTED IS <input type="checkbox"/> ORIGINAL <input type="checkbox"/> INCREASE <input type="checkbox"/> DECREASE	15 CONTRACTING OFFICE <input type="checkbox"/> IS <input type="checkbox"/> IS NOT AUTHORIZED TO EXCEED AMOUNT SHOWN BY 10%				
		16 SERVICING FINANCE OFFICE NUMBER					
<b>17 APPROVALS</b>							
a BRANCH/OFFICE	DATE	d PROPERTY MANAGEMENT OFFICER/DESIGNEE	DATE				
b DIVISION/OFFICE	DATE	e OTHER (Specify)	DATE				
c FUNDS LISTED ABOVE ARE AVAILABLE AND RESERVED	DATE	f OTHER (Specify)	DATE				
18 DATE OF ORDER	19 ORDER NUMBER	20 CONTRACT NUMBER (if any)	21 DISCOUNT TERMS				
22 FOB POINT	23 DELIVERY TO FOB POINT BY On or before (Date)		24 PERSON TAKING ORDER/QUOTE AND PHONE NO				
25 CONTRACTOR (Name, address, ZIP Code)		26 TYPE OF ORDER <input type="checkbox"/> a PURCHASE REFERENCE YOUR QUOTE (See Block 24) PLEASE FURNISH THE ABOVE ON THE TERMS SPECIFIED ON BOTH SIDES OF THIS ORDER AND ON THE ATTACHED SHEETS IF ANY INCLUDING DELIVERY AS INDICATED THE PURCHASE IS NEGOTIATED UNDER AUTHORITY OF 41 USC 252(c)(1) <input type="checkbox"/> b DELIVERY PROVISIONS ON THE REVERSE ARE DELETED THE DELIVERY ORDER IS SUBJECT TO THE TERMS AND CONDITIONS OF THE CONTRACT (See Block 20) c. <input type="checkbox"/> ORAL <input type="checkbox"/> WRITTEN <input type="checkbox"/> CONFIRMING					
<b>27 SCHEDULE</b>							
ITEM NUMBER (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	ESTIMATED UNIT PRICE (e)	UNIT PRICE (f)	AMOUNT (g)	QUANTITY ACCEPTED (h)
<b>TOTAL \$</b>							
28 UNITED STATES OF AMERICA BY (Signature)				29 TYPED NAME AND TITLE OF CONTRACTING OFFICER			

EPA Form 1900-8 (Rev 4-84) Replaces previous editions,  
and EPA Form 1900-8T, which are obsolete

EXHIBIT 4-2

**PROCUREMENT REQUEST RATIONALE CHECKLIST**  
(to be submitted with EPA Forms 1900-8 and 1900-8A)

**Item 1:** The title of this procurement is \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**Item 2:** This procurement request package contains the following documents:  
(Check all applicable boxes and attach documents as appropriate.)

<u>See Attachment #</u>	<u>Check</u>	<u>Description</u>
N/A	<input type="checkbox"/>	EPA Forms 1900-8
—	<input type="checkbox"/>	Procurement Abstract
—	<input type="checkbox"/>	Statement or Scope of Work
—	<input type="checkbox"/>	Concise Technical Proposal Instructions
—	<input type="checkbox"/>	Competitive Technical Evaluation Criteria
—	<input type="checkbox"/>	Justification for Other Than Full and Open Competition (JOFOC)
—	<input type="checkbox"/>	Justification for Management Consulting Services
—	<input type="checkbox"/>	Justification of Need (Government-Furnished Property (GFP)/Equipment)
—	<input type="checkbox"/>	Quality Assurance (QA) Review Form
—	<input type="checkbox"/>	Recommended Sources List
—	<input type="checkbox"/>	Reports Description
—	<input type="checkbox"/>	Government-Furnished Property Description

**Item 3:** This procurement ☐ requires ☐ does not require management consulting services. (If management consulting services are required, attach a justification as prescribed in EPA Acquisition Regulation 1537.205.)

**Item 4:** This procurement ☐ involves ☐ does not involve legal analysis. I ☐ have ☐ have not discussed this procurement with the Office of Legal and Enforcement Counsel (OLEC) which ☐ concurs ☐ does not concur with proceeding with this procurement.

PROCUREMENT REQUEST RATIONALE CHECKLIST

Item 5: I ☐ anticipate or have knowledge of ☐ do not anticipate or have any knowledge of organizational conflict of interests issues related to this procurement. (If affirmative, describe conflict in an attachment.)

Item 6: Listed below are special EPA employee(s) who are or will be participating in EPA's processing or managing of this procurement, together with a list of their non-Government employers. Check here if none ☐.

EPA Special Employees

Non-Government Employer

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Item 7: This procurement ☐ is ☐ is not based on an Unsolicited Proposal.

Item 8: To the best of my knowledge the work results of this proposed procurement ☐ are ☐ are not available from any other source. (If the results are available from another source, describe in an attachment.) The Project Officer ☐ has ☐ has not reviewed the Office of Pesticides and Toxic Substance extramural activity report. The PO ☐ has ☐ has not consulted the EPA Headquarters Library for relevant reports by previous Contractors.

Item 9: The proposed Project Officer is \_\_\_\_\_. He/she ☐ has ☐ has not been certified as an EPA Project Officer.

Item 10: I ☐ recommend ☐ do not recommend prospective sources for this procurement. (If sources are recommended, list in an attachment.)

Item 11: This procurement anticipates ☐ a new contract award ☐ an additional work modification to existing contract no. \_\_\_\_\_. It also anticipates that it will be processed as a ☐ competitive procurement ☐ noncompetitive procurement. (If noncompetitive procurement is recommended, attach appropriate justification as described in Part 1506 of the EPA Acquisition Regulation.)

Item 12: This proposed procurement is appropriate for ☐ total small business/labor surplus area (SB/LSA) set-aside; or ☐ partial SB/LSA set-aside; ☐ partial SB set-aside; ☐ 8(a) set-aside; ☐ LSA set-aside; or ☐ none of the above (check only one). (Consult the Office of Small and Disadvantaged Business Utilization for advice.)

Item 13a: The estimated period of performance is \_\_\_\_\_ months after the effective date of the contract ☐ inclusive ☐ exclusive of submission of any final report which may be required.

**EXHIBIT 4-2 (Continued)**

## PROCUREMENT REQUEST RATIONALE CHECKLIST

**Item 13b:** The schedule of deliverable items (excluding reports) is as follows. Check here if no deliverable items are required ☒.

<u>Item No.</u>	<u>Description</u>	<u>Quantity</u>	<u>Delivery Date</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**Item 14:** This procurement anticipates that the following options will be needed. Check here if no options are anticipated /.

<u>Description of Option</u>	<u>Term of Option</u>
(Description may be indicated in a separate attachment)	

**Item 15:** The following reports are required (describe in an attachment).  
**Check here if no reports are required / /.** For each separate report  
 required, describe the following:

- (a) Type of report (e.g., draft, final, interim, special, etc.)
- (b) Descriptive title (e.g., monthly progress report)
- (c) Minimum content requirements
- (d) Number of copies required
- (e) Distribution (with complete addresses of all recipients)
- (f) Delivery schedule
- (g) Number of days the Government will have to review, comment, approve (disapprove) and return (as appropriate)

Where specific report formats, containing the information above, are used repetitively, "standard" formats are established or may be established with the servicing CO. Maximum use of such standard formats is encouraged. Examples include monthly or other periodic progress reports, financial and final reports.

Item 16: Peer review of Contractor-generated documents ☐ will be ☐ will not be required.

Item 17: Government property, data, or services ☐ will be furnished ☐  
will not be furnished under this procurement: (If furnished, describe in an  
attachment including quantity and date available.)

PROCUREMENT REQUEST RATIONALE CHECKLIST

Item 18: Budget. (An attachment may be used.)

- (a) The total estimated budget for the basic effort and all options is \$\_\_\_\_\_.
- (b) The estimated funding for the current fiscal year is \$\_\_\_\_\_.
- (c) The estimated total cost of Other Direct Costs is \$\_\_\_\_\_.  
(If possible, indicate estimate of significant subitems such as travel, computer time, consultants, equipment and material.)
- (d) For level of effort actions and other actions where hours, rather than an end product, are to be purchased, indicate for the basic and all option periods the number of hours required, by category, with definitions for each category.

Item 19: This procurement ☐ is ☐ is not subject to the requirements of OMB Circular A-76. (If A-76 applies, required documentation must be provided with the PR.)

Item 20: This procurement ☐ requires ☐ does not require priority processing (a brief priority justification may be attached).

(To be completed by procurement office:)

☐ Approved      ☐ Disapproved

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief, Contracting Office

Item 21: This procurement ☐ will ☐ will not involve the testing of human subjects in accordance with EPA Order 1000.17.

Item 22: This procurement ☐ does ☐ does not include acquisition of membership in an association. (If membership in an association is included, attach a certification indicating that the primary purpose of membership is to obtain direct benefits for EPA necessary to the accomplishment of its functions or activities.)

Item 23: This procurement ☐ is ☐ is not for leasing of motor vehicles. (If affirmative, attach certification per FAR 8.1102.)

Item 24: This procurement ☐ is ☐ is not to be funded from more than one appropriation.

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## **CHAPTER M-5.000**

### **PROPOSAL EVALUATION, NEGOTIATION, AWARD, AND PROTESTS**

#### **M-5.001 Introduction**

The area of source evaluation is extremely critical to the successful accomplishment of the acquisition process. Here, you, as the Project Officer, and other key members are involved in the review of proposals that have cost thousands of dollars to prepare and will result in the obligation of substantial amounts of Government funds. This Chapter sets forth both the rules and responsibilities of the participants and sequentially sets forth the steps of the evaluation process.

#### **M-5.002 Applicability**

The provisions of this Chapter apply to all competitive negotiated procurements in excess of \$25,000 except architect-engineering services.

#### **M-5.003 Policy**

EPA personnel shall conduct source evaluation and selection in accordance with consistent standards and procedures that ensure fair and impartial treatment of all offerors.

## **M-5.100**

### **SOURCE EVALUATION BOARD STRUCTURE AND RESPONSIBILITIES AND DUTIES OF PARTIES INVOLVED**

#### **M-5.101 Introduction**

The Contracting Officer is responsible for performing all administrative actions leading to the award of a contract and occupies a key role in the source selection process. The need for management oversight of the administrative actions leading to contract award increases for larger dollar procurements since such procurements usually have a significant impact on the Agency's ability to accomplish its mission. This management oversight is accomplished by the monitoring of the evaluation and selection process by senior procurement officials and their review and approval of major pre-award decisions.

#### **M-5.102 Source Evaluation Board Structure**

Exhibit 5-1 at the end of this section sets forth the structure of EPA's source evaluation process. Respective duties of the personnel are set forth in M-5.103.

#### **M-5.103 Duties and Responsibilities of Parties Involved**

Your responsibilities as the Project Officer and other participants in the Source Evaluation Board are set forth below.

##### **M-5.103-1 Head of the Contracting Activity**

The Director, Procurement and Contracts Management Division (PM-214), is the Head of the Contracting Activity (HCA). The functions of the Head of the Contracting Activity include monitoring the source evaluation and selection process, providing guidance and direction when appropriate, participating in the selection process in specified instances, and ruling on requests for deviations and exceptions to the Agency's policy and/or procedures regarding source evaluation and selection. The HCA will serve as the Source Selection Official for acquisitions in excess of \$5 million.

#### **M-5.103-2 Source Selection Official**

The Source Selection Official (SSO) is the official responsible for overall management of the source selection process. Duties of the SSO include appointing the members and chairpersons of the Source Evaluation Board, the Technical Evaluation Panel, the Business Evaluation Panel, and approving the solicitation document including any amendments. The SSO approves the competitive range and makes the source selection decision.

#### **M-5.103-3 Source Evaluation Board**

The Source Evaluation Board (SEB) consists of a chairperson, who is responsible for all of the procedural and administrative aspects of the SEB, and other specialists—e.g., technical, procurement, and financial—as may be deemed appropriate by the SSO. An attorney from the Office of General Counsel should serve in an advisory role to the SEB. The SEB makes recommendations to the SSO on selection of a contractor for award.

#### **M-5.103-4 Technical Evaluation Panel**

The Technical Evaluation Panel (TEP) develops the evaluation criteria and the Statement of Work for the solicitation and performs the technical evaluation of offers. All members of the TEP must review all proposals initially submitted in response to a solicitation. Unless approved in advance by the SSO, only individuals who evaluated initial proposals may evaluate revised proposals submitted after determination of the competitive range.

#### **M-5.103-5 Business Evaluation Panel**

The Business Evaluation Panel (BEP) reviews the solicitation evaluation criteria and Statement of Work from a business perspective; evaluates the business and contractual aspects of the offerors' business proposals; and considers other factors such as responsibility of the offerors.

#### **M-5.103-6 Project Officer**

The Project Officer is the Chairperson of the TEP and as such is responsible for recommending the TEP membership for the approval of the SSO. The Project Officer is designated by the EPA program official at division, office or laboratory director level, with the concurrence of the SSO, as the technical representative for the procurement action.

#### **M-5.103-7 Contracting Officer**

The Contracting Officer serves as Chairperson of the BEP and as such coordinates the activities of the BEP membership. He/she makes competitive range decisions and prepares the source selection decision for the SSO's subsequent approval.

#### **M-5.103-8 Contract Specialist**

This Government employee is 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 and conducting pre-proposal conferences, conducting negotiations, ensuring complete and accurate documentation of the official contract file, preparing the competitive range determination and source selection memorandum at the direction of the Contracting Officer, and preparing the contractual instrument. The contract specialist is also responsible for receiving, safeguarding, and distributing offers to the TEP and BEP. The contract specialist is always a member of the BEP.

#### **M-5.103-9 Cost/Price Analyst**

The cost/price analyst is responsible for evaluating the financial aspects of the proposals, which includes performing preliminary evaluations of the cost proposals and detailed cost and price analyses. The cost/price analyst is always a member of the BEP when the value of the procurement exceeds \$500,000.

#### **M-5.103-10 Director or Chief of the Contracting Office**

The Director or Chief of the Contracting Office is the senior EPA individual classified in the GS-1102 series having assigned responsibilities for the management and operations of the contracting activities at a specific location, i.e., Washington, D.C.; Research Triangle Park, North Carolina; or Cincinnati, Ohio. These individuals are also "Chiefs of the Contracting Offices." The Director or Chief of the Contracting Office monitors the solicitation preparation, the source evaluation and selection process, serves as SSO in specified instances, and provides advice or guidance when required.

#### **M-5.103-11 Quality Assurance Officer**

For Procurement Requests involving environmentally related measurements and requiring QA/QC documentation in the offerors' proposals, the Quality Assurance Officer may be a member of the Technical Evaluation Panel (TEP) for the purpose of evaluating the adequacy of the offerors' QA/QC documentation.

#### **M-5.103-12 Other Personnel**

Only regular or special employees of EPA or employees of other Federal Government agencies may participate in the evaluation and selection process. Employees of contractors do not participate either formally or informally in the evaluation/selection process.

## **M-5.200**

### **PREPARING FOR THE EVALUATION**

#### **M-5.201 Introduction**

As a participant in the selection process, you must know the concerns and responsibilities that must be addressed prior to initiation of the evaluation. They are as follows:

##### **M-5.201-1 Conflicts of Interest**

(a) The Code of Federal Regulations (40 CFR Chapter 1 Part 3) prescribes the high ethical standards of conduct required of each EPA employee in carrying out his or her duties and responsibilities. You must be familiar with the provisions of Part 3 regarding conflicts of interest and inform the source selection official in writing if your participation in the source evaluation and selection process could be interpreted as a possible or apparent conflict of interest. If the source selection official determines that you have a conflict of interest, you will be relieved of further duties in connection with the evaluation and selection process and a successor will be designated.

(b) Members of the Source Evaluation Board, including the Business Evaluation Panel and the Technical Evaluation Panel, will be told to determine that:

- (1) All members are regular or special employees;
- (2) No member's spouse or minor child holds a financial interest in any contract or firm from whom a proposal is received;
- (3) No member is an officer, director, employee, partner, nor consultant to an offeror from whom a proposal was received;
- (4) No member is negotiating for nor has any arrangement concerning future employment with any offeror.

- (5) No member's family has a relationship with an offeror which could present the appearance of a conflict of interest or impropriety.

(c) In addition to being concerned with any personal conflict of interest problem, you, as a member of the evaluation panel, must be aware of the conflict of interest regulations stated in 48 CFR Part 1503 regarding current or former EPA employees. These regulations deal with conflicts of interest and improper influence or favoritism in connection with contracts involving current or former employees. They state:

- (1) No contract may be awarded without competition to a current regular or special EPA employee or to a former regular or special EPA employee whose employment terminated within 365 days before submission of a proposal to EPA. Likewise, no contract is to be awarded without competition to a firm which employs, or proposes to employ, a current regular or special EPA employee or a former EPA regular or special employee whose employment terminated within 365 calendar days before submission of a proposal to EPA. These restrictions apply if either of the following conditions exists:

- (i) The current or former EPA regular or special employee is or was involved in developing or negotiating the proposal for the prospective contractor.
- (ii) The current or former EPA regular or special employee will be involved directly or indirectly in the management, administration, or performance of the contract.

The foregoing restriction may be waived in writing by the Assistant Administrator for Administration and Resources Management if the award would not involve a violation of the U.S.C. code, EPA regulations at 40 CFR Part 3, or the Federal Acquisition Regulation at 48 CFR 3.602 and if the award would be in the best interests of the Government.

- (2) The above prohibition does not apply to competitively awarded contracts. However, such awards must not involve violation of 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, or 48 CFR 3.601 and must not be based on improper influence or favoritism arising out of an EPA employee's current or former EPA employment.

If a conflict is perceived of this nature, inform the Contracting Officer in writing.

**M-5.201-2 Distribution and Proposal Control**

(a) Offerors' identities, offer contents, and prices shall be treated with the utmost discretion to avoid compromising the evaluation results or giving any offeror an unfair competitive advantage. Any questions regarding the receipt and distribution of offers, status of the proceedings, or other matters shall be referred to the CO or designated contract specialist.

(b) After receipt of proposals, the contract specialist will serially number all proposal copies received, distribute the required number of proposal copies to the TEP and BEP, and be responsible for the collection and final disposal of proposal copies. The panel chairpersons must maintain a log of proposal distribution within the TEP and BEP. The contract specialist will destroy all excess copies of proposals in a timely manner. The original copy of each unsuccessful proposal should be retained by the contract specialist as a reference in conducting debriefings. A minimum of two copies of the successful proposal should be retained (contract file copy/Project Officer file copy) for reference in administering the contract. Final disposition of the file shall be accomplished in accordance with the EPA Records Management Manual.

#### **M-5.201-3 Disclosure of Information**

During the course of evaluation and selection, you must not reveal any information concerning the evaluation (except as may be required for internal clearance or technical assistance) to anyone who is not participating in the same evaluation proceeding. The right to information during the evaluation process does not extend to your supervisor. However, this does not preclude reasonable status reports of activities on a "need to know" basis to persons having procurement responsibility, provided that no information relating to the status or content of a specific proposal is disclosed. Of particular concern here is that you realize that no discussion should be held with either offerors or other organizations which have requested information regarding the evaluation. Such inquiries should be referred to the Contracting Officer.

#### **M-5.201-4 Review of the Solicitation**

Each member of the TEP, in preparing for proposal evaluation, must be familiar with the technical proposal instructions, the technical evaluation criteria and weights, and the scoring plan. Familiarity and understanding between panel members will ensure consistent, timely, and accurate evaluation.

## **M-5.300**

### **PROPOSAL EVALUATION PROCEDURES**

#### **M-5.301 Introduction**

Evaluation of technical proposals involves the evaluation and scoring of each offeror's proposal, and reporting the Technical Evaluation Panel findings to the Contracting Officer. The considerations and steps involved in the evaluation and scoring of proposals are addressed in this section with reporting requirements set forth in M-5.400.

##### **M-5.301-1 Scoring Plan**

(a) The scoring of offers is accomplished through the use of the Scoring Plan as shown on the next page. The Scoring Plan consists of narrative descriptive statements and numerical values for each statement. These predetermined numeric values are on a scale of zero through 5. The scoring plan must be used in conjunction with the numeric weights set forth in the technical evaluation criteria to arrive at offeror's scores for each element and subelement of their proposals.

(b) Values assigned to technical evaluation elements in proposal reviews must be limited to values shown in the Scoring Plan. The use of fractional values other than 3.5 and 4.5 (e.g., 2.5) is prohibited.

(c) Further discussion of the Scoring Plan values is as follows:

- (1) Value of "0" or "1" - The element or subelement of this technical evaluation criterion is clearly deficient. The "0" or "1" score is used solely for scoring, ranking, and determination of competitive range. If, however, the offer attains an overall score, due to high scores in other technical evaluation criteria, which places it in a sufficiently high position to be selected for negotiations, the offeror shall be afforded the opportunity to correct those deficiencies during written or oral discussions or during final negotiations.

- (2) Value of "2" - The element or subelement of the technical evaluation criterion contains deficiencies which must be clarified or substantiated before the offer is fully understood. These deficiencies should be resolved during written or oral discussions, often called interrogatories, if conducted, and the offer is to be given a final score in any supplemental TEP Reports (see M-5.400, Evaluation Reports) based on the offeror's revised proposal.
- (3) Values of "3", "3.5", "4", "4.5", or "5" - The element or subelement of the technical evaluation criterion is fully understood and there is no need for clarification by the offeror. However, discussions involving any such elements or subelements are not precluded. An assigned value of 3 or higher does not, however, preclude comments on perceived weakness or areas that could be improved.

### SCORING PLAN

<u>Value</u>	<u>Descriptive Statement</u>
0	The element is not addressed or is totally deficient and without merit.
1	The element is addressed but contains deficiencies that can be corrected only by major or significant changes to relevant portions of the proposal.
2	Clarification is required. Final scoring of the element will be made following limited discussions or full negotiations, if discussions or negotiations are held with the offeror.
3	The proposal element is adequate. Overall, it meets specifications. However, comments should be made on any perceived weaknesses or on areas in which an offeror could improve.
3.5	None. (Indicates intermediate merit. If used, you must provide a narrative to explain the distinction between values 3 and 4.)
4	The proposal element is good with some superior features.
4.5	None. (Indicates intermediate merit. If used, you must provide a narrative to explain the distinction between values 4 and 5.)
5	The proposal is superior in most features.

#### M-5.301-2 Scoring Formats

(a) The technical evaluation criteria and numerical weights used in evaluating offerors' proposals are developed prior to the issuance of an RFP, and once adopted, must be applied without change throughout the entire evaluation.

(b) Using the criteria and weights mentioned in (a) above, the Chairperson of the TEP is responsible for the development of the scoring format (see Exhibits 5-2 and 5-3 for examples). The format must be designed and reviewed by the Contracting Officer prior to the issuance of the RFP. The Scoring Plan shown under M-5.301-1 will be used with Exhibit 5-2. Failure to promptly develop the format may adversely impact the procurement leadtime. For purchases valued at \$500,000 or less, the PO shall use EPA Form 1900-61, Proposal Technical Evaluation, shown in Exhibit 5-4.

#### **M-5.301-3 Scoring Illustration**

(a) When reviewing a subelement of an offeror's proposal, it is evaluated in light of the descriptive statements in the Scoring Plan and assigned a numeric value corresponding to the appropriate statement. The numeric value is converted to a percentage factor which is then applied to the numerical weight assigned to the subelement in the Evaluation Criteria to determine an offeror's score. Since the numeric values are 0 to 5, the "5" represents 100 percent. Therefore, each whole number represents 20 percent; "0" is 0 percent, "1" is 20 percent, "2" is 40 percent, "3" is 60 percent, etc.

(b) Exhibit 5-2 reflects a typical scoring example showing the assignment of numerical weights, the application of the scoring plan, the derivation of individual scores for each technical evaluation criterion, and the overall score to be used in ranking the offers.

(c) The final decision for assigning a numeric score to individual offers, when two or more evaluators materially differ, must be resolved through discussion among the panel membership and arrival at a consensus opinion. Arriving at a consensus opinion is mandatory. Averaging of individual member's scores to arrive at an overall panel score is prohibited.

(d) Applying the scoring plan principles discussed in M-5.301-1(c)(1) through (3) to Exhibit 5-2 will result in the following:

- (1) Items II.a, II.d, and III.b, "Previous experience the project manager has had in this type of effort", "Project management organization," and "Educational qualifications related to the project performance" must be discussed with the offeror and the element appropriately rescored. The clarification offered will be rescored with an appropriate value.
- (2) Items I.b and II.c, "Proposed sources of information", and "Proposed plan for use of personnel resources in connection with work performance" should be discussed with any offeror determined to be in the competitive range and normally would be corrected to an acceptable condition prior to award to an offeror who has an evaluated element rated as "0" or "1."

#### **M-5.301-4 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 to any technical evaluation criterion element or subelement. There are many factors you should consider when analyzing offers, a sampling of which follows.

(a) Avoid "reading into" or "reading out of" any portion of the offer a meaning other than the exact language appearing in the offer.

(b) Avoid the tendency to interpret the meaning of the offeror's proposal when the writing is ambiguous.

(c) Avoid any infusion of personal knowledge of an offeror's capabilities not described in the offer.

(d) Recognize that the assignment of a score to an element or subelement is subjective and based upon your best reasoned judgment.

(e) Recognize that no two evaluators may assign the same numerical score to an element or subelement of the evaluation criteria.

(f) Recognize ambiguities, inconsistencies, errors, omissions, irregularities, and deficiencies that can affect scoring.

(g) Recognize that offerors often use "catch phrases," "buzz words," and semi-legalistic phraseology which may indicate a lack of thorough understanding of the solicitation.

(h) Recognize the substantive quality of the proposal and do not be influenced by form, format, or method of presentation.

(i) Recognize flattery on the part of the offeror.

(j) Avoid forming "first impressions" of an offer that might tend to influence the score to be assigned.

#### **M-5.301-5 Ranking**

The total of assigned numerical scores to an offer when compared to other offers determines the relative rank of that offer. While the use of predetermined scores as a cut-off (e.g., no offeror receiving a score of less than 60 will be considered) for competitive range consideration 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. Each member of the TEP shall independently evaluate and score each offer for procurements in excess of \$500,000. The average of individual TEP members' scores to arrive at an overall panel score is prohibited. However, discussions between evaluators to understand conflicting views is acceptable. The final overall ranking is the responsibility of the TEP Chairperson.

### **M-5.302 Optional Scoring Procedure**

A combined checklist-scoring system is to be utilized where procurement actions not in excess of \$500,000 are involved. The combined checklist-scoring system appears in Exhibit 5-4 at the end of this section. The evaluator(s) use a separate page 2 for each evaluation criterion.

### **M-5.303 Evaluation Considerations**

In addition to the relative technical ranking of technical offers and the evaluation of price or cost, consideration must be given to other factors contained in the solicitation which may influence the selection decision. These other factors may be used as the discriminating element for determining the selection of a source between two otherwise substantially equal offerors. The factors include, but are not necessarily limited to, the following:

(a) Prior Performance. Often evaluators confuse prior performance with past experience of an organization. An organization's prior performance concerns such items as: timeliness of work performed, whether the contractor has been terminated for default, the acceptability of work performed, etc. Evaluating prior performance is the responsibility of the Contracting Officer and is not given a relative rating as is the case in evaluating technical proposals. An offeror's record of prior performance may significantly influence the selection decision. Examples of recent or current seriously deficient performance may even cause the Contracting Officer to determine the offeror to be nonresponsible. Therefore, as an evaluator you should provide (see paragraph (1) below) all information that you may have regarding any offerors' prior performance record.

- (1) In the TEP Supplemental Report, (see M-5.400, Evaluation Reports), you must include a summary evaluation of the technical aspects of the offeror's prior performance under contracts requiring similar work. The summary shall provide an analysis of the offeror's previous record in providing work of a high quality in a timely and cost efficient manner.
- (2) You may obtain information relating to prior performance from several sources. For example copies of applicable EPA Form 1900-26 (see Exhibit 5-5) may be obtained from the Quality Assurance Branch of the Procurement and Contracts Management Division. To gain information on contracts which may not be included in the 1900-26, file a request to the Contracting Officer to provide you with a list of current contracts. The listing will contain Project Officer's names whom you may contact. Information provided on prior performance may be evaluated. Current and prior contracts listed in the offeror's proposal may be reviewed and considered in addition to personal knowledge of the TEP.

(b) Past Experience. Past experience, on the other hand, relates to the "content" of work the contractor has performed--e.g., the offeror has conducted water quality studies, emission analyses, etc. Past experience, if it has been established as an evaluation criterion, will be evaluated by the TEP.

(c) Conflicts of Interest. Part 9.500 of the FAR and Part 1509.5 of the EPAAR impose restrictions on contracting with a firm or individual when organizational and individual conflicts of interest would occur. The TEP and BEP Chairpersons must poll the membership of their panels for any personal knowledge concerning conflict of interest that a member may have about the firms that have submitted proposals. The results of the poll, including any information obtained, will be included in the panel report.

Solicitation provisions require offerors to certify that it is not aware of any information bearing on the existence of any potential organizational conflict of interest. If the offeror cannot so certify, it is required to provide a disclosure statement in its proposal describing relevant information concerning any past, present, or planned interests that may be a potential conflict of interest. The Contracting Officer is required to evaluate such information and take appropriate action. It is EPA's policy to avoid,, neutralize, or mitigate organizational conflicts of interest. If this cannot be done, then the prospective contractor will be disqualified. When potential or actual conflicts are identified after award, the contract may be terminated.

An organizational conflict of interest exists when the nature of the work to be performed under a prospective contract and a prospective contractor's organizational, financial, contractual, or other interests (including the interests of its chief executives, directors, consultants, or subcontractors) are such that (a) award of the contract may result in an unfair competitive advantage, or (b) the contractor's objectivity in performing the contract work may be impaired.

**M-5.400**  
**EVALUATION REPORTS**

**M-5.401 Introduction**

The TEP and BEP evaluation of proposals is a continuing activity throughout the negotiation process. The findings of the panels provide the SEB with information required to make proper competitive range and source selection decisions. When a formal SEB is formed, three separate written reports are prepared. These reports are described in the following subparagraphs.

**M-5.401-1 Source Evaluation Board Report**

In procurements where an SEB is convened, the SEB provides the SSO with a report on its findings. The report is submitted after completion of discussions or full negotiations, depending on the source selection method employed, and should include: a description of the acquisition; a summary of the significant strengths, weaknesses, and risks associated with each offer still in the competitive range. This summary shall generally be an independent assessment of the facts and findings appearing in the TEP and BEP reports. The SEB report contains recommendations for selection; and a statement that the SEB members are free from actual or potential personal conflicts of interest.

**M-5.401-2 Evaluation Panel Reports**

(a) These are formal narrative reports prepared by the TEP and BEP for submission to the CO. The reports form the basis of negotiation and are the basis for a major portion of the SEB report, competitive range determination, and source selection determination. The reports must be in sufficient detail to be used to debrief offerors as to why they did not receive an award. Each report shall identify the individuals participating in the evaluation of proposals. M-5.302 should be consulted regarding the use of simplified procedures when actions are not in excess of \$500,000.

(b) The CO will advise the TEP Chairperson when the results of the technical evaluation are to be submitted. Normally, evaluators are given a period of 14 to 30 calendar days (depending upon the complexity of the requirement, the number of proposals received, etc.) to evaluate proposals.

(c) Preparation and Submission of the Technical Evaluation Panel Report.

- (1) The TEP Report is delivered to the Contracting Officer upon the completion of the initial technical evaluation of offers received. This includes a detailed scoring of each offer received and a summary of facts and findings of significant strengths and weaknesses and risks associated with each offer. The report must be in sufficient detail to support a determination of offers meeting the minimum requirements of the Government, to justify the relative ranking of offers, and to support the establishment of the competitive range.
- (2) The report must include any interrogatories the CO should submit to offerors to clarify their technical proposals. The CO may add to the TEP's list any additional interrogations deemed appropriate.
- (3) The PO must deliver a supplemental TEP report to the CO upon the completion of evaluation of revised proposals and prior to final selection. The supplemental report must include, for each offeror in the competitive range:
  - (i) A discussion of whether or not the offerors' cost proposals adequately reflect their technical proposals and the requirements of the solicitation;
  - (ii) A summary evaluation of the technical aspects of each offeror's record of recent or current performance. The evaluation of past performance includes an analysis of the offerors' previous efforts to provide work of a high quality in a timely, cost-efficient manner. However, past performance is not a criterion to be scored. Where the offeror is known to have performed contracts for EPA and for other Government agencies for comparable work, those agencies should be contacted for a record of past performance and the CO contacted for a record of past performance on EPA contracts; and
  - (iii) Any changes to the initial technical evaluation scores and a narrative evaluation based on discussions or negotiations and the revised proposal. All revised score sheets by each panel member must be included.

(d) Preparation and Submission of the Business Evaluation Panel Report. Concurrent with your preparation of the TEP Report, the Chairperson of the Business Evaluation Panel must prepare a Business Evaluation Panel Report.

- (1) The BEP Report delivered to the Contracting Officer upon the completion of initial evaluation of the business portion of offers received includes: a discussion of any factors which might prevent award to a proposer (i.e., appearance on a suspended/debarred list) and a preliminary analytical cost evaluation report. The report may include worksheets or a formal narrative to identify cost elements which appear unreasonable or questionable. For level of effort contracts, the report will compare proposed costs with the cost standards specified in the solicitation, e.g. man-hours per labor category.
- (2) A supplemental BEP Report is delivered to the Contracting Officer after completing the evaluation of revised proposals and prior to final selection. The BEP Report narrative is in sufficient detail to permit the selection of source for final contract award. It includes the appropriate consideration, analysis, and findings concerning the following elements of the business proposal of each offeror in the competitive range:
  - (i) A detailed cost analysis on the business proposals;
  - (ii) Evaluation of proposed management structure to be utilized for performance;
  - (iii) Evaluation of offeror's subcontracting program as it relates to small business, labor surplus area concerns, and socially and economically disadvantaged business enterprises;
  - (iv) Evaluation of those business elements submitted with each proposal which could lead to a determination of nonresponsibility by the Contracting Officer.
  - (v) Evaluation of the offeror's record of performance under prior EPA contracts as it relates to timely performance, history of cost control, requests for changes, and quality of the end product. The BEP should obtain this information from the Contractor Performance Evaluation System. Where the offeror is known to have performed contracts with other Government agencies for comparable work, the BEP should contact those agencies for a record of past performance; and

Both the TEP and BEP reports must also include:

- (1) A statement that the respective panel members are free from actual or potential personal conflicts of interest; and
- (2) Any information which might reveal that an offeror has an actual or potential organizational conflict of interest.

## **M-5.500**

### **DETERMINATION OF THE COMPETITIVE RANGE AND DISCUSSIONS**

#### **M-5.501 Determination of the Competitive Range**

(a) Determination of the competitive range is a responsibility of the Contracting Officer, subject to the approval of the SSO, and involves his or her consideration of the ranking of the technical proposal, price, cost, and other factors. The competitive range is comprised of those proposals (taking into consideration the factors mentioned above) that through a reasonable amount of written or oral discussions may be considered acceptable to receive the contract award.

(b) Almost all EPA procurement actions to which this Chapter applies involve technical factors which are of greater importance than the price or estimated cost proposed. Accordingly, determination of the competitive range is made only after evaluation of all offers received and careful consideration of any possible trade-offs.

(c) When the procurement action is expected to exceed \$5,000,000, complete documentation supporting the competitive range decision is presented to the HCA for review and approval. The HCA may call for an oral briefing by the SEB prior to granting approval of the competitive range decision.

(d) When only one offer is determined to be in the competitive range, the CO must review the solicitation document to assure that it did not unduly restrict competition. The competitive range determination must include the CO's determination that the solicitation is not restrictive. The determination will also include a discussion of the relevant aspects of the solicitation.

#### **M-5.501-1 Technical Evaluation**

The attainment of a particularly high technical score would seem to indicate that an offer should be considered within the competitive range. However, upon consideration of the price offered, it may not be practical to

trade the superior technical aspects of the offer for a significantly higher price. Generally, the attainment of a high technical evaluation score in itself is not a sufficient basis for a Contracting Officer's determination that the offer is within the competitive range. Conversely, an offer with a lower technical evaluation may meet the minimum requirements of the solicitation and offer a price that should be given further consideration.

#### **M-5.501-2 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 technical scores that are close in numerical value. In such cases, the business evaluation may be the determining factor in arriving at the competitive range. Similarly, the factors set forth in M-5.303 may be of such importance that the offer cannot be reasonably determined to be within the competitive range.

#### **M-5.501-3 Determination and Documentation**

The Contracting Officer makes the determination of the competitive range for the subsequent approval by the SSO. As with the preceding discussions regarding evaluations, no stringent rules can, or should, be applied in determining the competitive range, nor can a mathematical formula be devised. Where there is reasonable doubt regarding the inclusion of a particular offer within the competitive range, that doubt is resolved in favor of inclusion. Because the determination of the competitive range is based on informed judgment and is complex in nature, all such determinations must be completely documented to set forth rationale supporting the determination.

#### **M-5.501-4 Competitive Range Example**

The following example highlights the principle of determining the competitive range based on the technical and business evaluations of a group of offers.

#### **COMPETITIVE RANGE EXAMPLE**

<u>Offeror</u>	<u>Technical Evaluation Score</u>	<u>Cost/Price</u>
A Co.	330	\$250,000
B Inc.	325	175,000
K Co.	275	145,000
D Co.	245	150,000
C Co.	150	115,000
G Co.	125	92,000

(a) G Co., while offering the lowest price/cost, has submitted an offer that is seriously lacking in essential technical qualities. A review of the scoring would show several technical elements to have been scored as "0" or "1". Therefore, G will not be included in the competitive range.

(b) A Co., while attaining the highest technical ranking, has offered a price/cost that is unreasonable for the effort required. If an analysis of the business proposal shows that several elements of price/cost are unusually high, but may be susceptible to downward revision, the offer should be included in the competitive range; however, if those circumstances do not exist, the offer may be considered to be outside the competitive range because of price/cost.

(c) C Co. has attained a score showing that portions of the proposal do not meet the minimum requirements. This is also reflected in the business proposal. The offer should not be considered within the competitive range.

(d) The offers of B Inc., D Co., and K Co. are close with respect to both the technical evaluation and price/cost offered. Therefore, these three offers should be included within the competitive range. Depending upon the circumstances, A Co.'s offer may also be included.

#### **M-5.502 Written or Oral Discussions**

##### **M-5.502-1 Background**

The Federal Acquisition Regulation (FAR) requires that, except under specified circumstances, the Contracting Officer conduct oral or written discussion with all responsible offerors who submit proposals within the competitive range.

##### **M-5.502-2 Purpose**

The purpose of oral and written discussions is to:

(a) Advise the offeror of deficiencies in its proposals so the offeror is given an opportunity to satisfy the Government's requirement;

(b) Attempt to resolve any uncertainties concerning the technical, or other terms and conditions of the proposal;

(c) Resolve any suspected mistakes; and

(d) Provide the offeror an opportunity to submit any cost/price, technical, or other revisions to its proposal.

##### **M-5.502-3 Limitations**

The Contracting Officer will chair the Government negotiation team and all members must use careful judgment in determining the extent of discussions. They must not engage in technical leveling, technical transfusion, or auction techniques. Any discussions should scrupulously avoid disclosure of technical information, ideas, or cost data from any other offeror. No

indications should be given to any offeror of a price which must be met or bettered to obtain further consideration since such practice constitutes an auction technique. On the other hand, this does not prohibit pointing out price or cost elements that do not appear to be justified, or encouraging offerors to put forward their most favorable price proposals. In so doing, the price elements of any other offeror must not be discussed, disclosed, or compared.

**M-5.502-4 Limited Discussions vs. Full Negotiations**

(a) To satisfy the varying nature of different acquisitions, the Contracting Officer may suit the negotiation strategy to the circumstances of the procurement. Factors which influence this decision include the number of proposals and relative closeness of technical scores and costs.

(b) After determination of the competitive range, the Contracting Officer may proceed with limited cost/full technical discussions with the firms in the competitive range, generally through interrogatories, and final in-depth negotiations with one or more firm(s) still within the competitive range after evaluation of revised proposals; complete/full cost and technical negotiations with all firms comprising the competitive range; or a variation of these two approaches as the circumstances of the procurement dictate. Regardless of which approach is used, the Contracting Officer should raise cost questions as early as possible and not defer them to final negotiations. Discussions/negotiations with contractors in the competitive range shall include questions on past performance (Government and non-Government) that was less than satisfactory. Information on past performance may be obtained from program personnel who have served as Project Officers on relevant contracts, and/or from the contractor performance evaluations maintained by the Procurement and Contracts Management Division.

## **M-5.600**

### **PROPOSAL REVISION AND SOURCE SELECTION**

#### **M-5.601 Proposal Revisions**

##### **M-5.601-1 Notifications**

All offerors included in the competitive range are notified by the Contracting Officer at the conclusion of limited discussions or full negotiations of the opportunity to submit a revised proposal. A final common cut-off date for receipt of revised proposal and/or confirmation of negotiations (best and final offer) is established. The notification includes information to the effect that discussions are concluded; offerors are being provided the opportunity to submit a revised proposal (which can be a confirmation of a prior offer); and the confirmation or revised final offer must be received by the cut-off date specified. Offerors are cautioned to submit information in support of changes to their initial offer(s). Where limited negotiations were held, the notice may indicate that further negotiations may be conducted with the source selected.

##### **M-5.601-2 Receipt**

Any revised proposal received after the established final common cut-off is handled as a "late proposal." In these instances, the prior proposal is considered as being the offeror's complete submission.

##### **M-5.601-3 Evaluation**

Revised proposals are subject to a final evaluation (price or cost, technical, and other salient factors considered) to the extent deemed necessary by the Contracting Officer. Evaluations are performed in accordance with the procedures previously prescribed for use in the evaluation of initial offers in order to determine the relative ranking of the revised offers. Any changes to scores resulting from revised proposals must be substantiated with a complete rationale--i.e., written explanation of what elements of the proposal were changed and how it affected the rating (see M-5.401-2(c)).

## **M-5.602 Source Selection**

### **M-5.602-1 General**

The selection of a source is made following receipt and evaluation of all proposal revisions. The selection of a source or sources is based upon consideration of the TEP and BEP findings of significant strengths, weaknesses, and risks associated with each offer, business and management ratings, price or cost, and other factors which may influence the award decision. With regard to technical scores, EPA normally uses technical point ratings of offers in establishing the relative ranking of offers. Technical point ratings are useful guides in the evaluation of offers, but they are not conclusive as to the actual merit of offers. The final merit of the offers is determined by review of technical evaluation narratives, descriptive ratings, and other relevant information in addition to point scores. After technical merit is determined, consideration is given to the price or cost proposed and other business aspects. Also other factors (record of prior performance, subcontracting plans, etc.) may properly influence the decision to select one offer in preference to other offers received as unscored discriminating elements to determine the winner between two otherwise substantially equal offers.

### **M-5.602-2 Source Selection Decision**

The Contracting Officer prepares the source selection decision, including:

- (a) The source selected;
- (b) Comprehensive rationale for the decision including the consideration given to price or cost, technical merit, and other factors contained in the solicitation;
- (c) A statement of approval of the decision prepared for the signature of the SSO.

### **M-5.602-3 SSO Approval**

A copy of the source selection decision and supporting materials prepared by the CO is presented to the SSO for approval of the decision. When the value of the procurement action is greater than \$5 million, complete documentation supporting the selection is submitted to the HCA.

## **M-5.603 Negotiations with the Source Selected**

Where the Contracting Officer followed some form of limited discussion with the selected source, further negotiations may be necessary on areas that had not yet been covered. Such negotiations do not involve material changes which would alter the basis of the source selection decision.

## **M-5.700**

### **AWARD NOTIFICATIONS AND DEBRIEFINGS**

#### **M-5.701 Award Notifications**

##### **M-5.701-1 Preaward Notifications**

When the proposal evaluation period is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range, the Contracting Officer notifies those offerors outside the competitive range that their proposals are unacceptable. This requirement applies to purchases over \$10,000.

##### **M-5.701-2 Postaward Notices**

Promptly after contract award, the Contracting Officer notifies the unsuccessful offerors, in writing, of the source selected for award, unless the offeror had been given a preaward notification. This requirement applies to purchases over \$10,000.

#### **M-5.702 Debriefings**

(a) When a contract is awarded on a basis other than price, unsuccessful offers may request a debriefing concerning the basis for the selection decision and contract award.

(b) Debriefings are individually conducted only after contract award for those unsuccessful offerors who submit a written request that has been signed by a corporate official, senior partner, or other comparable executive of the organization. Debriefings are conducted by the SSO or his/her designee with participation by the PO and other specialists the SSO or designee deems necessary. Debriefings must be absolutely factual and in conformance with the documentation supporting the approved source selection decision. The release of information relating to proposals other than the organization being debriefed is limited in accordance with FAR 15.1001(b).

(c) Debriefing information will include the Government's evaluation of the significant weak or deficient factors in the proposal; however, point-by-point comparisons with other offerors' proposals may not be made. Debriefing must not reveal the relative merits or technical standing of competitors or the evaluation scoring. Moreover, debriefing must not reveal any information that is not releasable under the Freedom of Information Act; for example:

- (1) Trade secrets;
- (2) Privileged or confidential manufacturing processes and techniques; and
- (3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.

(d) The Contracting Officer will include a summary of the debriefing in the contract file.

**M-5.800**  
**PROTESTS**

**M-5.801 Introduction**

Interested parties may object to a solicitation, a proposed contract award, or the award of a contract by filing a protest, in writing, to the Contracting Officer, the General Accounting Office (GAO), or in the case of acquisition of ADP equipment or services to the Contracting Officer, to the GAO, or to the General Services Board of Contract Appeals (GSBCA). Interested parties are defined as "an actual or prospective offeror whose direct economic interest would be affected by the award of or failure to award a particular contract." Protests are categorized either pre- or post-award and are concerned with the propriety of the solicitation and award process, not with contractual disputes.

**M-5.802 Protests to EPA Only**

Pre- and post-award protest made to EPA only are handled in accordance with the rules established in the FAR, Subpart 33.1 and EPA Acquisition Handbook, Unit 7.

**M-5.802-1 Pre-Award Protests**

(a) When a written protest against making award is filed only with the EPA, the Contracting Officer must not proceed with award until the matter is resolved unless it can be determined that:

- (1) The items being solicited are urgently required;
- (2) Performance or delivery will be severely delayed if award is not made promptly; or
- (3) It is advantageous to the Government to make prompt award.

(b) If the Contracting Officer determines that award should be made because of one of these factors, he or she must prepare a written justification and obtain concurrence for award from the Office of General Counsel and the Head of the Contracting Activity.

(c) If the Contracting Officer or a higher official in EPA sustains a pre-award protest the following are actions which may be taken:

- (1) If the sustained protest is in regard to a defective solicitation, the solicitation will either be modified or withdrawn;
- (2) If the sustained protest is in regard to award to another offeror, the apparently successful offeror's proposal will be rejected; or
- (3) If the sustained protest does not affect the validity of the solicitation, and if the protester's proposal is low, he or she may receive award, provided the Government still requires the supplies or services being acquired.

#### **M-5.802-2 Post-Award Protests**

(a) When a written protest against an awarded contract is filed with EPA only, the Contracting Officer need not suspend contract performance or terminate the awarded contract unless it appears likely that the award will be invalidated and delayed delivery of supplies or services is not "prejudicial to the Government's interest." In this event, the Contracting Officer will consider making a mutual agreement with the contractor to "suspend performance on a no-cost basis."

(b) If the Contracting Officer or a higher official in EPA sustains a post-award protest, the following are actions which may be taken, according to the circumstances of the contract:

- (1) Cancel the award as being void;
- (2) Terminate for convenience; or
- (3) Allow the improper award to stand.

(c) Note that the decision to let an improper award stand should be based on several factors including (1) the degree of performance, (2) the need to prevent performance delays, and (3) the incumbent contractor's good faith in entering into the contract.

#### **M-5.803 Protests to the GAO**

The Competition in Contracting Act of 1984 (CICA) amended the Budget and Accounting Act, Chapter 35, of Title 31, U.S. Code, to provide that protests concerning alleged violation of a procurement statute or regulation shall be decided by the Comptroller General if filed with the GAO in accordance with the statute and implementing GAO procedures published in

**Title 4, Part 21 of the Code of Federal Regulations (CFR) entitled "Bid Protest Procedures."**

**M-5.803-1 Time for Filing**

Protests based on alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals must be filed prior to bid opening or the closing date for receipt of initial proposals, or, in the case of amendments to the solicitation, not later than the next closing date for receipt of proposals. In other cases, protests must be filed not later than 10 days after the basis of the protest is known or should have been known. Under the prescribed procedures, if an offeror initially submits a protest to the Contracting Officer, any subsequent protest to the Comptroller General must be filed within 10 days after receipt of formal notification of, or actual or constructive knowledge of initial adverse action taken by the Agency.

**M-5.803-2 EPA Actions Required**

(a) The GAO will notify the Contracting Officer within one day by telephone of the receipt of a protest. If the award has already been made, the contractor must be notified of the protest; protests filed before award will require that the Contracting Officer notify all offerors "who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied."

(b) Upon notification of receipt of the protest by the GAO, the Contracting Officer has 25 work days to prepare a report for submission to the GAO or 10 work days after receipt of a GAO determination to use the express option. Copies of the submitted report must also be furnished to all interested parties. The following should be included in the Agency report:

- (1) Copy of the protest;
- (2) Copy of the protesting offeror's proposal;
- (3) Copy of the proposal being considered for award or proposal which is being protested;
- (4) Copy of the solicitation, including specifications or portions relevant to the protest;
- (5) The abstract of bids or offers or relevant portions;
- (6) Any other documents relevant to the protest;
- (7) A statement which explains the Contracting Officer's actions and the reasons behind them; and
- (8) Findings, actions, recommendations, and other information necessary for determining the validity of the protest.

(c) When EPA has received notice from the GAO of a pre-award protest filed directly with the GAO, the Contracting Officer cannot award a contract unless the Head of the Contracting Activity determines in writing that:

- (1) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit waiting the decision of the GAO; and
- (2) Award is likely to occur within 30 calendar days of the written finding.

(d) If the agency receives a notice from the GAO, within 10 calendar days after award of a contract, that a protest has been filed against the award, the Contracting Officer must immediately suspend performance or terminate the contract. An exception to this requirement is that the Head of the Contracting Activity may authorize performance upon a written finding that, (i) contract performance will be in the best interest of the United States; or (ii) urgent and compelling circumstances that significantly affect the interest of the U.S. will not permit waiting for the GAO's decision. Contract performance may not be authorized until the agency has notified GAO of the above finding.

When it is decided to suspend performance or terminate the awarded contract, the Contracting Officer should attempt to negotiate a mutual agreement on a no-cost basis.

#### **M-5.803-3 GAO Decision Time**

The GAO is required to issue its recommendation on a protest within 90 work days, or within 45 calendar days under the express option, unless the GAO establishes a longer period of time.

#### **M-5.803-4 GAO Authority**

(a) When a protest is filed with the GAO, the Comptroller General will determine whether the solicitation, proposed award, or award complies with statute or regulation. If the Comptroller General determines that the solicitation, proposed award, or award does not comply with a statute or regulation, the Comptroller General may recommend that the Federal agency:

- (1) Refrain from exercising any of its options under the contract;
- (2) Recompete the contract immediately;
- (3) Issue a new solicitation;
- (4) Terminate the contract;
- (5) Award a contract consistent with the requirements of such statute and regulation;

- (6) Implement any combination of the above recommendations; or
- (7) Implement such other recommendations as the Comptroller General determines to be necessary in order to promote compliance with procurement statutes and regulations.

(b) The Comptroller General will make recommendations on protests without regard to any cost or disruption from terminating, recompeting, or reawarding the contract.

If a protest is sustained, the GAO may declare that the protestor is entitled to the cost of filing and pursuing the protest, including attorney fees and bid and proposal costs. Cost awarded by the GAO must be paid promptly by the agency from agency funds.

#### **M-5.804    Protests of the GSBCA**

An interested party may file a written protest concerning a solicitation for bids or proposals to a proposed contract for the procurement of ADP or ADP services, or a proposed award or the award of such contract conducted under the authority of Section 111 of the Federal Property and Administrative Services Act to the GSBCA. The GSBCA Bid Protest Rules of Procedure are contained in 48 CFR Chapter 61.

##### **M-5.804-1    Time for Filing**

(a) The GSBCA rules provide that protests based on alleged improprieties of the solicitation which are apparent before bid opening or the closing date for receipt of proposals shall be filed before bid opening or the closing date for receipt of initial proposals. Otherwise, the protest shall be filed no later than 10 days after the basis for the protest is known.

(b) GSBCA procedures require that a protester furnish a copy of its complete protest to the agency official, or the location designated in the solicitation, or to the Contracting Officer, the same day as the protest is filed with the Board.

##### **M-5.804-2    EPA Actions Required**

(a) The GSBCA procedures state that within one working day after receipt of a copy of the protest, the agency shall give either oral or written notice of the protest to all parties who were solicited or, if the solicitation has closed, only to those who submitted a sealed bid or offer; and written confirmation of notice and a listing of all persons and agencies receiving notice should be given to the Board within five working days after receipt of the protest.

(b) Within 10 work days after the filing of the protest, the agency is required to file with the GSBCA a protest file. Except where the agency determines under appropriate authority to withhold classified or privileged information or information that would give a competitive advantage, the protest file must include the following:

- (1) A Contracting Officer's decision, if any.

- (2) The contract, if any.
- (3) All relevant correspondence.
- (4) Affidavits or statements of witnesses on the matter under protest.
- (5) All documents relied upon by the Contracting Officer in taking the action protested.
- (6) A copy of the solicitation, the protester's bid or proposal and, if bid opening has occurred and no contract has been awarded, a copy of any relevant bids and the bid abstract.

(c) No later than 15 work days after the filing of the protest, the Contracting Officer must file its answer to the Board setting forth its defense of the protest.

#### **M-5.804-3 GSBCA Authority to Suspend Award**

If a protest contains a timely request for a suspension of procurement authority, the Board will hold a hearing no later than 10 calendar days after the filing of the protest. The Board will suspend the procurement authority (DPA) unless the agency establishes that:

- (1) Absent suspension, the contract award is likely within 30 calendar days; and
- (2) Urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision.

#### **M-5.804-4 GSBCA Hearings and Decision Authority**

(a) The Board will hold a hearing on the merits of a protest no later than 25 work days after the protest filing and a decision on the merits of a protest will be issued within 45 work days after the filing of a protest, unless the Board's Chairman determines that the unique circumstances of the protest require a longer period.

(b) The Board is required to conduct such proceedings and allow such discovery as may be required for the expeditious, fair, and reasonable resolution of the protest. In making a decision on the merits of protests brought under this authority, the Board is required to give due weight to the policies of the protest authority section of the CICA, and the goals of economic and efficient procurement. The Board may take one or more of the following actions:

- (1) The Board may dismiss a protest the Board determines is frivolous or which, on its face, does not state a valid basis for protest.

- (2) If the Board determines that a challenged agency action violates a statute or regulation or the conditions of any delegation of procurement authority, the Board may suspend, revoke, or revise the procurement authority of the Administrator or the Administrator's delegation of procurement authority applicable to the challenged procurement.
- (3) In addition when the Board determines that the agency action violates a statute or regulation or the conditions of a DPA, the Board may also declare an interested party to be entitled to the costs of filing and pursuing the protest, including reasonable attorney's fees, and bid and proposal preparation costs.
- (4) The Board may also order any additional relief which it is authorized to provide under any statute or regulation in addition to actions authorized under the CICA, Section 2713.

# EXHIBIT 5-1

## SOURCE EVALUATION STRUCTURE

	<u>Over \$5M</u>	<u>Not Exceeding \$5M</u>
SSO	Head of the Contracting Activity	As determined by the Chief of the Contracting Office
SEB	Chairperson <sup>1</sup> Chief of the Contracting Office TEP Chairperson BEP Chairperson Other Specialists as assigned by SSO	Established only when requested by the Program Office or SSO. The SSO will determine the organizational levels of individuals to serve if convened.
TEP	Chairperson (PO) At least two other members	Chairperson (PO)* At least two other members
BEP	Chairperson (CO) Contract Specialist and Cost/Price Analyst	Chairperson (CO)* Contract Specialist and Cost/Price Analyst
<sup>1</sup> Head of the Contracting Activity or Designee		
<p><b>NOTES:</b></p> <p>SSO--Source Selection Official  SEB--Source Evaluation Board  TEP--Technical Evaluation Panel  BEP--Business Evaluation Panel</p> <p>* For procurements valued at \$500,000 or less, the PO may be the only member of TEP, and the CO or contract specialist the only member of the BEP.</p>		

**EXHIBIT 5-2**

**TECHNICAL EVALUATION SCORING FORMAT  
(Example)**

	<u>Evaluation Criteria</u>	<u>Numerical Weight</u>	<u>Scoring Plan</u>	<u>Individual Scores</u>
<b>I.</b>	<b>Adequacy of Technical Proposal</b>	<b>200</b>		
	a. Literature search and investigation methodology	40	3	24
	b. Proposed sources of information	40	1	8
	c. Plan for assessing the value of each publication	40	3.5	28
	d. Correlation of literature to economic aspects	40	3	24
	e. Presentation of findings	40	2	16
<b>II.</b>	<b>Project Management</b>	<b>100</b>		
	a. Previous experience the project manager has had in this type of effort	25	2	10
	b. Company resources available to the project manager	25	4.5	22.5
	c. Proposed plan for use of personnel resources in connection with work performance	25	0	0
	d. Project management organization	25	2	10
<b>III.</b>	<b>Personnel Qualifications</b>	<b>100</b>		
	a. Technical experience of principal project staff related to the project performance	35	3	21
	b. Educational qualifications related to the project performance	30	2	12
	c. Relevant publications of proposed personnel	35	3	<u>21</u>
	<b>Total Score</b>			<b><u>196.50</u></b>

EXHIBIT 5-3  
ALTERNATE SCORING FORMAT  
PROPOSAL TECHNICAL EVALUATION

RFP NUMBER AND TITLE: \_\_\_\_\_

OFFEROR: \_\_\_\_\_

EVALUATED \_\_\_\_\_ BY: \_\_\_\_\_  
DATE: \_\_\_\_\_

MAXIMUM SCORE ATTAINABLE: \_\_\_\_\_ EVALUATION SCORE: \_\_\_\_\_

EVALUATION CRITERIA - SCORING PLAN - SCORE

<u>Value</u>	<u>Descriptive Statement</u>
0	The element is not addressed or is totally deficient and without merit.
1	The element is addressed but contains deficiencies that can be corrected only by major or significant changes to relevant portions of the proposal.
2	Clarification is required. Final scoring of the element will be made following limited discussions or full negotiations if discussions or negotiations are held with the offeror.
3	The proposal element is adequate. Overall, it meets specifications. However, comments should be made on any perceived weaknesses or on areas in which an offeror could improve.
3.5	Indicates intermediate merit. If used, you must provide a narrative to explain the distinction between values 3 and 4.
4	The proposal element is good with some superior features.
4.5	Indicates intermediate merit. If used, you must provide a narrative to explain the distinction between values 4 and 5.
5	The proposal is superior in most features.

EXHIBIT 5-3 (continued)

**INSTRUCTIONS:** This form is furnished for your use in evaluating proposals received in response to the above-cited RFP. Fill in all pages and return to the Chairperson of the TEP. Be as thorough and explicit as possible in your responses. Your professional evaluation of the proposal's responses as required by the Statement of Work, technical proposal instructions, and technical evaluation criteria. Specify strengths and weaknesses for each evaluation criterion. If you have questions concerning any proposal, please contact the Chairperson. For each of the criterion listed below, indicate in what ways the proposal does or does not meet acceptable standards, and assign a value from the scoring plan.

**I. ADEQUACY OF TECHNICAL PROPOSAL - Maximum of 200 Points**

- a. Literature search and investigation methodology - 40 points.  
Comment on strengths and weaknesses:  
Scoring Plan Value: \_\_\_\_\_ Score: \_\_\_\_\_

\_\_\_\_\_  
Page Number(s)

- b. Proposed sources of information - 40 points.  
Comments on strengths and weaknesses:  
Scoring Plan Value: \_\_\_\_\_ Score: \_\_\_\_\_

\_\_\_\_\_  
Page Number(s)

- c. Plan for assessing the value of each publication - 40 points.  
Comments on strengths and weaknesses:  
Scoring Plan Value: \_\_\_\_\_ Score: \_\_\_\_\_

\_\_\_\_\_  
Page Number(s)

**EXHIBIT 5-3 (continued)**

- d. Correlation of literature to economic aspects - 40 points.**

**Comments on strengths and weaknesses:**

**Scoring Plan Value: \_\_\_\_\_ Score: \_\_\_\_\_**

Page Number(s)

- e. Presentation of findings - 40 points.**

**Comments on strengths and weaknesses:**

**Scoring Plan Value: \_\_\_\_\_ Score: \_\_\_\_\_**

Page Number(s)

**II. PROJECT MANAGEMENT - Maximum of 100 points.**

- a. Previous relevant experience of the project manager - 25 points.**

**Comments on strengths and weaknesses:**

**Scoring Plan Value: \_\_\_\_\_ Score: \_\_\_\_\_**

Page Number(s)

**EXHIBIT 5-3 (continued)**

- b. Company resources available to project manager - 25 points.**  
**Comments on strengths and weaknesses:**  
**Scoring Plan Value: \_\_\_\_\_ Score: \_\_\_\_\_**

Page Number(s)

- c. Proposed plan for use of personnel resources - 25 points.**  
**Comments on strengths and weaknesses:**  
**Scoring Plan Value: \_\_\_\_\_ Score: \_\_\_\_\_**

Page Number(s)

- d. Project management organization - 25 points.**  
**Comments on strengths and weaknesses:**  
**Scoring Plan Value: \_\_\_\_\_ Score: \_\_\_\_\_**

Page Number(s)

**EXHIBIT 5-3 (continued)**

**III. PERSONNEL QUALIFICATIONS - Maximum of 100 Points**

- a. Staff technical experience in relation to project - 35 points.**  
**Comment on strengths and weaknesses:**  
**Scoring Plan Value: \_\_\_\_\_ Score: \_\_\_\_\_**

                      
**Page Number(s)**

- b. Educational qualifications of personnel - 30 points.**  
**Comments on strengths and weaknesses:**  
**Scoring Plan Value: \_\_\_\_\_ Score: \_\_\_\_\_**

                      
**Page Number(s)**

- c. Relevant publications of proposed personnel - 35 points.**  
**Comments on strengths and weaknesses:**  
**Scoring Plan Value: \_\_\_\_\_ Score: \_\_\_\_\_**

                      
**Page Number(s)**

**EXHIBIT 5-3 (continued)**

## SUMMARY RATINGS

	<u>Points Possible</u>	<u>Value</u>	<u>Score</u>
<b>I. Adequacy of Technical Proposal</b>	<b>200</b>		
<b>a. Literature Search</b>	<b>40</b>	_____	_____
<b>b. Information Sources</b>	<b>40</b>	_____	_____
<b>c. Assessment Plan</b>	<b>40</b>	_____	_____
<b>d. Literature Correlation</b>	<b>40</b>	_____	_____
<b>e. Presentation of Findings</b>	<b>40</b>	_____	_____
<b>II. Project Management</b>	<b>100</b>		
<b>a. Experience of Project Manager</b>	<b>25</b>	_____	_____
<b>b. Available Resources</b>	<b>25</b>	_____	_____
<b>c. Personnel Resources</b>	<b>25</b>	_____	_____
<b>d. Management and Organization</b>	<b>25</b>	_____	_____
<b>III. Personnel Qualifications</b>	<b>100</b>		
<b>a. Staff Technical Experience</b>	<b>35</b>	_____	_____
<b>b. Educational Qualifications</b>	<b>30</b>	_____	_____
<b>c. Publications</b>	<b>35</b>	_____	_____
<b>TOTAL SCORE</b>			

## RECOMMENDATION

\_\_\_\_\_ Technically Acceptable      \_\_\_\_\_ Technically Unacceptable  
\_\_\_\_\_ Conditionally Acceptable

**Signature**

Date \_\_\_\_\_

EXHIBIT 5-4  
OPTIONAL SCORING PROCEDURE  
PROPOSAL TECHNICAL EVALUATION

RFP NUMBER AND TITLE: \_\_\_\_\_

OFFEROR: \_\_\_\_\_

EVALUATED  
DATE: \_\_\_\_\_ BY: \_\_\_\_\_

MAXIMUM	SCORE	ATTAINABLE:	_____	EVALUATION
SCORE:	_____			

GENERAL COMMENTS: \_\_\_\_\_

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EXHIBIT 5-4 (continued)

TITLE OF CRITERION: (ASSIGNED WEIGHT (in points))

<u>%</u>	<u>Value</u>	<u>Descriptive Statement</u>
0	0	The element is not addressed, or is totally deficient and without merit.
20	1	The element is addressed but contains deficiencies that can be corrected only by major or significant changes to relevant portions of the proposal.
40	2	Clarification is required. Final scoring of the element will be made following limited discussions or full negotiations if discussions or negotiations are held with the offeror.
60	3	The proposal element is adequate. Overall it meets specifications.
70	3.5	None.
80	4	The proposal element is good with some superior features.
90	4.5	None.
100	5	The proposal is superior in most features.

(Score: % of Assigned Weight \_\_\_\_\_)

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT 5-5**  
**EPA FORM 1900-26**

<b>CONTRACTING OFFICER'S EVALUATION OF CONTRACTOR PERFORMANCE</b> <small>(Read instructions on reverse before completing form.)</small>			
1. FROM		2. TO	
3. FORWARD (original only) TO: CONTRACTOR RELATIONS SECTION #4-314 WASHINGTON, D.C. 20460		4. CONTRACT NO.	5. ACTIVITY
6. CONTRACTOR'S NAME AND ADDRESS		7. PROJ. OFFICER'S NAME	
		8. BASIC CONTRACT COST	
		9. FINAL CONTRACT COST	
		10. TYPE OF CONTRACT	
12. PROJECT TITLE			
13. EXTENT OF COMPETITION IN NEGOTIATION (Check one) <input type="checkbox"/> PRICE COMPETITION <input type="checkbox"/> DESIGN, TECHNICAL OR OTHER COMPETITION <input type="checkbox"/> SOLE SOURCE <input type="checkbox"/> SOLICITED			
14. EVALUATE CONTRACTOR'S ABILITY TO ESTIMATE AND MEET REALISTIC DELIVERY SCHEDULE A. _____ BASIC CONTRACT COMPLETION DATE    B. _____ ACTUAL CONTRACT COMPLETION DATE			
15. GIVE REASON WHY CONTRACTOR DID NOT MEET BASIC CONTRACT COMPLETION DATE			
16. EVALUATE CONTRACTOR'S ABILITY TO INITIALLY ESTIMATE REALISTIC COSTS (Circle one of the following and give narrative for rating) E VG A P U			
17. EVALUATE CONTRACTOR'S BUSINESS MANAGEMENT EFFICIENCY (Circle one of the following and give narrative for rating) E VG A P U			
18. RECOMMENDATIONS AND ADVICE TO PERSONNEL CONSIDERING THIS CONTRACTOR FOR FUTURE SOLICITATIONS			
19. CONTRACTING OFFICER'S SIGNATURE		20. DATE	21. OVERALL RATING (Circle one) E VG A P U

EPA Form 1900-26 (Rev. 10-73)

PREVIOUS EDITION IS OBSOLETE

## EXHIBIT 5-5 (Continued)

### INSTRUCTIONS

Prepare in duplicate and distribute as follows:

Original to be forwarded to Headquarters, Contractor Relations Section (PM-214), Washington, D.C. 20460.  
Second copy to be retained by Contracting Officer for Contract File.

The following guidelines are to be used by the contracting Officers responsible in the preparation of the form at the completion of the technical phase and/or acceptance of the final end product of the contract. The information is to be accurate, as it will provide to program staff personnel or anyone else in the agency an orderly and uniform method of determining and recording the effectiveness of contractors in meeting their contractual commitments for future consideration in contract awards. The information will be filed in the contract file, and with the contractor's bidders application file. The Contracting Officer's business rating of the contractor and the Project Officer's technical rating will be entered on the automated bidders list by the Contractor Relations Section. All items have been numbered to identify specific instructions as they pertain to individual items.

Rate Contractor in areas listed below by circling one of the following:

*E (Excellent), VG (Very Good), A (Average), P (Poor), or U (Unsatisfactory)*

Provide a detailed narrative or background material the rating is based on. Attach additional sheets, if necessary, to provide detailed narrative.

#### ITEMS

##### FOLLOWING ITEMS TO BE FILLED IN BY THE CONTRACT ADMINISTRATOR RESPONSIBLE FOR THE CONTRACT

- 1 thru 4 Self-explanatory.
- 5 Activity responsible for the project such as: Washington, D.C., RTP, Cincinnati Region No. or Laboratory.
- 6 Self-explanatory

##### FOLLOWING ITEMS TO BE FILLED IN BY THE COGNIZANT CONTRACTING OFFICER

- 7 thru 14 Self-explanatory.
- 15 State reasons for contractor delays, request for extension of time, etc.. Statement should clarify whether contractor or government was responsible for delays.
- 16 Was Contractor's estimate close to the government estimate? Did contractor submit a low bid for the purpose of buying in? Number of overruns and reasons for this, and ratio of additional funding under limitation of cost provision to original estimated cost.
- 17 Information desired on contractor's administrative efficiency, contractor's cooperation, ethical conduct. Additional factors to be considered are cooperativeness of company officials, general attitudes of company personnel contracted, abilities of personnel assigned to the project, contractor's attention to details of contract.
- 18 thru 21 Self-explanatory.

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**CHAPTER M-6.000**  
**CONTRACT ADMINISTRATION**

**M-6.100 Initial Steps in Managing Contracts After Award**

**M-6.101 Reviewing the Contract**

(a) The first step of contract administration is to review the requirements and specific obligations set forth in the contract. The Statement of Work (SOW) or the contract specifications contain the details of these requirements and obligations. It is important to note that although the Project Officer may have written the SOW or specifications it is imperative that the Project Officer review the entire contract package in order to properly discharge his/her responsibilities as a Project Officer.

(b) It is a fundamental rule of contract law that the obligations of the parties (in this case, the contractor and the Government) are established and governed by the language of the contract. During negotiations, the parties may have made various proposals and counterproposals, but what actually governs is precisely what was agreed to by both parties in the contract. The final written contract is assumed to be exactly what the parties agreed to. The words of the contract are taken to mean exactly what they say. If one of the parties has intentions contrary to what is contained in the words of the contract, that intention has no legal effect. What governs is what the contract actually says, not what was meant to be said.

(c) The PO is concerned with determining what are to be the final results and should review the contract along these lines. The Contracting Officer or the PO must require the contractor to do that which is provided for in the contract, within the level of quality provided for in the contract.

(d) Contracts for equipment or supplies are usually straightforward with regard to quality levels. The contractor delivers the items called for, they are inspected, and either accepted or rejected. In cases where the contract is for services or research, the determination of results is much more complex. The

Government is acquiring the effort of the contractor; there is a need to know what kind of effort has been purchased, what the required result should be, and what quality standards have been incorporated into the contract.

#### **M-6.102 Preparing a Contract Administration Checklist**

(a) A checklist should be made by the PO for each of the major tasks included in the contract. The tasks should be outlined in the SOW or in a schedule of major tasks. If the SOW is of general nature, it will be necessary to do some analysis to determine what specific tasks will be required for contract completion.

(b) This checklist serves three purposes:

- (1) As a baseline for project management;
- (2) As a simple reminder sheet for monitoring contract completion; and
- (3) As an aid in post-award orientation.

(c) The PO should list the important administrative requirements for each task required by the contract. They include administrative duties, Government obligations, deliverables, inspection requirements, deadlines, and payment provisions. The list should be simple and easy to use, yet it must be complete and provide a basis for efficient contract administration. The step-by-step preparation of the checklist is discussed in detail below.

##### **M-6.102-1 Required Work**

(a) In identifying the work the contractor is legally obligated to perform under the contract, certain documents describing the contractor's job may have been made a part of the contract by the device of "incorporation by reference." This is necessarily done where selection of the contractor was based (in part, at least) on the merit of the technical approach the contractor proposed. In many cases, these documents are not actually attached to the contract but may be obtained from the Contracting Officer. Such materials might be:

- (1) Detailed specifications that describe characteristics of what the contractor is to provide.
- (2) Contractor's proposal that describes features of what was proposed. It would include what was to be provided by the contractor and its approach or method.

##### **M-6.102-2 Deadlines or Timeframes**

The deadline or timeframe in which each task is to be accomplished should be established. Where continuing services are required, the frequency of delivery and beginning and ending dates should be noted. Tasks that must be accomplished before others can go forward must be highlighted. Any

"slack" in the timeframes and absolute deadlines should be specially noted. When the contract specifies a number of days, weeks, months, etc., from date of award the Project Officer should convert to specific calendar dates.

#### **M-6.102-3 Deliverables**

Identify and examine the deliverables called for in the contract. These may not be the same as the tasks. For example, the contractor may be required to investigate the effect of extreme heat on a metal. That would be the task. However, the deliverable might be samples of the metal or a report on the testing, or both.

#### **M-6.102-4 Administrative Duties and Persons Responsible**

(a) Identify and list the Government's major administrative duties and determine the person or persons responsible for each. This step is important when the contract has any of the following features:

- (1) The contract requires Government action for quality assurance.
- (2) The contract requires extensive inspection or testing before acceptance or approval by the Government.
- (3) The contract requires the Government to furnish certain property or information to the contractor.
- (4) The contractor is required to perform work or deliver at more than one location or at more than one time.
- (5) The contractor is providing services or products that benefit several offices, divisions, or agencies.
- (6) The Contractor must coordinate activities with several offices, divisions, or agencies.

(b) Where administrative responsibility is not clearly spelled out in the contract, program personnel should coordinate with the Contracting Officer to assure that their roles are clearly defined and understood, that Government obligations will be carried out properly, and that the contractor's efforts will be fully monitored.

#### **M-6.102-5 Testing, Inspection, and Quality Assurance Requirements**

Special requirements for testing, inspection, and quality assurance in a contract almost always impact costs because the Government is in effect buying the extra effort from the contractor that is needed to perform these functions. Since it is the responsibility of the PO to ensure that the Government gets what has been purchased, enforcement of these requirements is important. The PO should examine the contract and note any special testing, inspection, or quality assurance requirements to the appropriate task.

In particular, the Project Officer should pay careful attention to the quality assurance requirements as documented in the Quality Assurance Project Plan. The QA Project Plan will be incorporated in the contract at the time of award if the plan has been submitted as part of the technical proposal. If the QA Project Plan is a contract deliverable, the Contracting Officer may incorporate the plan in the contract by issuance of a change order. Any substantive revisions or additions to the QA Project after incorporation in the contract must be accomplished by a change order. It is the PO's responsibility to ensure that the contractor maintains a current QA Project Plan. All substantive changes require the approval of the PO and the QA Officer in the same manner as the review and approval of the QA Project Plan when submitted originally.

#### **M-6.102-6 Government Obligations**

(a) It is important to determine the obligations of the Government because just as the Government pays more for special requirements, it pays less when it undertakes certain responsibilities. For example, the contract may state that the Government will furnish certain property (Government-furnished property, or GFP) or information to the contractor. If such GFP or information is not provided within the timeframe stated in the contract, the contractor may have an excuse for a delay in performance or may have a basis for a monetary claim against the Government.

(b) Each obligation of the Government should be listed next to the associated task of the contractor. The Government person or persons responsible for respective obligations should be listed as well.

#### **M-6.102-7 Payment Provisions**

The last step is to examine any contract provisions relating to payments. If progress payments are authorized, determine when and under what conditions the progress payments may be made. Where partial payments are authorized, they should be noted and the conditions for such progress payments indicated. Partial payments are usually associated with accomplishment of major tasks. For example, in the case of a contract for a study, payments may be authorized after various required interim reports are delivered. It must be kept in mind that there is a danger in the use of this technique. (The Contracting Officer will give the procurement extensive consideration before it is used.) The danger is that each report delivered is a priced item in the contract. When inspected, accepted, and paid for, there is no recovery. Often Project Officers view the payment as interim or of a progress payment nature and if the contractor does not perform, the funds will be recovered. This is not true! The technique discussed above is no different from a contractor who has partial payment provisions in a contract to purchase 100 desks. If 5 are shipped, inspected, accepted, and paid for, there is no recovery, barring fraud or latent defects.

**M-6.103 Post-Award Orientation Conference**

(a) Once the contract administration checklist has been prepared and the contract has been reviewed, it is often of value to hold a post-award orientation conference. A conference will help ensure that all portions of the contract are clearly understood and that all parties are certain as to their obligations.

(b) The fundamental task of the Government contract administrators is to ensure that the contractor performs the contractual obligations. Post-award orientation can be a useful device for enhancing good contractor performance by:

- (1) Increasing assurance that the contractor understands what the contract requires;

- (2) Clarifying the roles of Government personnel who will be administering the contract;
- (3) Clarifying the contract administration procedures to be used.

**M-6.103-1 Determining the Need for a Conference**

(a) When it is determined that the contractor may not have a clear understanding of the scope of the contract, its technical details, or the rights and obligations of the parties, an orientation conference may be held. If the potential problem areas do not warrant a full conference (for example, if the procurement is relatively simple), the same effect may be achieved by simpler means such as a letter to the contractor.

(b) Factors used in determining the need for a conference include:

- (1) The relation of the contract to other programs or needs;
- (2) Technical complexity;
- (3) Urgency of the delivery schedule;
- (4) The contractor's record of past performance;
- (5) The nature and extent of any pre-award survey that may have been conducted; and
- (6) The contract type and its dollar value.

**M-6.103-2 Preparatory Steps**

(a) After the need for a conference has been established, the Contracting Officer or designated representative (usually the PO) must take certain preparatory steps. These are (i) conducting a preliminary meeting of Government personnel, (ii) setting a time and place for the conference, (iii) notifying the participants, (iv) preparing an agenda, and (v) appointing a person to chair the conference.

(b) At the preliminary meeting of Government personnel, a detailed page-by-page review of the contract and the SOW should be held to determine all of the Government required actions, assure that all Government personnel fully understand their respective responsibilities in administration of the contract, and establish a full understanding and common position with respect to both the contractual delivery requirements and contractor responsibilities. At this time, all delivery dates that have been specified in the contract as a period of time "after date of contract award" should be converted to calendar dates for purposes of discussions with the contractor.

(c) The contract administration checklist should be utilized as a basic guide to this review.

(d) Everyone participating in the preliminary meeting should know that all aspects of contract administration depend upon a complete understanding of the SOW and/or specifications. While the contractor is primarily responsible for understanding the work requirements, it is incumbent upon the Government to make correct interpretations of the technical documents in that they are required for evaluating performance and determining the responsibility for any variation from what is intended. The assumption that the Government understands its own requirements is not always valid. Specifications sometimes are ambiguous and that is not always uncovered until after work has started. Requirements for placing a square peg in a round hole are not unheard of in Government contracting. Many times, neither the Government nor the contractor is aware of the practical impact of the requirements until after the work has begun.

#### **M-6.103-3 Agenda**

An agenda for the conference should be created that covers all items that need clarification or discussion with the contractor to avoid misunderstanding and to facilitate contract administration. These items might include:

- (1) Special contract provisions;
- (2) Reporting requirements;
- (3) Specifications or other work requirements;
- (4) Quality control and testing/inspection requirements;
- (5) Monitoring and measuring contract progress;
- (6) Billing and payment procedures; and
- (7) Deliverables and delivery dates.

#### **M-6.103-4 Conducting the Conference**

(a) The Contracting Officer, or assigned representative, and technical personnel should attend the conference for the Government. Similar contractor personnel should also attend. It must be pointed out at the start that the conference purpose is to explain and clarify contract requirements and not to make any changes to the contract. If a change is necessary, the nature of the proposed change and its extent should be clearly identified and made by the Contracting Officer. The other Government personnel are there to generally provide information, and not to direct the contractor. The limits of their authority should be made clear to the contractor.

(b) It is recommended that a checklist be used to ensure that all essential items are covered during the conference. Each item should be discussed to the extent necessary to be sure that everyone has a full understanding of the rights and responsibilities of the parties.

#### **M-6.103-5 Establishing Administrative Authority**

(a) The contractor should be informed of the authority of the Project Officer and the Project Officer's contract monitors, if any, who are assigned to the administration of the contract. This can best be done by giving the contractor a copy of the letter from the Contracting Officer to the PO which defines the authority of the Project Officer. The Government should be advised of the authority of the contractor's personnel.

(b) The contractor must be made aware that the Government is not bound to make contract adjustments as a result of actions taken by either the PO or his monitors, unless such action has been specifically authorized in the letter of designation or by the contract. Such a statement may be viewed by some as undercutting the authority of the PO. However, it is not the case. The statement is made to protect the PO from potential personal liability in the event the contractor takes actions or incurs costs outside the scope of the contract based upon what seemed to be the authority of the PO.

(c) As part of the discussion of authority, contractors should be instructed on the proper routing of correspondence. They must be informed that technical matters should be addressed directly to the PO, whereas matters pertaining to questions of fact on the terms and conditions of the contract must be sent directly to the Contracting Officer. Unless the contract states otherwise, the contractor should be requested to identify all correspondence with the applicable contract number and to identify the appropriate paragraph number(s) of the contract to which reference is made.

#### **M-6.103-6 Assuring Project Quality**

(a) A very important aspect of work to be performed is the quality assurance/quality control (QA/QC) program the contractor intends to utilize. The contractor's reports, submittal requirements, and the Quality Assurance Project Plan (QAPP) form the baseline upon which the contractor's results may be compared for acceptability with respect to technical and data quality objectives. The QAPP should provide for efficient and systematic inspection of all work to be performed, and for effective corrective actions when needed.

(b) The Government's inspection plan is somewhat more limited than that of the contractor. Accordingly, the Government must be satisfied that the contractor's QAPP and other appropriate reports to the PO will result in the required level of data quality. The Project Officer should routinely receive copies of all contractor inspections, internal audits, guidelines, checklists, and instructions to contractor personnel. The contractor's QAPP must be acceptable to the Government; after suitable review and analysis, the Government should advise the contractor in writing of its acceptability. The QAPP review shall be done by the Project Officer and the Quality Assurance Officer (or his or her designee). The approved QA Project Plan must be made a part of the official contract in order to be binding on the contractor. Any revisions to the QA Project Plan will require the approval of the PO and the QA Officer.

(c) The Statement of Work should also provide that one or more on-site EPA quality assurance technical systems (qualitative) audits may be performed during the project duration. These external quality assurance procedures will be performed by the EPA Quality Assurance Officer or by his or her independent third party designee. Selection of the specific areas of focus for systems audits will be commensurate with the scope and needs of the program.

(d) In addition to the above, the Statement of Work should provide that contractor participation in one or more EPA (quantitative) performance audits may be required during the project duration. The purpose of these performance audits will be to assure and document that data quality meets project objectives. Performance audit techniques could involve the use of reference materials of known composition or value and/or split samples for independent analyses, independent calibration checks on individual system components, and/or the use of colocated samplers. A complete record of testing information (including printouts graphs, calibration charts, and all other pertinent information used to arrive at the reported results) shall be submitted with test results.

#### **M-6.103-7 Contractor Responsibilities**

It is important that contractor personnel leave the conference with a full understanding as to their responsibilities with respect to the contract. These include responsibilities in managing the work effort, safeguarding GFP, meeting the provisions of the contract, and any other specific items contained in the contract.

#### **M-6.103-8 Conference Report**

A report of the conference should be written and sent to all persons who attended. It should cover factually all items discussed at the conference and identify any actions to be accomplished and timeframes, if any.

#### **M-6.103-9 Orientation of Subcontractors**

Any subcontractors must be oriented by the prime contractor. It is the responsibility of the prime contractor to see that all subcontractors have all required instructions, interpretations, and understanding of the prime contract to properly perform their work. If necessary, the Government may have representation at any subcontractor orientation conference, but should coordinate this with the prime contractor.

## **M-6.200**

### **MONITORING THE CONTRACT WORK**

#### **M-6.201 Introduction**

Whenever the Government contracts for goods and services it is most interested in obtaining the following performance elements from the contractor:

- (a) Delivery of the specific items called for in the contract;
- (b) Avoidance of waste of time and/or money;
- (c) Performance that increases the benefit of the contract;
- (d) Good quality;
- (e) Performance in a timely fashion; and
- (f) Performance within the budget

The following sections of this Chapter discuss what measures a Project Officer can take to ensure that the Government obtains these performance elements.

#### **M-6.202 Relationship Between Contract Type and Contract Administration and Monitoring**

There are over a dozen types of contracts noted in the FAR. Each type of contract establishes a different relationship between the parties and requires a different approach to contract administration.

#### **M-6.202-1 Cost Responsibility: Fixed-Price vs. Cost-Reimbursement**

(a) Contracts vary as to the degree and timing of contractor responsibility for the cost of performance and the amount and type of profit incentive contained in the contract. Contract types may be listed in decreasing order of contractor responsibility for cost performance. The contract type with the least contractor responsibility for the cost of performance is the cost-reimbursement type contract where the fee is fixed. At the other end of the spectrum is the firm fixed-price type of contract, where the price to the Government is fixed, and the contractor has maximum responsibility for cost of performance.

(b) All fixed-price completion contracts require the contractor to guarantee performance of the work for a fixed price, while the cost-reimbursement completion contract only requires the contractor to use its best efforts to perform the work, while being paid all allowable, allocable, and reasonable costs up to a ceiling, plus a fee, if provided for. There are various types of contracts that combine features of these types of contracts.

(c) Some interesting comparisons can be made between the payment provisions used in these two contract types. In a fixed-price contract, a fixed amount will be paid for all the work to be performed, whereas a cost-reimbursement contract provides for an open amount of funds up to a ceiling which may not be exceeded except at the contractor's risk. If work is performed for less than what the cost estimate is the contractor will be paid the lesser amount. Where the work cannot be performed at the estimated cost, the Government has several options [see M-6.208-3(c)].

#### **M-6.202-2 Cost Responsibility: Risk and Administrative Oversight**

(a) Cost responsibility is considered in terms of risk and uncertainty. Where there are many uncertainties and a high degree of risk, it is reasonable that the Government assume some portion of these risks and uncertainties. If predictable risks and few uncertainties exist, then it is reasonable to expect the contractor to bear the major brunt of the risks.

(b) The degree of contract oversight by the Government is directly related to the assumption of risk by the Government. The greater the risk, the greater should be the Government's oversight of the contractor's performance. This is the basis for the different administrative levels of activity with respect to different types of contracts.

#### **M-6.203 Socioeconomic Programs Affecting Contracting**

(a) The volume of Government contracting in economic terms provides an opportunity to achieve certain national social policies. This is accomplished by including clauses in contracts for advancing certain social objectives, including:

- (1) Establishing fair wages and working conditions;
- (2) Establishing fair employment practices;
- (3) Promoting small and small disadvantaged business firms;
- (4) Protecting the environment;
- (5) Encouraging humane treatment of animals;
- (6) Promoting domestic business and the economy;
- (7) Reducing unemployment and providing training and job opportunities;
- (8) Promoting effective use of resources;
- (9) Rehabilitating the handicapped and/or prisoners.

(b) Many complicating factors are introduced to the procurement process by these socioeconomic objectives [see M-3.106-8(e)]. Agencies must determine which regulations apply to a proposed contract, compliance status of the successful bidder, and wage determinations in bid solicitations. Consideration of these factors requires the allocation of personnel and resources to conduct investigations, make reports, and keep records. From a contract administration perspective, the socioeconomic program which has significant contract monitoring implications is the Socially and Economically Disadvantaged Business Program operated by the Small Business Administration, commonly referred to as the "8(a) Program."

#### **M-6.203-1 Considerations in Monitoring Contracts Awarded Under Section 8(a) of the Small Business Act**

(a) Under Section 8(a) of the Small Business Act, the SBA is authorized to contract with Federal agencies and then to subcontract the work to socially and economically disadvantaged small businesses. Any type of service may be contracted for under the 8(a) program.

(b) SBA delegates the administration of 8(a) subcontracts to the procuring agency, which gives rise to certain differences in contract administration of these 8(a) subcontracts. For example, supplemental agreements or other changes must be accomplished by two changes: one with the SBA prime contract, and the other between the SBA and the subcontractor. POs must take care in "suggesting" changes to 8(a) subcontractors; 8(a) firms are often inexperienced and may incorrectly interpret suggestions, which in turn could lead to claims against the Government for constructive changes.

#### **M-6.203-2 Payment**

8(a) contracts may call for advance payments since these small businesses often do not have the cash flow to finance their contracts to completion or

until receipt of progress payment. Most other types of contracts do not provide for advance payments. POs should always remember to expedite payment requests for small business contractors to avoid disruptions in contractor performance caused by cash flow problems.

#### **M-6.203-3 Termination**

The 8(a) subcontractor is subject to the termination clauses contained in the prime contract with SBA. However, independent exercise of the termination right by the agency is restricted. Normally, the SBA will try to reach an agreement to modify the requirements of the contract to avoid termination. If this fails, the agency may actually terminate the contract with SBA, who cannot be held liable for any excess costs or repurchase. If this occurs, SBA in turn will terminate the subcontract.

#### **M-6.203-4 Role of the Project Officer**

(a) Assisting the subcontractor to become a viable business firm is a special responsibility in the administration of an 8(a) contract. This responsibility may, at times, be in conflict with the responsibility to assure performance on the contract.

(b) While assuring successful performance under the contract may require a special effort by the PO, this special effort may result in a better product or service than might otherwise have been obtained. In addition, the legality of "sole sourcing" to an 8(a) firm allows the PO to gain the benefits of their special efforts on follow-on or succeeding contracts.

#### **M-6.204 Role of the PO in Assuring Performance of Required Work**

(a) Performance assurance is key to the contract administration function and agencies rely on the PO to carry this out. POs can make a contribution of the highest value by reviewing and carefully considering the information on the contractor's work in process and by taking intelligent steps as appropriate. Project Officers cannot assume that all contractor personnel are familiar with the terms of the contract. While some personnel may become familiar with the SOW through involvement in the proposal preparation, they may not always be the people who are assigned to work under the contract. When they are actually working on the contract, they may have subordinates who are not as familiar with the contract terms. On long jobs, personnel turnover may make this problem worse.

(b) In cases where all contractor personnel are familiar with the SOW, there is sometimes a temptation to cut a corner or provide what appears to be just as good as what was called for in the contract. Under the stress of time, items may "fall between the cracks." Specific characteristics or elements may be overlooked in both the work effort and progress reports.

(c) Accordingly, it cannot be assumed that the contract effort will be performed exactly as required. Government personnel must actively oversee the work effort and monitor the contractor's performance with the objective of assuring that such performance meets the requirements of the contract.

(d) History has shown that when the PO does not or cannot devote adequate time to determine what is actually being done under the contract, the results can be disastrous. The Project Officer is the eyes and ears of the Contracting Officer and as such must be aware of the responsibility of assuring that the work performed is exactly in accordance with the minimum terms of the contract.

**M-6.204-1 Step One: Determining Contractor Obligations**

(a) The contract should be reviewed to determine the exact obligations of the contractor. The SOW states these obligations. In some contracts, task orders are used to initiate contract performance. The PO must examine the description of work in each task order so that the contractor's obligations can be listed and monitored.

(b) The Project Officer must keep track of any change orders issued by the Contracting Officer under the Changes clause of the contract. These are legally effective in changing the description of work to be done and, accordingly, the obligations of the contractor.

**M-6.204-2 Step Two: Learning and Monitoring What the Contractor Is Doing**

The Project Officer must take action to know what the contractor is actually doing and plans to do. Contractor's plans must be reviewed with respect to the SOW to assure that misdirected efforts are avoided.

**M-6.204-2(a) Post-Award Orientation Conference**

This conference is very useful for review of the terms of the contract, determining what the contractor plans to do, avoiding any misunderstanding of contractor obligations, and establishing a full understanding of what is expected of the Government.

**M-6.204-2(b) Reviewing the Contractor's Work Plan**

The contractor's plan of work may be part of the proposal or may become available after the contract has been awarded. The PO should review the contract to see if such a plan is required, and if so, see that it is submitted as required. If such a provision is not in the contract, and the PO believes it is important, then the Contracting Officer should be consulted with regard to a change to the contract requiring submission of such a plan. Work plans are key tools in monitoring a contractor's performance.

**M-6.204-2(c) Monitoring by Inspection**

(1) Inspection clauses in the contract give the Government the right to inspect and test the work performed under the contract. This right is standard under Government contracts; it is derived from the concept that the Government has the right to determine if the goods or services offered are what was ordered. This right can be exercised at any stage and place of work performance.

- (2) Inspection of the contractor's work involves the use of spot checks, scheduled inspections, random sampling, user reports, and periodic review of the contractor's quality assurance and control programs.
- (3) The need for inspection will vary from case to case and is dependent upon the nature of the work being performed, the contractor's past performance history, and the criticality of the work performance. If, for example, a contractor has an outstanding quality assurance program and performance levels, the amount of monitoring may be reduced.
- (4) The decision of whether or not to use inspections as the main tool for monitoring performance is dependent upon many factors, including: type of work, type of contract, place of performance, and feasibility of performing inspections. Production of standard, "off-the-shelf" items under fixed-price contracts may require lower levels of monitoring, whereas cost-reimbursement type contracts frequently require a high level of monitoring. Careful attention to the monitoring and inspection levels required is a key responsibility of the PO.

**M-6.204-2(d) Monitoring through Progress Reports**

- (1) The use of contractor's written progress reports can be of significant help in providing a picture of work progress under the contract. The PO is responsible for ensuring that the contractor complies with reporting provisions. When reports are part of a contract, they have been included in the contract price or cost. Accordingly, the Project Officer should ensure that the Government gets exactly those reports required, in the time frames provided for, and in the detail required. Care should be taken not to require extra reports above contract requirements, as they could lead to a claim against the Government for increased costs.
- (2) Information required by the Project Officer is important in evaluating progress and for making management decisions relating to the contract. However, although the information flow provided must be adequate to the requirements of the Government, it should not be so detailed and involved as to create unnecessary administrative and financial burdens on the contractor. Additionally, the Government personnel assigned to review the contractor's reports must be capable of assessing the included information.
- (3) Often the contractor is reluctant to make certain information available. This is caused by a tendency to withhold "bad news" or information that may indicate that the contractor is having problems. Contractors generally believe that things can be worked out given a little time. Both the contractor and the PO must remember that the reason for progress reports is to enable the Government to determine whether the contract is being performed properly. Accordingly, it is vital that the PO ensure the timely submission of progress reports from the contractor and review the reports with great care.

- (4) The Project Officer must be aware of his or her responsibility to verify what is said in the reports, especially if they appear to be written in general terms. The PO can accomplish this by requesting copies of designs, results, drafts, or other data that should be available, if the reports are accurate. There is always the possibility that lower level employees of the contractor may have misled, intentionally or not, their supervisors who then approve a report indicating greater progress than that which has actually been made.

**M-6.204-3 Step Three: Taking Appropriate Action to Enforce Any Contract Requirement Not Being Met**

(a) When a Project Officer discovers that a specific contract requirement is not being met by the contractor, he or she should call attention to the discrepancy and seek a voluntary commitment by the contractor to take remedial action. In such a case, the PO must take appropriate follow-up action to ensure that remedial action is taken.

(b) In cases where the contractor disputes the existence of the discrepancy, claiming the requirements of the contract are, in fact, being met, the PO should determine the grounds for the contractor's claim. At the same time, the Contracting Officer must be kept informed of the situation. If the contractor's position is clearly not reasonable, the Project Officer should inform the Contracting Officer in writing.

(c) The PO's primary job is to ensure that the contractor performs what the contract calls for. The Project Officer must not direct the contractor to do anything beyond or at variance with what is in the contract. If so, such direction would violate the limit placed on the PO's authority which is:

The Project Officer is not authorized to make any changes under the contract which alter, in any way, the requirements of this contract, the contract price, contract terms, or conditions.

(d) If the contractor refuses to comply with the direction of the PO, or asserts that the direction is without authority, the matter must be referred to the Contracting Officer.

**M-6.205 Role of the PO in Assuring Most Beneficial Performance**

In many types of contracts, the description of work is of a broad and general nature. The contractor can satisfy the requirements of the contract in a number of ways. It is important for the PO to recognize that he or she will be concerned with directing the effort so that maximum results are achieved.

**M-6.205-1 Monitoring Performance**

The most important thing the PO can do is know what the contractor is doing and where the contractor is heading. This is the best way to assure that performance can be directed to proceed along lines that are beneficial.

## **M-6.205-2 Provisions of the Technical Direction Clause**

Contracts that deal with new lines of inquiry or cover areas where new directions may present themselves as work unfolds (usually cost-reimbursement type contracts) often contain a provision for Government guidance of the contractor's effort: the Technical Direction clause. When several approaches are available, but some appear more useful than others, and all fall within the requirements of the contract, the PO may provide technical direction as to which area or line of approach is to be undertaken. Such direction may be provided only if it is within the agreed description of work and changes neither the description of work nor the contract.

### **M-6.205-2(a) Contracts Having a Technical Direction Clause**

Technical direction should be coordinated in advance with the contractor and reduced to writing, with a copy to the Contracting Officer. If the contractor thinks the technical direction requires work that is above or beyond that which is required by the contract, the matter must be referred to the Contracting Officer.

### **M-6.205-2(b) Contracts Without a Technical Direction Clause**

Even though a fixed-price contract is without a technical direction clause, such direction may, under unusual circumstances and with the consent of the Contracting Officer be given. Usually, contracts for research are of a cost-reimbursement type (contractor is compensated for all allowable, allocable, and reasonable costs for work within the contract task or work description), and consequently, the contractor is willing to undertake a line of effort at the direction of the Government. However, because of the nature of a fixed-price contract (the contractor assumes all cost risk of performance) it is not advisable to provide technical direction without a contract provision. Technical direction in fixed-price contracts often lead to constructive changes. In addition, the fixed-price contractor may not be willing to follow such direction, if the contractor believes it will increase costs and reduce profits.

## **M-6.206 Role of the PO in Assuring Quality**

(a) It is the responsibility of the Project Officer to define the data quality objectives (DQOs) for the work to be performed consistent with the Statement of Work in the contract. The quality of the contractor's work should reflect the DQOs established. This is critical if the defensibility of the results is to be documented and known.

(b) Contracts for supplies can usually specify the physical attributes that will result in an acceptable product. Contracts for services, particularly those involving creative work or investigations, typically cannot describe specific attributes of the final result. Quality control in services contracts can best be monitored by monitoring both the personnel assigned to the work and the methods used by the contractor as the work progresses.

#### **M-6.206-1 Monitoring Contractor's Work**

(a) The quality of a study or analysis depends to a great extent on the methods used. The validity of the conclusions may be suspect if the contractor failed to take into account all data or relevant factors. Interim conclusions that are suspect may seriously undermine all follow-on efforts resulting in a total waste and possible requirement for a new start.

(b) Generally, in R&D type contracts, the PO is responsible for continuous monitoring of the contractor's efforts, as they progress, in order to assure satisfactory quality of work performed. This does not mean taking charge of the contractor's work effort. It does mean:

- (1) Clearly defining the technical and data quality expectations or objectives to be achieved;
- (2) Using technical expertise to identify contractor actions or lack of action that affect the quality of the work;
- (3) Identifying and calling the contractor's attention to deficiencies;
- (4) Keeping well-informed of what the contractor is doing;
- (5) Working out appropriate action to remedy deficiencies.

#### **M-6.206-2 Monitoring Contractor's Personnel Assignments**

Quality of the contractor's output is dependent upon the competence of its personnel. In many cases, the best way to assure quality of work performed is to assure that personnel with the necessary capabilities, qualifications, and experience are assigned to the work effort. This is true in contracts for services calling for creative or conceptual development or analysis. However, POs should never appear to act as the contractor's personnel department. These functions are the contractor's, not the Government's. The Project Officer's role is one of review and working with the contractor to remedy any inadequacies. The PO should review the contract to see what has been agreed by the contractor along these lines.

##### **M-6.206-2(a) Key Personnel Clause**

- (1) A Key Personnel clause may be included in a contract to assure that the work is performed or managed by personnel with the proper qualifications. In this clause, the contractor:
  - (i) Promises to assign to the contract work certain named individuals (sometimes indicating the capacity in which each will act);
  - (ii) Promises not to remove or divert any of the named "key personnel" from the contract unless the Contracting Officer consents.
- (2) Through monitoring, the PO can assure that key personnel have not been removed or diverted from the contract work and that their level of effort is as required for satisfactory contract performance. Key personnel should be working in those capacities that were indicated by the contractor.

#### **M-6.206-2(b) Monitoring Assignment of Non-Key Personnel**

- (1) The competence of non-key personnel is also important in assuring the quality of the work performed. If contractor personnel do not appear satisfactory with regard to training, experience, or other factors, the PO should direct this to the attention of the contractor.**
- (2) Under cost-reimbursement contracts, the Project Officer may learn a great deal about the number and types of contractor personnel by reviewing invoices. Also, the Project Officer is normally permitted to ask for and receive information (e.g. resumes, position descriptions, etc.) that is reasonably required to determine if the personnel are qualified to receive their rates of pay. Such information would shed light on personnel qualifications and functions. Additionally, the Project Officer may ask for and receive this information even if pay is not an issue.**

#### **M-6.206-3 Monitoring Assignment of Work to Outside Subcontractors**

**(a) Under the provisions of the subcontracts clause contained in cost-reimbursement contracts, the contractor must notify the Contracting Officer before entering into any fixed-price subcontract that exceeds \$25,000, any cost-reimbursement contract, or any contract that involves fabrication or acquisition of property with a value that exceeds \$10,000.**

**(b) The Project Officer is involved in evaluating the need for the subcontract, the reasonableness of the subcontractor's estimate, and, in the case of a request to acquire or fabricate an item, the Project Officer should determine its availability from the EPA property excess listing. The PO may seek from the contractor information about the qualifications of parties proposed as subcontractors and is entitled to inspect the subcontractor's plant and work in process.**

#### **M-6.207 Role of the PO in Assuring Timeliness of Performance**

**(a) The PO must understand from the onset that contract type has an impact both on the amount of monitoring needed and the probability of timely performance by the contractor.**

**(b) In fixed-price contracts, the threat of default under the Default clause can be used to motivate the contractor to complete on time. In the case of cost-reimbursement contracts, which are best efforts contracts and the default provisions are virtually meaningless, possible motivators include withholding of payment and the fact that the firm will gain a bad reputation. Accordingly, in this type of contract the assurance of timely completion of the work effort is highly dependent on the efforts of the PO.**

**(c) Failure to deliver on time almost always is the result of a build-up of factors during performance. If the PO keeps in close touch with the progress of the work effort, such interim delays can be identified and corrective action**

initiated. The agency depends on the Project Officer to obtain and analyze progress information and to develop a recommended course of action. The following techniques are of use in assuring timely performance of the work effort.

#### **M-6.207-1 Completion or Delivery Dates**

All contracts contain a period of performance or delivery schedule—the importance of which varies—as shown below.

##### **M-6.207-1(a) Completion Contracts**

Completion contracts call for a finite job, such as writing a handbook or collecting specific data and delivering it in a certain format. These contracts specify a time for completion of the work and delivery of the results. The date must be met for the contractor to fulfill its obligation. But often, other matters are at stake. For example, the completed work may be required before other work can begin. Untimely delivery can result in program delays with a cumulative effect beyond the initial work effort, impacting program effort, personnel, and costs.

##### **M-6.207-1(b) Term Form (Level-of-Effort) Contracts**

In these types of contracts, what is being purchased is an obligation by the contractor to apply a specified level of effort towards a specific objective or kind of work over a certain period of time. In these cases, the completion or end date in the contract relates more to the contractor's obligation to work than the completion of the effort. Once the end date comes, the contractor has no further obligation to continue work, regardless of the status of job completion or hours remaining in the contract. Depending upon the terms of the contract the contractor may or may not stop work on tasks let under a task order contract. However, work will not stop if a task or work order ordered during the fiscal year in which the contract was let extends into the next fiscal year. In many cases, there is no assurance that the work will be completed and, therefore, there is potential waste.

#### **M-6.207-2 Relation of Work-Plan to Timeliness**

(a) In administration of contracts with completion dates, it is not enough to know how the work is progressing. It is vital to have an overall scheme or work plan against which actual progress can be compared. Work plans help the PO identify delays in completion, note where the contractor has fallen behind, and whether corrective action is required.

(b) The work plan should contain a schedule that identifies each step required for contract completion and the period of time needed to accomplish that step. The schedule is usually expressed in calendar days or weeks. A plan may be required by the contract terms; but whether the contractor is obligated to deliver such a plan you may expect the contractor to have developed a plan for internal management purposes. The plan should be updated as required to reflect changes in estimates for completion of work elements and the total work effort.

### **M-6.207-3 Obtaining Progress Reports**

The Project Officer should assure that contract requirements for progress reports are met by the contractor in a timely fashion. If contract requirements omit data you believe to be important, seek a contract modification from the Contracting Officer. If the contractor fails to report on time, or the report is deficient, inform the Contracting Officer and request that the contractor promptly remedy the situation.

### **M-6.207-4 Reading Progress Reports**

(a) The PO must promptly read progress reports and have sufficient understanding of them to be able to deal with any problems that have arisen. Failure to read and understand progress reports renders them virtually useless.

(b) Progress reports that are vague or too general are of no value and may be an effort on the part of the contractor to obscure problem areas. The PO should get whatever clarification is required to render progress reports meaningful and seek whatever assistance is required to fully understand them. Verification of the information contained in progress reports should be accomplished at the minimum on a spot-check basis.

### **M-6.207-5 Analyzing Billings**

The Project Officer can spot evidence of problems in the contractor's vouchers. Variances in spending rates may be indicative of contractor performance problems. Where problems are suspected, the Project Officer should request an explanation of the deviation and, if necessary, request monthly back-up documentation—e.g., copies of vendor invoices, written explanation of the deviation, etc. Where it is evident the contractor has a serious problem, inform the Contracting Officer.

### **M-6.207-6 Dealing with Delinquencies**

If the Project Officer becomes aware of potential delinquencies from progress reports, or from any source, prompt notification should be made to the Contracting Officer. The longer problems drift along, the worse they tend to get and the greater the potential of the Government losing its contractual rights. The PO and the Contracting Officer should discuss the matter with the contractor, seeking a plan for remedial action.

### **M-6.207-7 Taking Remedial Action if Necessary**

(a) After the existence and cause of a delay are known, the PO should inform program management and the Contracting Officer of the facts of the case so that alternative plans can be formulated and decisions made.

(b) There may be several alternatives available. Work may be accelerated by applying greater resources, e.g. personnel, overtime, or equipment. (The availability of resources and money must be determined by the program office.) At times, a new technical approach or system must be used to solve the problem. It is possible that the program office may find the delay to be acceptable. However, the PO is not authorized to waive the requirements of the delivery schedule. It must also be understood that if the contract to be accelerated is of a cost-reimbursement type, the accelerated effort will most probably increase the cost to the Government. If it is a fixed-price completion contract and acceleration is needed to avoid default, the cost of acceleration will be borne by the contractor.

#### **M-6.207-8 Summary**

The Project Officer has the goal of assuring timely performance and to avoid any surprises to the program office concerning delays. Proper action by the PO gives the program management time and the chance to make decisions and adjustments over the widest number of options and to revise plans at an early stage.

#### **M-6.208 Role of the PO in Monitoring Expenditures**

(a) A firm fixed-price contract gives the contractor a great deal of incentive to perform the contract in the most economical way, since every penny saved is a penny of profit to the contractor. Therefore monitoring of expenditures under firm fixed-price contracts is not needed. However, such is not the case under cost-reimbursement type contracts. The contractor is generally entitled to compensation for costs incurred in doing the work, provided costs are allowable, allocable, and reasonable. Additionally, the work description may, out of necessity, be a performance type Statement of Work because of the difficulty in describing just what needs to be done. Accordingly, the contractor has broad contract authorization to perform work and charge for it, yet the work may not be exactly what the Project Officer envisioned. Under such circumstances it is obvious that close monitoring is essential.

(b) Administration of a cost-reimbursement contract requires the PO to monitor and guide the contractor's efforts to avoid waste of public funds and obtain the contracted services within budget. Inefficient or misguided performance may result in other contracts being robbed to provide additional funding, or in failure of the program to obtain needed services.

(c) Monitoring cost-reimbursement contracts is perhaps the most challenging task faced by Project Officers. The following sections break the overall monitoring function into manageable sub-functions for the purpose of providing clearer guidance.

##### **M-6.208-1 Monitoring and Controlling to Avoid Waste**

(a) The PO is the primary resource of the agency in tracking and guiding contractor performance to avoid waste.

(b) Under cost-reimbursement and labor-hour type contracts, a very effective means of identifying waste is Project Officer review of contractor invoices. These two types of contracts provide that the agency may ask the contractor for information to determine if the charges are reasonable, allowable and allocable (the basic tests the contractor's costs must meet to be reimbursed by the Government).

(c) If the PO believes the contractor is spending more than is reasonably required to accomplish certain portions of the work, the PO should ask for additional explanation or back-up of those costs. If information furnished substantiates the expenditure yet it is believed there is a better, more efficient method to accomplish the work, the PO should consult with the contractor.

(d) Managing the contract work is basically the contractor's job. The PO should keep this in mind and not attempt to take over management of the work effort. However, the PO should inquire as to what the contractor is doing and attempt to persuade the contractor to adopt a more effective and efficient method of working.

#### **M-6.208-2 Exercising the Right to Suspend or Disallow Costs**

(a) Under the provisions of a cost-reimbursement contract, the contractor is paid all allowable, allocable, and reasonable costs up to a pre-determined contractual maximum in return for its best efforts to perform the work. The costs incurred by the contractor in performing the work must be allowable, allocable, and reasonable as defined in the Federal Acquisition Regulation (48 CFR 31.2). In addition, cost expenditure must be in accord with any special provisions of the contract.

(b) The Project Officer, in reviewing numbers submitted under a cost-reimbursement contract, must examine them from the perspective of whether the expenditure is attributable to the contract; what a prudent businessperson would pay under like or similar circumstances. When a cost(s) does not meet the above criteria, the Project Officer may recommend suspension of the cost(s) and recommend payment of the vouchers less the suspended cost. Prior to recommending suspension of costs, every effort should be made by the Project Officer to obtain from the contractor the rationale and back-up supporting the expenditure. Lacking either the back-up or an acceptable rationale, the suspension should be recommended.

(c) The contractor knows that while it has the right to manage the work effort, the agency has the right to "disallow" costs that are unreasonable in nature or amount. This can be a powerful means of persuading a contractor to manage efficiently. This right, which is different from a suspension, can be exercised by the Contracting Officer. A disallowed cost is one where the Contracting Officer has made a final determination that the Government will not pay the cost. When a contractor is aware that a PO is keeping an eye on costs and may raise questions, there is a greater incentive to manage the work effort economically.

(d) Labor-hour contracts contain already agreed-to costs per labor hour. However, even though the Government is generally obligated to pay for all hours incurred in good faith for contract performance, the PO still may question the contractor where it appears that excessive labor hours are being used, or higher than required levels of personnel are on the job.

#### **M-6.208-3 Monitoring Cost-Reimbursement Contracts**

##### **M-6.208-3(a) Limitation of Cost Clause**

- (1) The Limitation of Cost clause is in all cost-reimbursement contracts, unless incrementally funded (which contains a similar clause entitled Limitation of Funds). The clause specifically limits the Government's obligation to the amount stated in the contract as the total estimated cost of the contract.
- (2) Occasionally the cost to complete contract work will exceed the estimated cost of the contract. The Limitation of Cost clause provides that the contractor has no obligation to continue work whether or not the work is completed when the performance cost reaches the total estimated cost. The contractor is entitled to stop work unless the contract is revised by the Contracting Officer to increase the total estimated cost.
- (3) The Limitation of Cost clause requires the contractor to notify the Contracting Officer in writing and to provide revised estimates of total cost whenever the contractor has reason to believe:
  - (i) That expected costs incurred in the next sixty (60) days plus costs already incurred will exceed 75 percent (75%) of the total estimated cost of the contract; and/or
  - (ii) The total cost of performance (less any fee) will exceed or be substantially less than the total estimated cost of the contract.
- (4) These requirements do not provide a continuing update of the status of contract funds but are designed to avoid crises. However, since the PO always sees the vouchers submitted by the contractor for reimbursement a running total of incurred cost can be maintained. Contractors are often required to submit interim financial status reports. For maximum utility, these reports should address various line items and portions of the budget for the entire effort. Thus, actually incurred costs can be compared with budget item costs, problems can be noted, and management decisions made concerning the need for additional funding.

##### **M-6.208-3(b) Monitoring Status of Contract Funds**

- (1) The points noted below stress the importance of monitoring the contractor's performance cost and informing the program office well in advance about a need for funds in addition to current total estimated costs:

- (i) The Government cannot extend the contractor's obligation to work once the total estimated cost is reached, unless and until the program office can provide additional funds. This may prove impossible or take a long period of time.
  - (ii) The contractor cannot be expected to maintain a readiness to work for an indefinite period of time.
  - (iii) The risk of the contractor's staff dispersing and the costs of resuming work increasing becomes greater the longer the time period between the contractor's reaching total estimated cost and receipt of additional funding.
  - (iv) Gaps in performance create problems and pressures in the program office that lead to crisis conditions and emergency decision making, rather than orderly exploration of options. The program office will have to deal with the crisis of whether to terminate the contract or where to get additional funds.
- (2) If the PO can keep the program office well informed on the status of the contractor's incurred costs, the office will be better able to make sound decisions concerning available options (see M-6.208-3(c)).

#### **M-6.208-3(c) Overruns**

- (1) If the contractor's performance costs reach the total estimated costs before work is completed an overrun has occurred and the contractor's obligation to proceed is suspended. It is vital that the Project Officer and program personnel refrain from, in any way, requesting or encouraging the contractor to continue work. It has been held by Boards of Contract Appeals that such actions may have legally obligated the Government to reimburse the contractor for continuing the work effort. This would constitute improper obligation of appropriated funds. It is possible that the PO could be held to be personally responsible for the over-obligation.
- (2) It is not fair for the Government to keep the contractor dangling with respect to the decision to fund an overrun. The PO should assist in a prompt determination of which action the agency will take and so inform the contractor.
- (3) When a contractor has reached or has made notification that it will be reaching the total estimated cost under the contract prior to completion of the work, the Government, upon the recommendation of the Project Officer, has the following potential options it may take:
  - (i) the contract may be modified by the Contracting Officer to add additional cost, however no additional fee may be added;
  - (ii) the Contracting Officer may modify the contract to reduce the statement of work so as to enable completion with remaining funds;

(iii) a decision may be made to let the contractor perform up to the extent of cost in the contract. After contract expiration the Government may either complete the work effort itself or recontract; or

(iv) the existing contract may be terminated for convenience.

(4) What option the Project and Contracting Officers settle on is dependent upon such factors as available funds, importance of the project, performance of the contractor, availability of in-house resources to complete the work, and urgency of the project.

#### **M-6.208-4 Monitoring Labor-Hour Contracts**

(a) Project Officer responsibilities and considerations in the monitoring of labor-hour contracts are similar to those required for cost-reimbursement type contracts. Labor-hour contracts generally have a provision which sets forth the agreed hourly compensation rate for the various categories of labor.

(b) Normally, the stated ceiling represents a limit on the contractor's obligation. Thus, raising the ceiling increases the contractor's obligation which affects the scope of the contract and requires the contractor's consent. To raise the ceiling, the Project Officer would have to furnish the Contracting Officer with a complete procurement request, including an acceptable justification for noncompetitive procurement. This is in contrast to the Contracting Officer's authority to unilaterally revive the contractor's obligation, under the Limitation of Cost clause in cost-reimbursement type contracts, by providing the contractor with an increase in estimated cost.

(c) The PO should keep a running record of both estimated and expended labor hours, by labor category, to avoid issuing orders that would require labor hours exceeding the ceiling. This is vital because the project may still be incomplete when the ceiling is used up, and the agency may not realize any value from the incomplete work.

#### **M-6.209 Documentation of Contract Administration Actions**

(a) POs are directly responsible to Contracting Officers for all matters pertaining to administration of the contract. As the primary interface between the Government and the contractor, POs have the following primary responsibilities:

- (1) Establishment of a contract surveillance program that will verify contractor performance;
- (2) Maintenance of records, logs, and reports that document the actions taken by the Government and the contractor during contract performance; and

- (3) Verification of the billings by the contractor to ensure payment is made for services rendered.

(b) The Project Officer may find it necessary to appoint contract monitors (in a large contract with many activities at different sites), and to call on Government specialists in order to carry out the contract surveillance function. Where the Project Officer has utilized monitors or specialists to assist in monitoring the contractor's work, he or she must be careful to avoid the poor communications pitfall. All activities of monitors and specialists must be within the purview of authority delegated and must be documented. The Project Officer is held responsible by the Contracting Officer for the actions of these personnel. Consequently, it behooves the Project Officer to keep in close communications with such agents.

#### **M-6.209-1 Records, Logs, and Reports**

(a) The need to maintain proper records, logs, and reports cannot be emphasized enough. The PO's records are considered part of the official contract documentation. In event of a contract dispute, these records may be subjected to examination by the Board of Contract Appeals or by the Federal Courts. The Project Officer should immediately, upon his or her designation, set up a contract administration and suspense file for the contract. All documents, including internal memos, concerning the contract must be contained in the PO's official files. Exhibit 6-1 is a sample file plan which may be used for this purpose.

(b) The sample plan may be changed to meet the specific requirements of the contract. For example, it may be wise to set up a special file section if Government-furnished property or special equipment is involved in the contract. If the contract provides for award fee payments, a section that specifically relates to this area may be set up in the files.

(c) EPA Form 1900-27, Project Officer's Evaluation of Contractor's Performance (see Exhibit 6-2), must be executed at contract completion for all of the following types of contracts:

- (1) All contracts for research and development and for services other than management and consulting services when the contract amount is \$25,000 and above;
- (2) All contracts for management consulting services, regardless of dollar value.

Use of the form provides an orderly and uniform method of determining and recording the effectiveness of contractors in meeting their contractual commitments.

(d) Project Officers should prepare their technical evaluation on EPA Form 1900-27 and forward the original of the form to the QA Section, Procurement and Contracts Management Division, Washington, D.C., 20460. A copy should be sent to the Contracting Officer for the contract file.

#### **M-6.209-2 Evaluation of Construction Contracts**

(a) With regard to construction contracts, the FAR requires the contracting activity to evaluate contractor performance and prepare a performance report for each construction contract of \$500,000 or more; \$100,000 or more, if any element of performance was either unsatisfactory or outstanding; more than \$10,000, if the contract was terminated for default; or \$100,000 or more, if the contract was terminated for convenience of the Government.

(b) The Contracting Officer will obtain input from the Project Officer on the contractor's performance. The Contracting Officer is to prepare the contractor performance report as prescribed in FAR 36.201 and EPAAR 1536.201 within two weeks after final acceptance of the work or contract termination.

#### **M-6.209-3 Evaluation of Architect-Engineer Contracts**

(a) The FAR requires that an agency provide for one or more permanent or ad hoc architect-engineer evaluation boards to review current data files on eligible firms and responses to public notice on a particular project; evaluate firms; hold discussions with at least three of the most highly qualified firms; and prepare a selection report recommending at least three of the most qualified firms in descending order of preference. The selection report should include a description of the discussions and evaluation conducted to allow the selection authority to review the considerations upon which the recommendations are made.

(b) An Environmental Protection Agency Architect-Engineer Evaluation Board has been established as provided in EPAAR 1536.602-2. Among the membership is the program official originating a requirement for architect-engineer services or his designated representative.

(c) Evaluations of architect-engineer contracts are conducted in accordance with the procedures applicable to construction contracts as prescribed in FAR 36.604 and EPAAR 1536.201. The Contracting Officer will obtain input from the Project Officer on the contractor's performance.

#### **M-6.209-4 Verifying Invoices/Vouchers**

(a) It is the PO's responsibility to verify contractor invoices/vouchers. It should be noted that all Government personnel have a responsibility to process invoices/vouchers for payment in a timely fashion. Timely processing is considered to be no more than five calendar days from receipt. Undue delay can cause financial hardship for the contractor and can turn a good contractual relationship into an impossible situation. Project Officers must keep in mind that under the provisions of the Prompt Payment Act (PL 97-177) late payment of an invoice will cause the Government to pay interest to the contractor. The interest cost will be assessed against the program.

(b) There are several methods of payment that are frequently utilized by the Agency. In fixed-price contracts, partial progress and lump sum payments

are made. Partial payments refer to those made when a part of a fixed-price contract is delivered, accepted, and paid. Progress payments are payments made under fixed-price contracts that are based on the progression of work. This type of payment should not be confused with provisional payments, which are made only under cost-reimbursement type contracts. Lump sum payments refer to the type of contract where one payment is made at contract completion.

(c) The Project Officer's involvement in the processing of vouchers and invoices is dependent upon the type of contract and what is being purchased. The following is an explanation of this involvement.

**(1) Provisional Payments Under Cost-Reimbursement Contracts**

Provisional payments are made subject to final audit to determine the allowability, allocability, and reasonableness of the costs paid. The following are Project Officer responsibilities for the processing of provisional invoices/vouchers under cost-reimbursement contracts.

- (i) Immediately upon receipt of the Contract Status Notification Form (EPA Form 2550-19) from the servicing finance office, the Project Officer determines whether the payment request is commensurate with the items delivered and/or services performed by the contractor. Project Officer response is required within one (1) week.
- (ii) When no exception is taken, the Project Officer shall approve and sign the Form 2550-19 and return it to the servicing finance office for further processing. A copy of the invoice/voucher should be retained by the Project Officer for the file.
- (iii) If, during the review, the Project Officer takes exception to any of the services or items being invoiced, he/she must prepare a memorandum setting forth (a) the reasons for the recommended disallowance or suspension, and (b) the amount recommended for payment, and submit it, together with the invoice/voucher, to the servicing finance office for appropriate action.

**(2) Completion Invoice/Voucher, Cumulative Claim and Reconciliation Under Cost-Reimbursement Contracts**

The Project Officer shall process completion invoice/voucher materials in accordance with the following:

- (i) Immediately upon receipt of the Contract Status Notification Form (EPA Form 2550-19) from servicing finance office, the Project Officer determines whether the payment request is commensurate with the items delivered and/or services performed by the contractor. Project Officer response is required within one (1) week.

- (ii) When no exception is taken, the Project Officer shall approve and sign the Form 2250-19 and return it to the servicing finance office for further processing. A copy of the invoice/voucher should be retained by the Project Officer for the file.
  - (iii) If, during the review, the Project Officer takes exception to any of the services or items being invoiced, he/she must prepare a memorandum setting forth (a) the reasons for the recommended disallowance or suspension, and (b) the amount recommended for payment, and submit it, together with the invoice/voucher, to the servicing finance office for appropriate action.
- (3) Progress and Partial Payments for Service, Supply, and Equipment Contracts Under Fixed-Price Contracts
  - (i) The Project Officer reviews the invoice/voucher to ascertain that all services and/or items billed have been satisfactorily performed and/or received, inspected, and accepted by the Agency.
  - (ii) When no exceptions are taken, the Project Officer approves and signs the Contract Status Notification (EPA Form 2550-19) and returns it to the servicing finance office, retaining a copy of the invoice for the file.
  - (iii) If, during the review, the Project Officer takes exception to any of the services or items being invoiced, he/she must prepare a memorandum setting forth (a) the reasons for the recommended disallowance or suspension, and (b) the amount recommended for payment, and submit it, together with the invoice, to the servicing finance office for appropriate action.
- (4) Lump Sum Payments for Service, Supply, and Equipment Contracts Under Fixed-Price Contracts
  - (i) The Project Officer reviews the invoice and ascertains that the contractor has performed and/or delivered all services and/or materials contracted for; and that the Government has conducted final inspection of, and has accepted, all contract services and/or materials.
  - (ii) When no exceptions are taken, the Project Officer signs the Contract Status Notification, EPA Form 2550-19, and returns it to the servicing finance office, retaining the copy of the invoice for the file.
  - (iii) If, during the review, the Project Officer takes exception to any of the services or items being invoiced, he/she must prepare a memorandum setting forth (a) the reasons for the recommended disallowance or suspension, and (b) the amount recommended for payment, and submit it, together with the invoice, to the Accounting Office for appropriate action.

**(5) Progress Payments Under Fixed-Price Contracts for Construction**

- (i) The Project Officer reviews the invoice and ascertains that all services and/or items invoiced have been satisfactorily performed and/or delivered by the contractor and accepted by the Agency.**
- (ii) If no exceptions are taken to the amount invoiced, the Project Officer shall (a) sign the Contract Status Notification (EPA Form 2550-19) form signifying agreement with the amount invoiced, and (b) forward the approved Notification form and the original and three copies of the contractor's invoice to the Contracting Officer for further processing, retaining the fourth copy of the invoice for the file.**
- (iii) If, during the review, the Project Officer takes exception to any of the work being billed, he or she should prepare a memorandum setting forth (a) the reasons for the recommended disallowance or suspension, and (b) the amount recommended for payment, and submit it, together with the invoice, to the Contracting Officer for appropriate action.**

**(6) Final Payments Under Fixed-Price Contracts for Construction**

**The Project Officer approves the final invoice when the following conditions have been satisfied:**

- (i) Final inspection has been made.**
- (ii) All work, including the correction of punch list items, has been accepted by the Government. The Project Officer then certifies and dispatches invoice copies in accordance with M-6.209-4(c)(5) above.**

**(7) Charging Costs Under Contracts Funded From Multiple Accounts**

**EPA may fund contracts from more than one appropriation, depending on the nature of the goods or services acquired. FMOs are legally responsible for assuring that payments on each contract are made from the proper appropriation and charged to the proper account.**

- (i) Voucher Payment. Project Officers, in certifying contractor invoices, must provide sufficient information to FMOs to charge contract costs correctly. Whenever a contract has multiple account funding, the Project Officer shall provide on every certification of an invoice for payment the accounts and amounts against which invoiced costs are to be charged. (See M-3.106-13(e).)**

(ii) Approval of Allocation for Multiple Appropriation Funded Contracts. The Director, Financial Management Division, must approve Project Officers' rationale for allocating costs among appropriations when:

- a. any specific work assignment or delivery order will be funded from more than one appropriation, or,
- b. any proposed contract will be funded from more than one appropriation and will have neither delivery orders nor work assignments.

This rationale must be submitted to the Director, FMD, and approved before these work assignments/delivery orders are issued or before such proposed contracts are awarded.

**M-6.209-5 Payments**

The Government's principal obligation is to pay the contractor for supplies delivered or work performed. A fixed-price contract states the exact amount to be paid in the contract, while a cost-reimbursement contract requires the Government to pay the contractor the costs incurred in performing the contract work, plus a fee, if any. The FAR contains contract clauses that spell out the precise obligations of the Government regarding payment.

**M-6.209-6 Payments Clause**

(a) The standard Payments clause spells out the Government's obligation to pay under fixed-price contracts. The clause provides for payment of the prices stated in the contract for items delivered and accepted, or for services rendered and accepted, upon submission of proper invoices. Partial payments for partial deliveries in excess of \$1,000 or 50 percent of the contract price are also provided for in a typical fixed-price contract.

(b) Under cost-reimbursement type contracts, the Allowable Cost and Payment clause and the Fixed-Fee clause are the primary clauses. These clauses provide for Government payment of:

- (1) The cost of performance determined by the Contracting Officer to be allowable
- (2) A fee, as provided in the contract.

(c) Payment under fixed-price contracts is much simpler than under cost-reimbursement type contracts. To make payment under a fixed-price contract, the Government representative need only know that the contractor has timely provided acceptable goods or services. Under the cost-reimbursement type contract, the process is more involved. In addition to knowing whether the service or product has been provided, the Government must determine whether the cost being charged is allowable, reasonable, and allocable.

#### **M-6.209-7 Determining Allowable Costs**

FAR 31.201 provides principles for use in determining whether the costs a contractor claims for reimbursement are allowable. The Government will pay costs incurred by the contractor only if they are reasonable and allocable. Costs excluded or limited by FAR provisions or by provisions of the contract are not allowable.

##### **M-6.209-7(a) Reasonable Costs**

Reasonable costs are those costs in amount and type that would ordinarily be incurred by a prudent person in a competitive business. Cost must be recognized as necessary for the operation of the organization. They must be incurred utilizing sound business practices and must be consistent with the normal practices of the firm.

##### **M-6.209-7(b) Allocable Costs**

**Allocable costs include:**

- (1) Direct costs or expenses incurred specifically for performance. Examples are (i) salaries of personnel performing a specific portion of the contract work, (ii) costs of materials or supplies used for the contract, and (iii) costs of subcontracts entered into solely for performance of the contract.
- (2) Indirect costs that benefit both the contract and other work of the contractor and that can be distributed between the contract and the other work based on relative benefit or another equitable basis. Examples are (i) depreciation on buildings and equipment used partially for the contract and partially for other work, (ii) fringe benefits for employees charged directly to the contract, and (iii) supervisory salaries, if time is not charged directly to the contract.
- (3) Indirect costs that are necessary to the overall operation of the contractor but that cannot be distributed to projects in accordance

with relative benefit. Examples are (i) office supplies, (ii) bid and proposal costs, and (iii) salary of an accountant.

**M-6.209-7(c) Accounting Principles for Determining Allocability**

- (1) The Contractor must compile costs which are claimed for reimbursement in accordance with generally accepted accounting principles and practices or, if applicable, with the Cost Accounting Standards.
- (2) Even though a contractor uses an accounting system that is not the same as systems used by other contractors, costs may be found to be in accordance with generally accepted accounting principles. If the contract is over \$100,000, the Cost Accounting Standards may require uniformity of accounting treatment of certain aspects of cost compilation. Whenever there is any question about the contractor's accounting system, personnel with expertise in that area will usually have to make the determination.

**M-6.209-7(d) Costs Specifically Limited or Excluded**

- (1) Certain costs are specifically limited or excluded by FAR Part 31:
  - (i) Entertainment costs are not allowable
  - (ii) Interest expenses are not allowable
  - (iii) Advertising expenses are limited to certain purposes
  - (iii) Depreciation on Government-owned property is not allowable.
- (2) Costs may also be limited or excluded by provisions in the contract. The Contracting Officer cannot agree in the contract to allow a cost that is specifically disallowed by the FAR. The CO may, however, agree with the contractor to limit or exclude costs allowable under the FAR. For example, a contract could exclude all travel costs in that the Government is to provide transportation.

**M-6.209-7(e) Processing Payments**

- (1) Submission of invoices or vouchers with documentation supporting the contractor's cost claims starts the payment process. See M-6.209-2 for verification and processing of provisional and other invoices and vouchers.
- (2) The Contracting Officer reviews all invoices/vouchers to determine whether the costs should be allowed or the invoice should be paid. Where the contract provides for reimbursement of indirect costs at negotiated rates, costs must be examined to assure that there is no duplication of costs between direct and indirect cost items. Degree of the Contracting Officer's examination depends on the

circumstances. Payment for questionable items can be suspended by the CO pending resolution, and over- and under-payment can be subsequently adjusted. Especially under the Prompt Payment Act Provisions, it is important to promptly advise the CO of any concerns you may have with an invoice given to you for review prior to payment. The CO has the authority to toll the Prompt Payment Act while problems are being resolved. (It should be noted that the interest penalty provisions do not apply to progress, advance or provisional payments made to the contractor, but do apply to the final payment.) The potential adverse impact of the Contracting Officer's failure to exercise this important right on behalf of the Government was illustrated in a recent case where a contractor was allowed to recover over \$34,000 (plus interest) in holiday pay expenses as a fringe labor cost on the basis of its proof that holiday pay was contractually excluded from overhead rates as an indirect cost. In part, the contractor's proof was based on the fact that the Project Officer responsible for approval and certification of invoices routinely approved such requests during more than half the contract's duration. This case illustrates the need for clear expression of contract provisions regarding costs, complete understanding of such provisions by person's authorized to approve and certify invoices, and immediate communication between the Contracting Officer and his or her authorized representative in the event of any question.

- (3) A detailed audit is conducted, in most cases, prior to final payment of cost-reimbursable contracts. The Contracting Officer should seek clarification and justification of any items of cost questioned by the audit. The Contracting Officer should make the final decision, under the Disputes clause, to resolve the matter if agreement cannot otherwise be reached. Acceptance of final payment releases the Government from any claims against it by the contractor.
- (4) EPA has now begun using the Treasury Financial Communications System (TFCS) for disbursing contractor payments of \$25,000 or more.

The TFCS is a computer-to-computer link that provides the Federal Government with on-line access to the Federal Reserve Communications System (FRCS), a nationwide telecommunications network. Through this system of electronic funds transfer, payment can be made directly or indirectly through correspondent financial institutions to virtually any financial institution in the country.

The TFCS is a highly reliable, responsive payment mechanism that eliminates both the mail time and processing associated with check payments. Under the TFCS, payments of \$25,000 will be made to the account designated at the contractor's financial institution on, or as close as possible to, the actual payment due date. Information identifying the particular invoice(s) for which payment is made is included on the TFCS payment message to the financial institution.

#### **M-6.209-7(f) Paying a Fixed Fee**

Payment of the fixed fee under a cost-plus-fixed-fee contract is governed by the provisions of the contract. After paying 85 percent of the fee, the Contracting Officer is authorized to withhold the final 15 percent of the fee, or \$100,000, whichever is less, until contract completion or final payment.

#### **M-6.209-8 Limitation of Cost Clause**

(a) While the Government is obligated to pay a contractor's allowable, allocable, and reasonable costs under the appropriate payment clause, the Limitation of Cost (or if incrementally funded, Limitation of Funds) clause provides that the Government is not obligated to pay any more than the estimated cost of performance set forth in the contract.

(b) The clause provides for the Contracting Officer to formally modify the contract whenever the estimated cost is to be increased. The cost stated in the modification becomes the new estimated cost of performing the contract, and the contractor's obligation to continue work is reinstated or expanded. Costs incurred up to the new estimated cost are reimbursable even though they are in excess of the original estimated cost.

(c) If the Contracting Officer issues a change order under the provisions of the Changes clause and the cost of performing the work as changed will exceed the cost contained in the contract, the contractor may not (except at its own risk) incur costs in excess of the cost set forth in the contract. (Changes are discussed at M-7.305).

(d) Gaps in contract performance caused by the operation of the Limitation of Cost (or Funds) clause should be avoided or minimized. The longer the gap period, the greater the risk that the contractor will be legally excused from its obligation to proceed, after receipt of notice of increase. Periodically an on-going contract will sustain an overrun and the press of business is such that a complete analysis and negotiation of the overrun proposal cannot be accomplished prior to the contractor's work stoppage. When this occurs, the Contracting Officer may interim fund the contract so as to avoid work stoppage. It is not fair to put the contract at risk, and the costs of standing by are wasteful.

(e) Contract administration personnel must keep constantly advised of total costs incurred relative to progress of the work so that needed actions to obtain additional funds for the project can be taken in a timely fashion. Government personnel must not cause or encourage the contractor to incur costs beyond the estimated costs of the contract. The Government may be liable for costs exceeding the contract limit if this rule is not observed.

#### **M-6.209-9 Conclusion**

The core of the PO's responsibility is to monitor the performance of the contract. The various functions involved are based upon good business practices, legal doctrines, common sense, and contractual authority.

## **M-6.300**

### **ADMINISTRATION OF GOVERNMENT PROPERTY IN CONTRACTOR'S POSSESSION**

#### **M-6.301 Introduction**

(a) Property administration functions begin with the letting of the contract and involves the Property Administrator, the Project Officer, the Contracting Officer, and other personnel as needed. This section sets forth requirements to be followed by Project Officers in establishing and maintaining control of Government property acquired by or furnished to the contractor pursuant to the terms and conditions of contracts. Project Officer responsibilities are outlined for all aspects of Government property management.

Normally, the Property Administrator performs his duties by virtue of a "Designation of Property Administrator" article in the contract. A Property Administrator is an EPA employee designated by the Contracting Officer to act as his representative in matters concerning the management and control of Government property under a contract.

#### **M-6.302 Project Officer Duties and Responsibilities**

(a) A Project Officer must communicate the need to authorize the use of existing Government-owned property or the furnishing or acquisition of property immediately to the Contracting Officer or Contract Specialist. Items of property to be furnished by the Government or acquired by the contractor must be identified as specifically as possible in the original contract schedule or in a change order or supplemental agreement. The Project Officer must ensure that: (1) providing property is justified, (2) the Government receives adequate consideration, and (3) one contractor or prospective contractor does not receive a competitive advantage over others.

(b) Project Officers should assure that both the Contracting Officer and Property Administrator are always fully informed on all matters affecting contract property administration, regardless of the classification of property (i.e., nonexpendable, noncapitalized, or supplies. See M-3.106-16(b) for definitions). Providing such information is vital due to the great variety of

rules and regulations that affect the administration of Government property in the possession of contractors.

#### **M-6.303 Procedure**

Copies of all cost-type contracts are provided to a Property Administrator, who immediately forwards a "Guide for Control of Government Property by Contractors" to each contractor. When a review of a contract reveals authorization for the acquisition of property, decals and a reporting form (EPA 1730-1, "Report of Nonexpendable Property Acquired by Contractor"), are provided to the contractor to identify EPA property. A copy of this form must also be forwarded by the contractor to support its claim for reimbursement. Government-furnished property is transferred from a program's accountability to the contractor's accountability using a form forwarded by the Property Administrator for verification of receipt by the Contractor. Annual inventories are requested of all nonexpendable property. A final inventory must contain all residual property, expendable and nonexpendable.

#### **M-6.304 Actions Involving Other Property Accountable Area Offices**

Property accountable areas are established throughout EPA to control Government-owned property. Each program is an area within an accountable area, and all of that program's equipment is charged to that particular area. Therefore, when a determination is made and authorized by the Contracting Officer to provide Government property to a contractor, the Project Officer must notify both the Property Administrator and the person within its program who is responsible for the control of that property, so that a transfer of responsibility may be processed. No movement of equipment, either to or from a contract shall be made without involvement of the Property Administrator.

#### **M-6.305 Written Property Control Procedures by Contractors**

Normal contract property administration practice provides for the control of property by means of written procedures that communicate the organization's standards, techniques, and instructions to operational personnel for uniform application. Immediately after the award of an initial contract, the Property Administrator will request the name, title, address, and telephone number of the contractor's representative for contract property administration. Contractors dealing with large inventories or high dollar value equipment that is Government-furnished or contractor-acquired will be requested to provide their property control system policies and procedures to the Property Administrator for approval regardless of the categories of property involved (i.e., nonexpendable, noncapitalized and/or supplies). In cases where a contractor has only a few employees, the need for written procedures for effective management of Government property will be evaluated by the Property Administrator based on the contractor's explanation of his controls and observation of his performance during the early stages of the contract. If the control system is found to be inadequate by the Property

Administrator, necessary corrective actions will be referred to the Contracting Officer. The Project Officer does not normally see or review the contractor's accounting procedures, as this is the responsibility of the Property Administrator and, occasionally, the Contracting Officer.

#### **M-6.306 Property To Be Furnished and/or Acquired After Inception of the Contract**

##### **M-6.306-1 Needed Information**

If a need for property arises after a contract award, the Contracting Officer should be notified in writing and requested to issue a contract modification reflecting the addition. The same information required in the Purchase Request for the initial contract is required (see M-3.106-16).

##### **M-6.306-2 Disclosure of Unauthorized Property**

When Government property has been provided to a contractor but not provided according to any contract provision, the Project Officer should promptly send the Contracting Officer (with a courtesy copy to the Property Administrator) notification of all known circumstances and facts pertaining to the contractor's receipt of the property and the required statement to support the issuance of a contract modification (see M-3.106-16).

##### **M-6.306-3 Subcontractors**

(a) Project Officers who want to authorize the furnishing of Government property or the acquisition of contractor-acquired property to subcontractors must follow the same procedures used for dealing with a prime contractor. The prime contractor is responsible for acquiring any information about Government property from the subcontractor and for reporting to the Property Administrator. The same procedures regarding property acquisition, utilization, disposal, etc. apply to the subcontractor as well.

(b) If property is furnished and/or acquired by a subcontractor, it is the responsibility of the Project Officer and prime contractor to assure that the subcontractor operates according to all EPA regulations, that the property is used only as authorized by the contract, and that it is adequately cared for and maintained. Procedures necessary to assure the accomplishment of this responsibility should be included in any contractor's property control system.

##### **M-6.306-4 Accessory Item**

During the performance of a contract, it may be necessary to acquire an item of property that will be used as an accessory to equipment owned by the contractor. Where such equipment is provided and is attached to contractor equipment, EPA is responsible for bearing all costs for disassembly, disconnection, etc. to allow for physical disposal of the property. This process can be quite costly. Even though the accessory item may not exceed the

capitalization criteria, it is accountable for the life of the contract, and title always remains with the Government. The only exception occurs with educational and nonprofit organizations.

#### **M-6.307 Monitoring Activities**

##### **M-6.307-1 Review of Reimbursement Vouchers**

Reimbursement vouchers submitted by the contractor under cost-reimbursement contracts are forwarded to the Project Officer by the Financial Management Office for review and approval of contractor-acquired Government property. All charges to the contract for acquisition of equipment and materiel must have been previously authorized within the contract. Such acquisitions must be individually itemized on EPA Form 1730-1, "Report of Nonexpendable Government Property Acquired By Contractor," to show the required personal property management information. Those items acquired but not authorized under the contract should be brought to the attention of the Financial Management Office, the Contracting Officer, and the Property Administrator. If the Project Officer determines that an acquisition was not required for the performance of a contract, he should recommend to the Contracting Officer and Financial Management Office that the contractor not be reimbursed for the purchase (see M-6.315 Suspension of Payment).

##### **M-6.307-2 Inventories**

(a) The Property Administrator acquires annual, final or at times special inventories from contractors having contracts under which property has been furnished or acquired. The inventory is performed by the contractor and includes property associated with particular contracts. The process includes reconciling the inventory with the property administrator's records. Annual inventories include all nonexpendable and noncapitalized items acquired, furnished, and/or rented/leased. Final inventories also include nonexpendable and noncapitalized items, as well as expendable items not consumed during the performance of the contract, regardless of their value. The amount of accrued lease credits for leased property are included on the final inventory. The final inventory is furnished to the Project Officer for disposition recommendation. Annual and special inventories are available to the Project Officer on request. The Project Officer may elect to:

- (1) reassign the inventory or a part thereof to another contract;
- (2) reassign inventory to a licensee by means of a Revocable License Agreement for a loan;
- (3) have the inventory returned to the sponsoring program; or
- (4) report the inventory as unrequired to the needs of the sponsoring program.

(b) If the property is installed so as to necessitate removal and/or restoration, the Project Officer should provide the Property Administrator

with estimated costs of removal and restoration and with a list of actions required (e.g., disconnection of utilities, use of crane, special handling equipment, etc.). The Project Officer should also advise the Property Administrator of any and all unusual circumstances related to the inventory. For example, is the property contaminated or unsafe for further use? Do any odors exist that could prohibit further use? How is the property installed (underground, in a body of water)?

#### **M-6.307-3 Inspections**

(a) During site visits, the Project Officer should ascertain or verify the status of both contractor-acquired and/or Government-furnished property that is in the possession of the contractor. During his site visits, the Project Officer should also assure himself that the contractor has affixed Agency property decals to all equipment in the contractor's possession. In addition, a positive determination should be made that the property is being used according to the contract performance requirements listed in the scope of work and/or any special property article. [Note: Equipment not required for performance is to be reported by the contractor to the Property Administrator for coordination with the Project Officer as to future needs. However, this may not always occur.] If equipment is not required, the Project Officer may want to: (1) assign the property to another EPA contractor, (2) assign to a licensee through a Revocable License Agreement; (3) return the property to the sponsoring program; (4) make the property available to another EPA program; or (5) consider the property as excess to his needs.

(b) The Property Administrator will coordinate all disposal transactions with the contractor after receiving written advice from the Project Officer.

#### **M-6.307-4 Preventive Maintenance**

Project Officers should assure that preventive maintenance is performed on a regularly scheduled basis by the contractor to prevent malfunctions and to correct minor defects before they result in serious consequences. An effective preventive maintenance program shall be performed by the contractor, and records shall be maintained to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.

#### **M-6.307-5 Changes, Modifications, or Alterations to Property by Contractors**

(a) A Project Officer desirous of advising a contractor to modify, alter, or cannibalize property in their possession should request authorization from the Property Administrator before the actual transaction. The Property Administrator will present the determination and findings of the contractor/Project Officer to a three-member Board of Survey for their approval.

(b) Contractors shall not modify, alter, or cannibalize any property until written approval is received from the Property Administrator. Contractors are liable when Government property is damaged or destroyed, or when there is evidence of unreasonable use or consumption.

#### **M-6.307-6 Return/Transfer of Property**

(a) If property is to be returned to the Government before completion of the contract, the Property Administrator must be advised promptly in writing so that an adjustment in accountability is made to the contract.

(b) If the need arises to transfer an item of property from one contract to another, the Contracting Officer and the Property Administrator for both contracts must be advised in writing so that all records (both contract and property) can be modified. Detailed property information should be included in the correspondence to assure that the proper item is transferred.

#### **M-6.308 Transportation Considerations**

Once approval and/or modification has been given to furnish property, transportation may be required to ship it to the contractor. EPA Form 1700-4, "Request for Shipping Services," must be prepared and forwarded to the appropriate Shipping Officer, who will make such arrangements. If the required packing, crating or rigging services cannot be accomplished in-house, EPA Form 1900-8, "Procurement Request/Order," must be prepared and forwarded to the appropriate Procurement Office. If an item is to be transported from the contractor's site, the Property Administrator must be advised as to when and where it is to be shipped. Advice will then be given to the contractor by the Property Administrator as to how, when, and where to ship the property.

#### **M-6.309 Packing and Crating**

(a) Property can be prepared for transit to or from a contractor's facility in two ways. One method is to arrange for a household goods carrier that will pick up the property from within the facility, wrap it in a blanket, place it in a household goods van, and transport it to the exact location. This service is not considered as dock-to-dock, and at times it is less expensive than the normal method of packing, crating, and transporting by common truck carriers. This type of service is definitely less costly than the use of wooden crates for packing and crating the materiel. If cardboard containers are to be used, the cost savings are questionable. Normally it is best to use a common truck carrier. EPA Form 1700-4, "Request for Shipping Services," should be executed by the Project Officer and sent to the appropriate Shipping Officer with a copy of the form to the Property Administrator.

(b) The common truck carrier method requires the Project Officer to complete EPA Form 1900-8, "Procurement Request/Order," for packing and crating if the contractor does not have facilities to perform such a service or does not have funds within the contract for packing and crating. If the contractor has the capability and can be authorized to perform the services, this method is preferred. The Project Officer should execute EPA Form 1700-4, "Request for Shipping Services," to have the common truck carrier transport the property to its destination. After a carrier is selected by

the Property Administrator, contractor, or local Shipping Officer, the item is either shipped by Government bill of lading or the carrier is requested to ship the item by the least expensive means available. Common truck carriers are the most economical means of transportation. However, in special situations that require expediting the shipment, air transportation can be used even though it is more expensive. The Project Officer must justify the need for expediting the shipment. For those facilities with a Shipping Officer, the Project Officer should arrange for outbound shipments going to the contractor and furnish the Property Administrator with a copy of the Government bill of lading or memorandum of advice.

**M-6.310 Declaration Concerning Contamination of Equipment**

(a) When Government property is no longer required at the contractor's facility and removal is desired, the contractor must issue a certification that the property is free of biological, radioactive, chemical or any other contamination hazardous to health and that the property is safe for shipment or acquisition by others. The following certification shall be signed by an authorized official of the contractor for each excess declaration transaction or for the final inventory and forwarded to the Property Administrator with a courtesy copy to the Project Officer:

I certify that the listed property is free of biological, radioactive, chemical, or any other contamination hazardous to health and that the property is safe for disposal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

(b) When the contractor is unable to decontaminate the property for shipment, the items shall be identified on the final inventory or special letter of request to the Property Administrator. A copy of such information will be sent to the Project Officer so as to enable the Property Officer recommending further procedure to process the property.

(c) Once the Property Administrator receives disposal instructions, the contractor is advised as to how to dispose of the property. The Property Administrator will determine whether the property is needed within the Agency or whether it is excess to EPA's needs.

#### **M-6.311 Trade-in of Property**

The contractor should first discuss the need or reason for a trade-in of property with the Project Officer. If the Project Officer has no alternatives, such as reassignment of a similar item from in-house inventories to the contractor, he should advise the contractor to acquire quotes for purchase prices with and without trade-in. Once the quotes are acquired, they should be submitted to the Contracting Officer for review and approval. The Contracting Officer will review the transactions with the Property Administrator to determine whether outright purchase or purchase with trade-in option is the most beneficial to the Government. Once the Contracting Officer determines the appropriate method, a contract modification will be issued to authorize the contractor to acquire the property.

#### **M-6.312 Lost, Stolen, or Damaged Property**

When equipment is lost, stolen, or damaged, a comprehensive determination and findings must be filed with the Property Administrator by the contractor within three days after determining the actual status of the property. All the circumstances surrounding the transaction should be outlined, including names of individuals involved in the investigation, their title, and organization. The local police and the FBI must be advised of any EPA materiel suspected of having been stolen. Damaged property should be retained by the contractor until written notification is received from the Property Administrator relieving him of accountability. Attached to the determination and findings for stolen property should be copies of police and FBI reports. A determination and findings for lost property should include a statement indicating what search was made and which responsible individuals were contacted in attempts to locate the materiel. The determination and findings will be used to process a Report or Survey. Board members will review all circumstances surrounding the event and render a decision as to contractor liability, if any. Any given case involving lost, stolen, or damaged property will be considered open until the contractor receives a written response from the Property Administrator. The Project Officer must either endorse the determination and findings or require additional information.

#### **M-6.313 Disposal of Installed Personal Property**

Installed personal property falls into three categories. The first is materiel that can be readily removed from the contractor's facility with simple labor services (i.e., it is not installed into any utilities, and it requires no restoration). The second category is materiel that is installed in the contractor's facility and that requires restoration to the satisfaction of the contractor. The third category is materiel installed into (i) contractor's equipment and/or equipment in the possession of the contractor but owned by another Federal agency; or (ii) EPA equipment authorized for use under another contract for which the period of performance has not expired. A determination regarding restoration of the contractor's facility or equipment should be made and incorporated into the official contract at the same time

the property is authorized in the contract. Various factors should be considered in this determination including, for example, whether it is in the best interest of the Government to abandon the property, what would be involved in restoring the contractor's site, etc.

#### **M-6.314 Sale of Property**

Specialized equipment needed for a contract which cannot be used by EPA because of its specialization may sometimes be authorized by the Contracting Officer and involve a "buy-back" article. A contractor may be authorized to secure at his expense the services of an independent appraiser, acceptable to the Government, to evaluate and determine the current on-site, fair market value of the equipment. The contractor will then credit the contract for the appraiser's estimate, thereby transferring title to the contractor. These transactions take place at the end of the contract.

#### **M-6.315 Suspension of Payment**

Whenever the Property Administrator has problems with the contractor in acquiring final inventories, information to confirm shipment, or transactions relating to lost items of Government property, a memorandum will be provided to the Financial Management Office recommending that: (i) the current or next voucher be suspended in total, (ii) a given amount be suspended in total from the next voucher; or (iii) the amount of the item in question be denied until the problem can be resolved. The Property Administrator will furnish the Contracting Officer and Project Officer copies of all correspondence. He will also notify the Financial Management Office when the problem is resolved and advise them of the final action taken.

#### **M-6.316 Short-Term Loan of Property**

Loans on a short-term basis should not be made to a contractor without a contract modification. If the need exists for providing material to a contractor, the Project Officer should immediately advise the Contracting Officer in writing with a copy to the Property Administrator. Included in this memorandum should be a comprehensive determination and findings to be considered in issuing a modification to the contract (see M-3.106-16).

#### **M-6.317 Revocable License Agreements**

A Revocable License Agreement is used to "loan" Government property to a non-Federal institution. The EPA must derive a benefit from the loan. The use of a revocable license is not applicable for equipment furnished to a contractor but may be used with a cooperative agreement or a grant.

#### **M-6.318 On-Site Transfer of Equipment to a New Contractor**

The on-site use of existing Government-owned facilities/materiel by contractors located at installations owned and operated by the Government requires extremely close coordination by both the Project Officer and Property Administrator whenever contractors change. Both the present contractor and the new contractor must conduct their own physical inventories independently of each other and submit their findings to the Property Administrator for reconciliation and resolution. The inventory from the present contractor is used as the final inventory and if completed to the satisfaction of the Property Administrator, authorization of contract property administration closeout is granted. The inventory provided by the new contractor is used to ensure that the Government-furnished property is accurately stated in the contract and any problems are resolved with the previous contractor before contract property administration release. Normally, on-site type contracts involve significant inventories, and it is to EPA's advantage to ensure that the new GFP listing in the contract's Government-furnished property article is totally correct. Discrepancies between the old and new contracts require the issuance of a contract modification to the new contract to reflect the differences. Project Officers are requested to physically assist in resolving any overages and/or shortages reported by either contractor and, if necessary, in the preparation of supporting documents to a Report of Survey action.

## **EXHIBIT 6-1**

### **Sample Contract Administration**

#### **File Plan**

##### **Basic Contract File**

**Copy of contract and all modifications thereto**

**Copy of specifications, drawings, or manuals incorporated into the contract by reference**

**Listing of contractor submittal requirements**

**Listing of Government-furnished property or services**

**Listing of all information or documents furnished to the contractor**

**Copy of the pre-award survey, if conducted**

**Schedule of compliance reviews**

##### **File on PO and Contract Monitor Designation**

**Copy of PO designation**

**Letters of contract monitor assignments with copy of transmittal letter furnished to the contractor**

**Listing of specialized contract administration functions delegated to the PO or contract monitor**

##### **Internal Correspondence File**

**Record of communications between PO and other support activities**

**In-house pre-performance checklist**

**Copies of all correspondence between the PO and the Contracting Officer**

**Copies of correspondence between the PO and contract monitors and sponsoring activities**

**EXHIBIT 6-1 (Continued)**

**Contractor Correspondence File**

**Copy of all general correspondence related to the contract**

**Original of all contractor submittals of data and reports**

**Copy of notice to proceed, stop work, or correct deficiencies**

**Copy of all letters of approval pertaining to, for example: materials; the contractor's quality control program; prospective employees; work schedules, etc.**

**Payment File**

**Information relative to discount provisions for prompt payment**

**Copy of contractor invoices**

**Copies of inspection reports**

**Letters pertaining to contract deductions or fee adjustments**

**Back-up documentation for recommendation of contractor payment or progress payment.**

## EXHIBIT 6-2

PROJECT OFFICER'S EVALUATION OF CONTRACTOR PERFORMANCE		
<i>Rating instructions on reverse side of contract form.</i>		
1. FROM	2. TO	
3. FORWARD (Original only) TO CONTRACTOR RELATIONS SECTION PM-2141 WASHINGTON D C 20460	4. CONTRACT NO.	5. ACTIVITY
6. CONTRACTOR'S NAME AND ADDRESS	7. PROJ. OFFICER'S NAME	8. TECHNICAL PROGRAM
	9. BASIC CONTRACT COST	10. FINAL CONTRACT COST
	11. CONTRACTOR PROJECT OFFICER'S NAME	
12. PROJECT TITLE		
13. EVALUATED CONTRACTOR'S TECHNICAL ADHERENCE TO SCOPE OF WORK AND COMMITMENT OF PERSONNEL (Circle one of the following and give narrative of rating) E VG A P U		
14. EVALUATE CONTRACTOR'S TECHNICAL PERFORMANCE AND TECHNICAL APPROACH TO THE PROJECT (Circle one of the following and give narrative of rating) E VG A P U		
15. EVALUATE CONTRACTOR'S SUBMISSION/DELIVERY OF PROGRESS REPORT, FINANCIAL REPORT, FINAL REPORT, EQUIPMENT (Circle one of the following and give narrative of rating) E VG A P U		
16. EVALUATE CONTRACTOR'S DELIVERED END PRODUCT (Report, Equipment, etc.) (Circle one of the following and give narrative of rating) E VG A P U		
17. HAS CONTRACTOR <input type="checkbox"/> OVERRUN, OR <input type="checkbox"/> UNDERRUN THE CONTRACT (Explain reason for either)		
18. RECOMMENDATIONS AND ADVICE TO PERSONNEL CONSIDERING THIS CONTRACTOR FOR FUTURE SOLICITATIONS.		
19. PROJECT OFFICER'S SIGNATURE	20. DATE	21. OVERALL RATING (Check one) E VG A P U

EXHIBIT 6-2  
(Cont'd)

INSTRUCTIONS

Prepare in duplicate and distribute as follows:

Original to be forwarded to Headquarters, Contractor Relations Section (PM-214), Washington, D.C. 20460  
Second copy to be forwarded to Contract Administrator for contract file

The following guide lines are to be used by the Project Officer responsible for the project in the preparation of the form at the completion of the technical phase and/or acceptance of the final end product of the contract. The information is to be accurate, as it will provide other program staff personnel or anyone else in the agency an orderly and uniform method of determining and recording the effectiveness of contractors in meeting their contractual commitments for future consideration in contract awards. The information will be filed in the contract file, and with the contractor's bidders application file. The Project Officer's technical rating of the contractor and the contracting officer's business rating will be entered on the automated bidders' list by the Contractor Relations Section. All items have been numbered to identify specific instructions as they pertain to individual items.

Rate Contractor in areas listed below by circling one of the following:

E (Excellent); VG (Very Good); A (Average); P (Poor); or U (Unsatisfactory)

Provide a detailed narrative of background material the rating is based on. Attach additional sheets, if necessary, to provide detailed narrative.

ITEM(S)

FOLLOWING ITEMS TO BE FILLED IN BY THE CONTRACT ADMINISTRATOR RESPONSIBLE FOR THE CONTRACT.

- 1 thru 4 Self-explanatory
- 5 Activity responsible for the project such as Washington, D.C., RTP, Cincinnati, Region No. or Laboratory.
- 6 and 7 Self-explanatory. To be filled in by the Contractor Relations Section, or the Small Business Specialist at the NERCS.
- 8 Name of Section or Division within the Program responsible for the project.
- 9 and 10 Self-explanatory.
- 11 Self-explanatory.
- 12 Self-explanatory.

FOLLOWING ITEMS TO BE FILLED IN BY THE COGNIZANT PROJECT OFFICER

- 13 Has contractor fulfilled the requirements of the scope of work as specified in the contract? Did the Contractor adhere to his proposal, including his proposed commitment of personnel?
- 14 Indicate degree of creative contribution (level of technology) made by the contractor in response to their understanding of EPA's mission. If engaged in study contract or consulting contract, contractor's understanding of Federal Laws affecting the work (e.g., for a consultant on impact statements, understanding of NEPA and all related guidelines and significant court decisions).
- 15 Information desired is: did the contractor submit the report or equipment as per contract schedule? If not, give reason.
- 16 Information desired is: is the report or equipment delivered of high value and/or good quality? Did the report require many corrections, and did the contractor balk at making the corrections without additional cost?
- 17 Information desired is: give number of overruns and reasons for this (do not consider scope changes where contractor had to submit a proposal for the additional work); ratio of additional funding under limitation or cost provision to original estimated costs. Was underrun achieved by reducing the scope of work or through the development of new methods?

- 18 thru 21 Self-explanatory.

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## **CHAPTER M-7.000**

### **RIGHTS AND RESPONSIBILITIES UNDER GOVERNMENT CONTRACTS**

#### **M-7.100 Fundamental Duties of the Parties**

The parties to any Government contract are the United States of America (the Government) and the contractor. Each party has different rights and obligations which should be clearly expressed in the contract document itself.

#### **M-7.101 The Government**

The Government has the obligation to refrain from unreasonable interference or delaying the contractor in its contract performance. Examples of violations of this obligation are:

(a) Issuing defective specifications that result in delaying the contractor (a square peg to go in a round hole)

(b) Failing to provide in a timely fashion and in usable condition Government-furnished property or materials or failing to provide access to Government premises or data

(c) Delaying unreasonably Government required approvals or consents. These might include approval of drawings or consent to subcontracts. How much delay is unreasonable depends on the facts of each case.

#### **M-7.101-1 Contractor Redress**

(a) Violations such as those listed above are conditions for which the contractor is legally entitled to recover the amount of any damage caused by the breach. Some contracts have clauses that provide for contract adjustments to avoid forcing the contractor to go to court. For example, the Government-Furnished Property clause provides for equitable adjustment of delivery time and for compensation if Government-furnished property is delivered late or in unusable condition.

(b) The contractor is entitled to an extension of time for performance if there is an unreasonable Government delay or interference which hinders the contractor's performance.

(c) If the Contracting Officer determines that any failure to perform was due to causes beyond the contractor's control and without its fault, the delivery schedule may be revised as provided by the Excusable Delay clause in cost-reimbursement contracts. Such causes include acts of God or the public enemy, fires, floods, strikes, and severe weather.

(d) The Default clause in fixed-price contracts does not provide for a specific adjustment for delivery dates. It does, however, provide for an extension of time to perform where failure to perform on time is beyond the contractor's control and not due to negligence or the contractor's fault. Such causes for failure are the same as mentioned above for cost-reimbursement contracts. Government-caused delays would also entitle the contractor to such relief.

#### **M-7.101-2 Actions to Protect the Government's Rights and Interests**

(a) All Government employees are servants of the citizens and taxpayers of the United States and have a duty to act in ways that best serve their interests. All contract administration personnel (including the PO) have a duty to take actions required to meet the Government's obligations to the contractor and to protect the Government's rights and interests. When the Government buys something, it should get what it pays for—nothing more or nothing less.

(b) This concept forms the basis for written instructions for contract administration and is the basic guideline where such instructions are absent. The requirement in Part 46 of the FAR involving inspection prior to acceptance of contract supplies derives from the concept that the taxpayers' funds should not be paid out prior to determining that what is delivered is what was ordered.

(c) Government personnel do not have the authority to accept less than what was contracted for or to waive the right of the Government without obtaining a suitable reduction in the Government's obligations to the contractor. In some cases, it might be in the best interest of the Government to give up a legal right, but this would require extraordinary authority.

(d) The Government's basic interest is to obtain timely performance or delivery as provided for in the contract. To safeguard that interest, Government personnel must keep informed of the contractor's progress and deal with delays and problems as they develop and, if required, exercise the Government's rights under the contract through the Contracting Officer.

#### **M-7.102 The Contractor**

The basic duty of a contractor is to proceed diligently with the performance of the contract. Specific details of the contractor's obligations can be found in a reading of all of the contract provisions.

**M-7.102-1 End of Basic Duty to Proceed**

This basic duty to proceed comes to an end:

- (a) When the contract is completed.
- (b) Upon complete termination of the contract under provisions that permit the Government to terminate performance. (If the termination is only partial, the contractor must diligently proceed with performance of the part of the work that is not terminated.)
- (c) If the obligation to continue performance is excused by (1) a sufficiently gross and material breach by the Government of its duties and obligations under the contract, or (2) impossibility of performance. However, where performance is temporarily impossible, as in the case of temporary unavailability of materials essential for making the contract supplies, the contractor's duty to proceed will remain effective and the contractor must continue once the obstacle to performance has been removed.

**M-7.102-2 Situations in Which the Basic Duty Is Not Ended**

- (a) Acts of God or the Government, or others which result in the impossibility of further performance, do not end the contractor's duty to perform. An extension of time may be applied for, but the contractor still has the duty to proceed. For example, a contractor gathering data on air currents might be granted an extension of time due to severe storms but would still have to complete the work within the rescheduled date.
- (b) Disputes or disagreements do not suspend the duty to proceed. The Disputes clause allows the contractor to appeal a question of fact from a final decision of a Contracting Officer. However, the clause requires the contractor to proceed during the appeal process in accordance with the decision of the Contracting Officer.

**M-7.102-3 Circumstances in Which Performance May Be Suspended or Stopped**

The parties may agree to permit or require the contractor to stop or suspend performance in certain circumstances:

- (a) When unexpected technical problems arise, it may be to the Government's advantage to have the work suspended pending investigation and testing to discover the cause of the problems and determination of the best way to proceed.
- (b) The Limitation of Cost and Limitation of Funds clauses in cost-reimbursement contracts permit the contractor to stop work once the contract funds are exhausted.

## **M-7.200**

### **CONTRACT QUALITY REQUIREMENTS**

#### **M-7.201 Types of Contract Quality Requirements**

(a) Contract quality requirements fall into three general categories, depending on the extent of quality assurance needed by the Government for the acquisition involved. These categories are (1) Government reliance on inspection by the contractor, (2) standard inspection requirements, and (3) high-level contract quality requirements. Category (1) usually involves common commercial items. Category (3) involves complex items with critical application and generally entail the use of military-Federal specifications. Most Government purchases are such that standard inspection requirements are used.

(b) It is the responsibility of the contractor to "control" the quality of supplies or services and tender to the Government only those that conform to contract requirements. It is the responsibility of the Government to "assure" that the contractor complies with the contract terms and specifications.

(c) Any one responsible for inspection and acceptance must know:

- (1) The description, specifications, and standards of the items or services required by the contract.
- (2) The details of the Inspection clause.
- (3) The contractual Quality Assurance/Quality Control Program elements (Quality Assurance Project Plan, Inspection (Audit) Procedures, and related facilities and equipment).
- (4) The contractor's production on work process if such is pertinent to accomplishing Government inspection.

#### **M-7.202 Inspection Requirements**

(a) Every contract has some form of inspection clause which sets forth the rights and responsibilities of the contracting parties concerning the

delivery or performance of acceptable supplies or services. The working of the clauses vary somewhat depending on whether its for use in supply versus services contracts and also the type contract involved, i.e., fixed-price or cost-reimbursement type. Some of these rights and responsibilities are as follows:

- (1) The contractor is required to provide and maintain an inspection system acceptable to the Government and maintain complete records of such inspections.
- (2) The Government has the right to inspect supplies or services before acceptance. With this right goes the responsibility to make inspection in a timely manner that will not unduly delay the work.
- (3) The Government has the right to reject supplies that do not conform to contract specifications. In cost-reimbursement type supply contracts, the Government, may up to six months after acceptance, require the contractor replace or correct supplies that are nonconforming at time of delivery.
- (4) In fixed-price supply contracts, acceptance by the Government is not conclusive with regard to latent defects, fraud, or such gross mistakes as to amount to fraud.
- (5) In service contracts, if services performed do not conform to contract requirement, the Government has the right to require the contractor to perform the services again at no increase in contract price or fee. When defective services cannot be corrected by reperformance, the Government may reduce the price to reflect the reduced value of the services performed.
- (6) For work involving environmentally related measurements for which the Agency Quality Assurance requirements apply, the Government may conduct one or more on-site technical systems audits (qualitative audits) during the course of the project. The Statement of Work must provide for the right of the Government to perform qualitative audits. These external quality assurance procedures will be performed by the EPA Quality Assurance Officer or by his or her independent third party designee. Selection of the specific areas of focus for systems audits will be commensurate with the scope and needs of the program.

Areas of effort which can be considered in systems audits include:

- (1) Facilities
- (2) Equipment
- (3) Methods
- (4) Quality Control Systems
- (5) Recordkeeping
- (6) Data Validation

- (7) Maintenance and Calibration Procedures
- (8) Reporting
- (9) Adherence to Documented Procedures
- (10) Procurement and Inventory Procedures
- (11) Personnel Training
- (12) Feedback and Corrective Action

In addition to the above, the Government may require the contractor's participation in one or more EPA (quantitative) performance audits during the project duration if stipulated in the statement of work. The purpose of these performance audits will be to assure and document that data quality meets project objectives. Performance audit techniques could involve the use of reference materials of known composition or value and/or split samples for independent analyses, independent calibration checks on individual system components, and/or the use of colocated samples. A complete record of testing information (including printouts, graphs, calibration charts, and all other pertinent information used to arrive to the reported results) shall be submitted with test results.

#### **M-7.203 Notification of Rejection**

(a) To exercise its rights of rejection, the Government must notify the contractor of the rejection. The notice should be prepared by the Project Officer and signed by the Contracting Officer. It should:

- (1) Be in writing
- (2) Specifically identify what is rejected
- (3) Identify the basis for rejection; that is, the specific failure to conform to contract requirements
- (4) State what corrective action is required
- (5) State whether correction should be made at the Government facility.

(b) Unless the contract says otherwise, acceptance or rejection must be made as promptly as is practical after delivery, since a delay in such notice may, in some circumstances, imply acceptance. Inspection of partial products

or work in process does not relieve the contractor of the responsibility for correcting defects discovered prior to acceptance of the final product or the completed work. Furthermore, Government failure to inspect, and to accept or reject, does not relieve the contractor from responsibility for a defect.

#### **M-7.204 Revocation of Acceptance**

The Government has the right to require correction after an item has been accepted where latent defects, fraud, or gross mistakes amounting to fraud are involved.

##### **M-7.204-1 Latent Vs. Patent Defects**

(a) A patent defect is one that could reasonably be discovered by normal methods. A latent defect is one that could not be reasonably discovered using normal inspection techniques. It does not have to be impossible to discover. A defect discoverable by special tests (X-ray) is a latent defect if such special tests are not normally used to inspect that kind of item.

(b) The fact that the contractor could have very easily discovered the defect does not make it patent. Government contracts personnel or full-time quality assurance/quality control specialists are qualified to determine if a defect discovered after inspection is patent or latent.

##### **M-7.204-2 Fraud**

The Government has the right to revoke acceptance if it was deceived into an acceptance by fraud. Fraud involves an intentional deceit or falsehood. Acceptance due to fraud may be revoked even if the defect was patent.

##### **M-7.204-3 Gross Mistakes**

If the contractor's conduct with respect to a defect involves a mistake so gross as to amount to fraud, the Government has the same rights to revoke acceptance as if there was fraud.

##### **M-7.204-4 Guarantees or Warranties**

A warranty or guarantee is a promise or affirmation given by a seller to EPA regarding the nature, usefulness, or condition of the supplies or performance of services to be furnished. The principal purposes of a warranty/guarantee are to delineate the rights and obligations of the contractor and EPA for defective items and services and to foster quality performance. Generally, warranties survive acceptance of the contract items for a stated period of time or use, or until the occurrence of a specified event, notwithstanding other contractual provisions pertaining to acceptance by the Government. Thus, they allow EPA additional time after acceptance in which to assert a right consistent with the warranty or guarantee.

#### **M-7.204-5 Remedies When Acceptance Is Revoked**

When acceptance is properly revoked, the Government has the same remedies available as when defects are discovered prior to acceptance (see Inspection requirements above).

#### **M-7.205 Peer and Administrative Review**

(a) The Administrator has implemented an internal review process for EPA scientific, informational, and educational materials designed for public distribution. Any such materials attributable to EPA, whether produced by an EPA employee, consultant, contractor, or grantee, must be reviewed through the control system established in the EPA Order prior to public distribution. The intent of the Order is to ensure the high quality, completeness, and accuracy of materials attributable to EPA.

(b) A new contract clause restricts the contractor from independently publishing or printing material generated under contract until after completion of the EPA review process. The Project Officer is to notify the contractor of review completion with the number of calendar days specified in the contract clause after the contractor's transmittal to the Project Officer of material developed under the contract. If the contractor does not receive Project Officer notification within this period, the contractor is to notify the Contracting Officer in writing.

(c) The contract clause will establish statements the contractor must include in any public distribution of the contract-generated material, and requires the contractor to send the PO and CO a copy of such material 30 days prior to publication.

(d) The procedures for existing contracts lacking the new clause are:

- (1) Products of existing contracts should be accepted before initiating any review as described in EPA Order 2200.4.
- (2) Each Associate, Assistant, or Regional Administrator and Staff Office Director in the Office of the Administrator, or his/her designee, will peer and administratively review his/her own documents prior to release to the public. The Project Officer will be held accountable for compliance with the objectives of Order 2200.4.
- (3) The Project Officer is responsible for incorporating the results of this review and for final disposition of the material in accordance with applicable requirements.

**M-7.300**

**CONTRACT MODIFICATIONS**

**M-7.301 Introduction**

(a) Contract modifications fall into two major classes: unilateral and bilateral. Unilateral modifications are those which the provisions of the contract allow the Contracting Officer to make and which do not require the consent of the contractor. A bilateral modification requires the contractor to consent to the contract change. Listed below are some typical areas in which modifications are made to contracts. Each has been classified as being a unilateral or bilateral modification.

<u>Purpose of Modification</u>	<u>Unilateral</u>	<u>Bilateral</u>
Changes in: specifications, designs, drawings, place of delivery, inspection, acceptance method of shipping or packing.	X	
Exercise of option	X	
Termination	X	
Administrative changes	X	
Novation agreements		X
New procurement: increase in scope or quantity of work		X

<u>Purpose of Modification</u>	<u>Unilateral</u>	<u>Bilateral</u>
Equitable adjustments:		
Differing site conditions		X
Suspension of work		X
Government property (fixed-price and R&D)		X
Inspection (fixed-price supply and R&D)		X
Inspection and correction of defects (cost-reimbursement supply and R&D)		X

(b) This section discusses contract modifications per se with the intent of providing insight both into their use and the Project Officer's involvement in the modification process.

#### **M-7.302 Administrative Vs. Substantive Changes**

An awarded contract should contain all the necessary provisions for completion of the work and discharge of the obligations of the parties. Other than exceptions such as fixed-price redeterminable contracts, modifications are not contemplated at the time a contract is signed. As a practical matter, however, few contracts are completed without some sort of modification. Many modifications are simply administrative changes that do not affect the substance of the contract. Examples would be changes in Government appropriation data, paying office, or name of Project Officer. Other modifications do involve substantial changes to details of price, quantity, quality, or delivery.

#### **M-7.303 Unilateral Modifications**

Unilateral modifications may be either administrative or substantive in nature (see the section on the Changes clause, below). Change orders involve the Contracting Officer in unilaterally directing the contractor to perform work other than that which was originally called for in the contract. In addition, the Contracting Officer may make decisions involving disputes that are reflected in unilateral modifications. Terminations and exercise of options are issued unilaterally. These rights to unilaterally direct the contractor are provided for in the general provisions of the contract.

#### **M-7.304 Bilateral Modifications**

(a) Substantive changes to the contract that the contract does not provide the Contracting Officer the unilateral right to make require the agreement of the contractor on a bilateral modification or supplemental agreement. Both parties may enter into supplemental agreements affecting many parts of the contract (see section on Equitable Adjustments clause). These are reached by mutual consent and must include all the elements of a legal contract.

(b) Mutual agreement is not always enough to allow a modification to a contract. For example, the parties may want to add work which is outside the scope of the contract. However, this is new procurement and requires either a Justification for Noncompetitive Procurement or a competitive procurement. In addition, no clause in a contract required by law can be eliminated or changed, nor can the Contracting Officer consent to waive any substantive right of the Government without consideration. However, many changes can be made. Delivery schedules can be moved up or delayed, advance agreements can be reached concerning allowability of costs, or any other number of actions may be taken.

(c) Many bilateral actions will require negotiation concerning what constitutes proper consideration under the supplemental agreement. Such consideration is subject to the same principles as apply to a new procurement or equitable adjustments under the Changes clause (see below).

#### **M-7.305 The Changes Clause**

(a) Generally, Government contracts contain a "Changes" clause. The clause may differ slightly depending on the type of contract, but the provisions are essentially the same. They generally provide that the Government may unilaterally make changes, within the general scope of the contract, in any one or more of the following:

- (1) Drawings, designs, or specifications (in the case of supplies, only where the supplies are to be specifically manufactured for the Government)
- (2) Method of shipment or packing
- (3) Place of inspection, delivery, or acceptance.

(b) Special Changes clauses for construction and transportation contracts permit the Government to make unilateral changes in the work to be performed in ways tailored to the specific industry for which these special clauses are designed (e.g., a change in amount of Government-furnished property).

(c) The contractor is obligated to proceed with the work as changed when a change order is issued. If there is an impact on schedule, cost, or any other contractual aspects, the contractor may submit a claim for an equitable adjustment within thirty (30) days of receipt of the change order. If the cost of work is decreased, the Government has a right to a downward equitable adjustment in the contract price.

(d) Changes are limited to those that fall within the general scope of the contract and must be made by the Contracting Officer in written form.

(e) A change requires the execution of a procurement request (EPA Form 1900-8) plus associated procurement request rationale. For guidance in this area, refer to Chapter 4.

(f) Revisions of approved Quality Assurance Project Plans which have been incorporated in the statement of work require the issuance of a change order by the Contracting Officer.

#### **M-7.305-1 Constructive Changes**

(a) A constructive change results from action or inaction by the Contracting Officer or any other authorized individual—e.g., the Project Officer—which are of a nature that they can be construed or inferred to have the same effect as if the Contracting Officer had issued a written change order pursuant to the Changes clause of the contract. In that the contract has "effectively" been changed, the contractor is entitled to an equitable adjustment. An example of a constructive change would be a failure on the part of a Project Officer to review a report within the time frame provided within the contract. Another example would be where a Project Officer during contract monitoring directs a contractor to perform differently than provided in the contract. The contractor may later claim that a constructive change was made and seek an equitable adjustment. A PO's authority should be set forth in writing and should specifically preclude any actions that may affect the cost or price of the work.

(b) There is a fine line between a change and technical direction. What might not have seemed important at the time may end up having a substantial effect on final costs or performance. In such cases, it can be expected that the contractor will file a claim.

#### **M-7.305-2 General Scope of the Contract**

(a) It is not always clear exactly what comprises the "general scope of the contract." For example, the Changes clause allows for unilateral orders changing the place of delivery, but the U.S. Court of Claims has found that a substantial difference in the point of delivery in a transportation contract was actually beyond the scope of the contract since, in that case, the place of delivery was the subject of the contract. In supply contracts, the right of the Government to make changes in specifications is limited to goods specifically made for the Government and not off-the-shelf items.

(b) Changes affecting the quantity of the work are outside the scope of the contract and not subject to the Changes clause. Additional work (not an exercised option provision) is a new procurement. Substantial reductions in quantity may actually be terminations rather than changes. Even if the reduction or deletion is stated in terms of alteration of drawings or specifications, it may not be covered by the Changes clause. Minor modifications in design are covered by the clause, even if they change the quantity of work to be performed.

(c) Determining whether a proposed change is a new procurement, a termination, or a change must be done by the Contracting Officer in the light of the facts of the case. Often disputes arise in this area and may result in litigation.

(d) If defective specifications or drawings are later clarified by the Government, it may be considered a change even though no formal change order was issued. A change order is the proper method for changing any specifications or drawings.

#### **M-7.305-3 Coordinating Change Orders**

The Contracting Officer issues change orders even though the Project Officer has technical control over the contract; however, he or she discusses the effects of a change with the Project Officer prior to issuing change orders. Project Officers are most often performance-oriented people who nevertheless must always consider the impact of changes on costs and delivery schedules. Consequently, the PO should consult with the Contracting Officer to understand the impact a change may have to the overall integrity of the work effort while pursuing technical excellence. It should also be kept in mind that excessive changes are a major cause of "cost growth."

#### **M-7.305-4 Concluding Comments**

Adjustments related to change orders are usually agreed to by both parties, but the Contracting Officer has the authority to issue a unilateral decision if agreement cannot be reached. A CO's unilateral decision is subject to the Disputes procedures. The possibility of not being able to agree to the equitable adjustment should act to discourage the issuance of unilateral change orders. It is better to first work things out regarding money and time rather than invoke the unilateral right to issue a change order. Paperwork is reduced, as is the possibility of excessive charges by the contractor.

#### **M-7.306 Equitable Adjustments**

(a) Under the Changes clause, equitable adjustments to price, estimated cost, delivery schedules, or other areas impacted by the change must be reflected in a supplemental agreement. In addition to Changes, several other clauses call for equitable adjustments under certain circumstances. Among these clauses are:

- (1) Differing Site Conditions (construction);
- (2) Suspension of Work (construction);
- (3) Government Property;
- (4) Inspection (fixed-price supply and fixed-price R&D); and
- (5) Inspection and Correction of Defects (cost-reimbursement supply and cost-reimbursement R&D).

(b) The most common adjustments arise under the Changes clause. Basic principles apply to all equitable adjustments. Both parties should be made whole as a result of the adjustment. Neither party should gain an advantage or suffer a loss. Profitable contracts should remain equally profitable and existing losses should not be borne by the Government. That is the essence of the term "equitable." The following discussion is based on the most common problems of adjustments under the Changes clause.

#### **M-7.306-1 Computation and Negotiation of Adjustments**

(a) Most adjustments are based on costs, although they may be priced by reference to catalogs or market value of supplies or services. If based on costs, adjustments must consider the effects of the change on the entire contract, not just the portion of the work affected by the change.

(b) Changes in costs may also require a change in profit or fee to reflect the circumstances of the new situation. In some cases an adjustment may be negotiated only with respect to the fee—for example, in the event of delivery of nonconforming supplies in a cost-reimbursement contract.

(c) Computations and negotiation of adjustments is complicated when the change both adds and deletes items of work. In effect, one change order has made two changes. The net result of these additions and deletions may be very small or exactly equal; however, the concept of equity requires that both aspects of the change be properly considered.

(d) If the contractor's claim is for a few dollars, it is not safe to assume that little examination is required. For example, the deleted work may be labor intensive, with costs comprised primarily of direct labor and, therefore, subject to overhead charges. The added work may be capital intensive, and the costs not subject to the same extent of overhead. Unless care is taken, the contractor could honestly compare only the direct costs of the deleted and added work and end up collecting overhead expenses not incurred in work performance.

#### **M-7.306-2 Analysis of Cost of Changes**

(a) Often, estimating the cost of a change is difficult and out of necessity requires a particularly thorough and careful price analysis by the Contracting Officer before a supplemental agreement can be negotiated.

(b) Difficulty may still be encountered even though cost data are available. The estimates of costs of work deleted can be based on either (1) the cost estimated at the time the contract was negotiated, or (2) the costs at the time the change was made. If the original estimate is used and costs have risen, then the contractor will suffer a smaller loss or more profit. If the reverse is true, then the contractor will have a greater loss or less profit. Contractor-suggested changes should be thoroughly reviewed to assure that the contractor is not suggesting changes to enhance its profit position.

(c) Pricing adjustments after the work is done is much easier than estimating costs in advance. The contractor's data may clearly show the actual costs of the change to which a customary profit may be added. This is an appealing rationale, but it has its dangers. If a change order has been issued and the work is completed prior to pricing the adjustment, the contractor has had absolutely no incentive toward controlling costs. If a customary profit is to be added, then the more that is spent on the added work, the larger the contractor's profit will be. Even if the contractor can be trusted to control costs in such a situation, the Government will not have had an opportunity to review the contractor's proposed costs and possibly point out more efficient production methods or management controls. Forward pricing,

that is, issuance of a single supplemental agreement instead of a unilateral order followed by an adjustment, allows for a complete negotiation on technical as well as price aspects of a change. It may not be practical to do this for all changes, especially if there are many small ones to be made. In that case, a single negotiation session resulting in a single supplemental agreement may be preferred.

**M-7.307 Role of the Project Officer Regarding Modifications**

(a) The Project Officer should avoid taking any action that results in directing the contractor in such a way that it has the effect of changing the contract's description of the tasks to be performed, the products provided, or the time or place for performance or delivery. The Project Officer is authorized only to direct the contractor to carry out the terms of the contract as written. Changing the contract's provisions is outside the authority of the Project Officer.

(b) At times a contractor may suggest modifications to the contract. Often the change will technically improve the contract services or supplies and the Project Officer should realize this. However, it should be kept in mind that contractors, especially those who are experiencing a loss under a contract, will suggest changes so as to provide a chance to better their profit position. The Project Officer must beware of leading the contractor to believe that the Project Officer's opinion authorizes the contractor to proceed. Such improper authorization would be in effect a constructive change. If the contractor makes the change and later claims extra costs, the Government will find it very difficult to deny these claims for costs since they were incurred in good faith (especially if the end result is a better product and the agency benefits). The Project Officer's action would be improper and unauthorized since only Government personnel designated as Contracting Officers have the authority to obligate the Government.

(c) The Project Officer has considerable responsibility for change orders, even though only the Contracting Officer has the power to issue such orders. Since the Project Officer monitors the contract performance, he or she will often be in an excellent position to know when a change will serve the best interests of the Government and help to formulate that change. The Project Officer can also be of significant assistance in determining both what a reasonable price/cost of the change should be and the effects of the change on the contract. It is important that all potential effects of a change are examined, so if additional funding is required it can be obtained prior to issuing the change order.

(d) After a change order has been issued, the Project Officer is responsible for assuring that the contractor is implementing it.

(e) In the case of a revision to an approved Quality Assurance Project Plan previously incorporated in the contract, the Project Officer and the Quality Assurance Officer must approve the revision. Once approved, the Contracting Officer will issue a change order to the contract to include any revisions, assuming the revisions are within the scope of the contract.

**M-7.400**

**CONTRACT TERMINATION**

**M-7.401 Remedies for Deficient Performance Short of Termination**

(a) There are a range of actions short of termination available to the Government when performance is deficient. These actions may only be taken by procurement personnel, and are listed below in order of priority:

- (1) Verbally bringing the deficiency to the attention of the contractor and asking for written notice of corrective action
- (2) Initiating a letter (from the Contracting Officer) directing the attention of the contractor to a deficiency and asking for a response that includes plans for corrective action
- (3) Requesting, orally or by letter from the Contracting Officer, a meeting with the contractor's management to focus attention on the problem and to obtain a commitment to corrective action
- (4) Accepting deficient performance in exchange for a reduction in price or other considerations.

(b) Before resorting to termination of the contract, the Contracting Officer may take one or several of the actions listed above, or may resort to payment stoppage, price reduction, or assessment of liquidated damages. These options are discussed below.

**M-7.401-1 Payment Stoppage**

The Government may withhold authorized progress or partial payments until satisfactory progress is shown. This is a powerful right. Payment should not be authorized unless the Project Officer is satisfied with the contractor's progress.

#### **M-7.401-2 Reductions in Price**

The Government has the option, under a fixed-price contract, to reduce the price in return for acceptance of less than contractually required goods or services. Only the Contracting Officer has the authority to reduce the price. The Project Officer, however, should not hesitate to suggest a price reduction if he or she believes it is the proper course of action. It must be remembered that any reduction in price should be based upon an actual loss to the Government.

#### **M-7.401-3 Liquidated Damages**

(a) Liquidated damages are adjustments for deficiencies in contract performance. The solicitation resulting in the contract provided that damages would be assessed contingent upon late delivery or some other failure of the contractor. Damages are usually a defined dollar amount. The FAR states that liquidated damages should only be used in contracts for supplies and services only if both of the following circumstances are present:

- (1) Time of delivery or performance is such an important factor in award that the Government may reasonably expect to suffer damage if delivery or performance is late.
- (2) The extent or amount of such damage would be difficult or impossible to determine or prove.

(b) In deciding whether to include a liquidated damage clause in a contract, consideration should be given to their impact on pricing, amount of competition, and the costs and difficulties of contract administration.

#### **M-7.401-3(a) Rate of Damages**

The rate of liquidated damages must be reasonable and based on probable actual costs. Unreasonable amounts are considered to be punitive and are unenforceable. The minimum amount of liquidated damages should be based upon the Government's inspection and administrative costs for each day of delay. If the Government will suffer other specific losses due to the contractor's failure to complete the work on time, these losses should also be included.

#### **M-7.401-3(b) Liquidated Damages Clause**

- (1) The Liquidated Damages clause—Supply, Service and R&D contracts—covers three points: (i) If the contractor fails to deliver the supplies or services within the time specified, the contractor will pay the Government a fixed amount for each day of delay; (ii) if delivery is so delayed, the Government may terminate the contract; and (iii) the contractor will not be charged liquidated damages when the delay is beyond the contractor's control.

- (2) When there are different items or stages of the work, with different completion periods provided for in the contract, the liquidated damages for each item or stage of work should be provided for in separate clauses.

#### **M-7.401-3(c) Administration of Liquidated Damages**

Personnel involved in contract administration should know the following points concerning liquidated damages:

- (1) If the Government does not terminate the contractor's right to proceed, liquidated damages will continue to be assessed until the work is completed and accepted. The amount the Government recovers will be limited to the amount of liquidated damages assessed.
- (2) Liquidated damages provisions are strictly construed against the Government. This means that the contractor will not be held liable unless all formal procedures relating to damages are followed and unless the Government is "obviously" in the right.
- (3) Liquidated damages are disallowed unless the work is eventually completed by someone, based on the theory that liquidated damages are for delay in delivery or completion and thus cannot be assessed when there is no delivery or completion.
- (4) Liquidated damages are not assessed upon substantial completion—i.e., completion with only minor deficiencies.

#### **M-7.402 Termination for Convenience (T for C)**

(a) Under the Termination for Convenience clause, the Government has a right to cancel work under a contract whenever it determines that it is in its best interest. Such a decision is a unilateral right of the Government. It is not, however, a decision that can be made lightly. Cancellation of the work under contract is an expensive and undesirable course of action. Generally, such terminations occur because of changes in Government requirements or because contract funding is not available.

(b) The Termination for Convenience clause outlines the actions of the contracting parties taken in consummating the termination of work and settlement. In terminating a contract, there may be extensive administrative effort involved on the part of the Government with respect to the various actions necessary to complete the settlement.

##### **M-7.402-1 Steps Employed**

(a) The first step in a termination for convenience is written notification to the contractor by the Contracting Officer. The notice clearly indicates that the contract is being terminated for the convenience of the Government. It also gives: (1) an effective date for the termination (usually the date of the notice); (2) the extent of the termination identifying what portion, if any, should be continued; and (3) any special instructions.

(b) Upon receipt of the notice, the contractor is obligated to comply with the Termination clause and the terms of the notice, which generally include:

- (1) Stopping work on the terminated portion of the contract.
- (2) Terminating related subcontracts.
- (3) Continuing with the unterminated portion and promptly requesting any equitable adjustment in price on the continued portion.
- (4) Taking action to protect and preserve any Government property or to return it as directed by the Contracting Officer.
- (5) Settling claims and liabilities arising from terminated subcontracts.
- (6) Promptly submitting its own claim for settlement.

**M-7.402-2 Settlement**

(a) The Contracting Officer directs the actions of the contractor, reviews the settlement proposal, and promptly negotiates a settlement. A number of people, including the Project Officer, may be involved in fulfilling these multi-faceted duties. One of the duties of the Contracting Officer in which the Project Officer participates is in the settlement conference. At the conference, the Contracting Officer will:

- (1) Explain the general principles governing settlements under the relevant clause, including the contractor's obligations with respect to subcontracts.
- (2) Determine the status of the work, and, if necessary, clarify the extent of the termination.
- (3) Determine the subcontracts being terminated and who is handling them for the contractor.
- (4) Make all arrangements for proper handling and disposition of Government property.
- (5) Discuss the form of the settlement proposal and the accounting data required.
- (6) Establish a tentative schedule for negotiation of the settlement.

(b) Settlement proposals submitted by contractors are subject to the cost principles of FAR Part 31 and will involve the Project Officer in evaluating their merit.

### **M-7.402-3 Involvement of the Project Officer**

Aside from possibly making the recommendation to terminate for convenience, the Project Officer will be involved in settlement conferences, advising the Contracting Officer on the disposition of property and evaluating the reasonableness (quantitatively and qualitatively) of the contractor's settlement proposal.

### **M-7.403 Termination for Default**

(a) Termination for default is based upon the contractual right of the Government to terminate, in whole or in part, the contractor's right to proceed with the work when the contractor has failed to perform its contractual obligations.

(b) If, after termination for default, it is determined that the contractor was not in default, or that the default was "excusable," the termination will be considered to be for the convenience of the Government. The rights of the parties are then to be governed by the Termination for Convenience clause.

(c) The contract may be reinstated by mutual agreement if it is determined by the Contracting Officer to be in the best interests of the Government.

#### **M-7.403-1 Government's Right to Terminate for Default**

This right is based on the contractor's failure to:

(a) Perform on time, as provided in the contract

(b) Perform any other provision of the contract

(c) Make progress, to the extent that the delay endangers contract performance. Although not expressly provided for in the Default clause, the Government may immediately terminate for default if the contractor definitely exhibits an intention not to perform within the time fixed in the contract. This manifest intention is termed as anticipatory breach or repudiation.

#### **M-7.403-2 Consequences of Termination for Default**

Depending upon contract type, the following consequences result from a termination for default.

(a) On fixed-price type contracts, the Government does not have to pay the costs of uncompleted work, but only the costs of products delivered to and accepted by the Government. In the case of a cost-reimbursement contract, the Government is liable for costs incurred up to the date of termination, plus a proportional part of any fee. The Government is not liable for settlement expenses, nor for any profit on costs of preparation for work in progress.

(b) The contractor must return any progress or advance payments.

(c) The Government has the right to take over the contractor's inventory, subject to a negotiated compensation.

(d) The contractor is liable for any excess costs the Government may have to pay in repurchasing the supplies or services. (However, a cost-reimbursement contract does not contain any provision for recovery of excess repurchase costs.)

(e) The contractor may also be liable for breach of contract damages.

**M-7.403-3 Alternatives to Termination for Default**

(a) Prior to taking any default action, the Contracting Officer will normally take action on one of the following remedies short of termination. At this time, the Contracting Officer should also determine:

- (1) Whether it would be effective to withhold payment until satisfactory performance is demonstrated;
- (2) Whether, if default action is taken, there is an alternative source of supply;
- (3) Whether the contractor's financial condition is such that it would be able to reimburse the Government for the excess costs of repurchase;
- (4) What would be the impact of default upon the contractor's ability to liquidate progress payments or continue to perform under other Government contracts;
- (5) Whether continued performance under a revised delivery schedule would be more in the Government's interest;
- (6) Whether the Government's interest would be better served by offering advance payments or some other special financing agreement;
- (7) Whether, if the contractor cannot continue to perform, an arrangement to have the contract performed by a capable subcontractor might be an appropriate solution;
- (8) Whether, where a capable organization declines to perform as a subcontractor, a novation agreement can be arranged whereby the desired performance can be obtained from that organization while the original contractor still remains legally liable for the contract;
- (9) Whether there is a surety or trustee in bankruptcy who would be willing to take over the responsibility for performing the contract;
- (10) Whether, where the requirement for the supplies or services no longer exists and the contractor is not liable to the Government for damages, a no-cost termination agreement should be executed.

(b) The Contracting Officer, with the assistance of the Project Officer, has a reasonable time to determine if it is in the Agency's best interest to exercise its right to terminate a contract in default. The definition of a reasonable period of time depends upon the facts of each case and varies from case to case. The contract file is fully documented to explain the reason(s) for default and the Agency's rationale for evoking the Default provision.

#### **M-7.403-4 Procedures for Termination for Default**

In order to effect a proper termination, the Government must follow the procedural requirements of the Default clause.

##### **M-7.403-4(a) Preliminary Notice**

The Government is not required to either give notice of failure or notice of the possibility of default prior to issuing a termination for default if the basis for default is failure to deliver or to perform on time. If, however, the Government fails to enforce the provisions related to timely delivery, or takes any action that might be construed as a waiver of the delivery or performance date, then the Contracting Officer must send a preliminary notice to the contractor proposing or setting a new date. It is important that Project Officers do not take actions that could possibly be construed as a waiver of the Government's contractual rights.

##### **M-7.403-4(b) Cure Notice**

- (1) In cases where the failure to perform involves provisions other than those concerned with timely delivery, or failure to make such progress as to endanger performance altogether, the Contracting Officer must give the contractor notice of such failure and allow at least ten (10) days for cure (remedy) of the failure before issuing a termination notice.
- (2) This "ten-day cure notice":
  - (i) States that a termination for default may arise unless the failure to perform and make adequate progress is cured within ten (10) days (or longer);
  - (ii) Calls the contractor's attention to its contractual liabilities in the event of default;
  - (iii) Requests an explanation of the failure to perform and plan for corrective action;
  - (iv) States that failure to present an explanation may be taken as an admission that there is no valid explanation;
  - (v) Where appropriate, invites the contractor to discuss the matter at a conference.

**M-7.403-4(c) Notice of Termination for Default**

- (1) Once the Contracting Officer determines that termination for default is in order, then the Contracting Officer issues an official written notice of termination that:**
  - (i) Sets forth the contract number and date and describes the acts or omissions that constitute the default;**
  - (ii) States that the contractor's right to proceed with performance of the contract (or a portion of the contract) is terminated;**
  - (iii) States, if the Contracting Officer has not determined whether the failure to perform is excusable, that it is possible that the contractor will be held liable for any excess costs the Government must pay in repurchasing terminated supplies or services;**
  - (iv) States, if the Contracting Officer has determined that the failure to perform is inexcusable, that (1) the notice of termination constitutes such a determination and is a final decision under the Disputes clause, (2) the contractor will be held liable for any excess costs of repurchase, and (3) the contractor has the right to appeal under the Disputes clause;**
  - (v) States that the Government reserves all rights and remedies provided by law or under the contract;**
  - (vi) States that the notice represents a decision that the contractor is in default as specified and that the contractor has the right to appeal under the Disputes clause.**

**M-7.403-4(d) Excusable Default**

- (1) The contractor has certain defenses against the Government's notice of termination for default which are contained in the Default clause.**
- (2) If the failure to perform is caused by factors beyond the control of the contractor, and without contractor fault or negligence, the contract cannot be terminated for default. If the failure to perform is caused by a subcontractor (at any tier), and if it is caused by factors beyond the control of the contractor and subcontractor and without their fault or negligence, then the contract cannot be terminated by default—unless the supplies or services to be furnished by the subcontractor were obtainable to meet the required delivery dates. Essentially, the same provision is found in the Excusable Delays clause applicable to cost-reimbursement contracts.**
- (3) Simply put:**
  - (i) A contractor's default is excusable if it is not caused by either contracting party, or if it is caused by the Government;**

- (ii) A contractor's default is inexcusable if caused by the contractor's own fault or negligence, by that of something or someone within its control, or by that of one of the subcontractors.
- (4) There are several excusable causes listed in the excusable delay section of the Default clause, some of which are:
  - (i) Acts of God or the public enemy
  - (ii) Acts of the Government in either its sovereign or contractual capacity
  - (iii) Fires, floods, epidemics, and quarantine restrictions
  - (iv) Strikes, freight embargoes, and unusually severe weather.
- (5) In every such case, the failure to perform must be beyond the control and without fault or negligence of the contractor. Also, the excusable cause must be the direct cause of the failure to perform.
- (6) If actions by both the Government and the contractor contribute to the default, and the specific causes and effects of the responsibilities of each are so intertwined as to defy disentanglement, then the contractor's default will not be excused.

**M-7.403-4(e) Termination Despite an Excusable Delay**

- (1) If, prior to issuance of a notice of termination, the Contracting Officer determines that the contractor's failure is excusable but the termination is in the best interests of the Government, the Contracting Officer can take either of these actions:
  - (i) Terminate for convenience where the contract contains a Termination for Convenience clause
  - (ii) Terminate at no cost to either party, where the contract does not contain a Termination for Convenience clause.
- (2) If the Contracting Officer was not able to determine whether the contractor's failure is excusable prior to the issuance of the termination, the Contracting Officer will make a written decision as soon as possible. The written decision will be delivered to the contractor promptly, with advice on the contractor's right to appeal under the Disputes clause.

**M-7.403-5 Waiver of Default**

- (a) After the contractor is found to be in default, the Government's rights will be waived if (1) the Government acts or fails to act and thus encourages the contractor to continue performance, and (2) the contractor, relying on that encouragement, continues to work and incurs costs in performance of the contract.

(b) If, after default, a contractor continues to perform and incurs costs, the Board of Contracts Appeals will carefully examine the contract administration personnel to see if they said or did anything, or failed to say or do anything, that may have encouraged the contractor to continue. If the Board finds such evidence, it will hold that a waiver is the result.

(c) If, after default, the contractor does nothing to continue work or incur costs, then there will normally be no waiver, in spite of anything the contract administration personnel may have or have not said or done. The Government's right to terminate for default will remain intact.

(d) The following kinds of acts on the part of Government personnel have been held to waive a default:

- (1) Accepting late delivery
- (2) Ordering and accepting corrective action after default
- (3) Encouraging continued performance
- (4) Negotiating a revised delivery schedule
- (5) Revising other contract terms

(e) The following kinds of acts on the part of Government personnel have been held to not waive a default:

- (1) Conducting negotiations concerning revisions of delivery times
- (2) Attempting, unsuccessfully, to revise other contract terms.

(f) The best way to avoid waiver of default is to have good rapport and communication between the Contracting Officer and the Program or Project Officer so that all personnel who are involved with the contractor will know the contract status, the Government's position, and what each party is supposed to do and not do.

(g) When it is concluded that the Government's action or failure to act is grounds for a waiver of the contractor's default, the Contracting Officer should take immediate steps to establish a new delivery schedule. These steps will revive the Government's right to terminate for default so that the right is available in the event of a new default.

#### **M-7.404 Closeout Procedures**

A contract is complete when all deliverables have been delivered and accepted or all required services have been performed and accepted or formally waived. Contracts that are physically complete must be administratively closed out. That means that all outstanding contractual issues must be settled and the contract documented. The Contracting Officer is responsible for closing out the contract with the assistance of the Project Officer.

**M-7.404-1 Project Officer Responsibilities for Closeout**

**(a) At the completion of either a fixed-price or cost-reimbursement contract, the Contracting Officer will request the Project Officer to certify as to whether:**

- (1) all technical requirements have been satisfied;**
- (2) product(s)/service(s) set forth in the contract schedule have been satisfactorily completed within contract price/cost; and**
- (3) the final report and/or other deliverable items have been received and accepted (see Exhibit 7-1 at the end of this section for sample Certification Form).**

**(b) It is the Project Officer's responsibility to review and determine to the best of his or her ability the accuracy of the contractor's reporting of inventions. Findings are sent to the Contracting Officer.**

**(c) The completion voucher of the contractor, accompanied with a memo entitled Provisional Approval for Payment, will be sent to the Project Officer on all cost-reimbursement type contracts. The Project Officer has the responsibility of examining the voucher from the perspective of (1) was the work performed, and (2) are the costs allowable and reasonable. The determination is sent to the Contracting Officer.**

**(d) All contracts after completion are to be evaluated by the cognizant Project Officer. A "Project Officer's Evaluation of Contractor Performance" (Exhibit 7-2) is forwarded by the Contracting Officer. The Form 1900-27 is to be completed and returned.**

EXHIBIT 7-1

DATE: \_\_\_\_\_  
SUBJECT: Project Officer Certification, Contract No. \_\_\_\_\_  
68-01-\_\_\_\_\_, with \_\_\_\_\_ Contract Type \_\_\_\_\_  
Title: \_\_\_\_\_  
FROM: \_\_\_\_\_  
Contract Administrator, Contracts Administration Section (PM-21)  
TO: \_\_\_\_\_

Project Officer (\_\_\_\_\_) \_\_\_\_\_  
Telephone No. \_\_\_\_\_

The end of the period of performance and/or final delivery date of subject contract occurred on \_\_\_\_\_. This office is undertaking action to initiate final close-out of the contract.

It is requested that you make a physical review of the contract and determine if: (1) all technical requirements have been satisfied; (2) services set forth in the contract schedule have been satisfactorily completed; and/or (3) the final report and/or other deliverable items have been received and accepted.

In the event that the Contractor has satisfied the performance and/or delivery requirements of the contract, please check the appropriate space and cite the date of your acceptance. Should there be a need to withhold close-out of the contract, please advise below and this office will take proper action. Your reply within 15 days from the date of this memorandum will be appreciated. I may be reached at 202/472-9344 if you have any questions.

- [ ] Contract requirements have been met and close-out should proceed. Date of Acceptance: \_\_\_\_\_.
- [ ] Delay close-out and final payment (please indicate reason for delay under "Remarks").

Remarks:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Project Officer

EXHIBIT 7-2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**Subject:** Project Officer's Evaluation of Contractor Performance  
Contract No. 68-01 \_\_\_\_\_ with \_\_\_\_\_.

**From:** Contract Administrator, Contracts Section (PM-214-M)

**To:** Project Officer \_\_\_\_\_

You are requested to review the contractor's performance under the subject contract and complete two copies of the attached EPA Form 1900-27. This form will serve as a record of contractor's performance for use in the source selection process for future contracts with this firm. Instructions for preparation are printed on the reverse side of the form. One copy should be addressed to my attention. The second copy may be kept for your records. Your response is requested by \_\_\_\_\_.

Please assure that the narrative portion of the form is completed for all of the evaluation factors. If you have any questions concerning completion of the form, please call me at \_\_\_\_\_.

**Title of Contract:** \_\_\_\_\_  
\_\_\_\_\_

**Enclosure**

**cc:**

## EXHIBIT 7-2 (Continued)

PROJECT OFFICER'S EVALUATION OF CONTRACTOR PERFORMANCE		
Read instructions on reverse before completing form.		
1. FROM	2. TO	
3. FORWARD (Original only) TO: CONTRACTOR RELATIONS SECTION (PM-214) WASHINGTON D.C. 20460	4. CONTRACT NO. 68-01-	5. ACTIVITY Wash
6. CONTRACTOR'S NAME AND ADDRESS	7. PROJ. OFFICER'S NAME	8. TECHNICAL PROGRAM
	9. BASIC CONTRACT COST	10. FINAL CONTRACT COST
	11. CONTRACTOR PROJECT OFFICER'S NAME	
12. PROJECT TITLE		
13. EVALUATED CONTRACTOR'S TECHNICAL ADHERENCE TO SCOPE OF WORK AND COMMITMENT OF PERSONNEL (Circle one of the following and give narrative of rating) E VG A P U		
14. EVALUATE CONTRACTOR'S TECHNICAL PERFORMANCE AND TECHNICAL APPROACH TO THE PROJECT (Circle one of the following and give narrative of rating) E VG A P U		
15. EVALUATE CONTRACTOR'S SUBMISSION/DELIVERY OF PROGRESS REPORT, FINANCIAL REPORT, FINAL REPORT, EQUIPMENT (Circle one of the following and give narrative of rating) E VG A P U		
16. EVALUATE CONTRACTOR'S DELIVERED END PRODUCT (Report, Equipment, etc.) (Circle one of the following and give narrative of rating) E VG A P U		
17. HAS CONTRACTOR <input type="checkbox"/> OVERRUN, OR <input type="checkbox"/> UNDERRUN THE CONTRACT (Explain reason for either)		
18. RECOMMENDATIONS AND ADVICE TO PERSONNEL CONSIDERING THIS CONTRACTOR FOR FUTURE SOLICITATIONS.		
19. PROJECT OFFICER'S SIGNATURE	20. DATE	21. OVERALL RATING (Check one) E VG A P U



## APPENDICES

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## **APPENDIX A**

### **GLOSSARY OF TERMS**

A glossary does not define its terms, but rather explains or characterizes them within the general context of their use. This glossary is a collection of some of the terms used throughout this Handbook, as well as others commonly associated with the EPA negotiated procurement process. While it always is instructive (and sometimes necessary) to search the law or regulations for the specific meaning and application of terms, there are times when it is helpful to understand their fundamental sense and everyday usage. This is the objective here.

There are dozens of terms that reflect the EPA procurement process environment, but few of them are subject to precise, unerring definition. Many are terms of art, colored by circumstance and application in different situations. So, while the following explanations and characterizations are sound, the reader is cautioned to remember that this is a glossary, not a dictionary.

#### **Allowance Holders**

EPA managers who are responsible for implementing a part of the Agency's Annual Operating Plan and for reporting on the progress of the program and the budget. They manage allowances which are a portion of the Agency's resources used to finance specific parts of the Annual Operating Plan. Allowance Holders are responsible to their Responsible Planning and Implementation Officer for program resources and the preparation, implementation, and submission of the Annual Operating Plan. The Chief of Staff, Regional Administrators, Associate Administrators, and Assistant Administrators are both Allowance Holders and RPIOs. All other Allowance Holders serve under a RPIO.

### **Annual Operating Plan**

Detailed quarterly distribution of the allocation of program resources to achieve Agency goals. The Annual Operating Plan is prepared under the direction of RPIOs by Allowance Holders and submitted to the Office of the Comptroller annually and updated as needed. It provides the estimated quarterly obligations for the fiscal year by Allowance Holder, program element, section of law, and object class.

### **Appeal**

When a contractor disputes an action taken by the Contracting Officer during performance regarding matters such as an equitable adjustment for a change order, and the two parties fail to agree on the adjustment, then the contractor may receive from the Contracting Officer a "Contracting Officer's Final Determination." An appeal is an appeal from the Contracting Officer's determination and is filed with a designated Board of Contract Appeals through the Contracting Officer.

### **Carryover Funds**

Funds that are not obligated by the end of a fiscal year and which may be obligated in the next fiscal year. They include unobligated balances in no-year and two-year appropriations. Carryover funds may be used in the current fiscal year on either contract actions brought forward from the previous year, or on new procurement actions.

### **Change Order**

A written order signed by the Contracting Officer, directing the contractor to make changes that the Changes clause of the contract authorizes the Contracting Officer to make without the consent of the contractor. Most commonly applies to supply-type contracts and is limited in its application. It provides for an equitable adjustment to be determined, requires the contractor to proceed with its direction, and is formalized by a Supplemental Agreement.

### **Commerce Business Daily (CBD)**

A Government publication distributed to subscribers five times weekly, which contains synopses of upcoming solicitations, subcontracting opportunities, notices of award, foreign trade opportunities, and other information useful to those seeking opportunities for contracting with the Federal Government or subcontracting with its prime contractors.

### **Commitments**

The reservations of funds for specific projects or services to be procured. The term refers to funds which have been submitted for obligation processing and entered in the Financial Management System (FMS) prior to formal obligation.

### **Common Cut-Off Date**

In negotiated procurements, the closing date for the receipt of initial proposals, or the closing date for receipt of revised proposals and Best and Final Offers after written or oral discussions have been concluded.

### **Competitive Range**

A range determined by the Contracting Officer after evaluation of proposals that will include all offerors except those determined to have no chance, through clarification and discussions, of improving their relative positions to the point of being selected for the award of a contract.

### **Conflicts of Interest**

Organizational conflict of interest exists when an offeror or contractor for any of a number of reasons has interests relating to the work to be performed under an EPA contract which (1) may diminish the impartiality, objectivity and soundness of assistance and advice or otherwise bias work product, or (2) result in an unfair competitive advantage.

Personal conflict of interest exists when an EPA employee's judgment or actions in procurement may be improperly influenced or biased in favor of a particular contractor for reasons such as ownership of stock or relationship to employees of the contractor.

### **Consulting Services**

Those services of a purely advisory nature relating to the Governmental functions of Agency administration and management and program management.

### **Contracting Officer (CO)**

That individual who because of business, administrative, leadership, and technical skills and capabilities is assigned by EPA as responsible for assuring that contracting is done as authorized by law and regulation. The CO is appointed by the use of a Contracting Officer's Warrant and is the only one authorized to commit the U.S. Government through contracting.

## **Contracts**

Legal documents between two or more parties which are used to acquire and/or deliver real property or services. In EPA, R&D contracts, program contracts, ADP service contracts, and other contracts and contract modifications processed and administered by the Procurement and Contracts Management Division (PCMD) in Headquarters, and the Contracts Management Divisions in Research Triangle Park (RTP) and Cincinnati are included under this definition. Purchase orders, construction contracts under \$2,000, delivery orders under the Federal Supply Schedule and other agencies' contracts, cooperative agreements, grants, interagency agreements, training and tuition contracts, printing contracts, and other contracts not administered by the three contracting offices are not covered in this Handbook.

## **Deficiencies/Questions**

In evaluating proposals, deficiencies may be identified and certain questions may indicate the need for clarification. The deficiencies/questions identified form the basis of negotiation with offerors in the competitive range.

## **Determination and Findings (D&F)**

A series of actions taken to document findings of fact supporting a determination by a Contracting Officer or higher authority that, for example, it is proper to use negotiation rather than formal advertising as a method of procurement.

## **EPA Acquisition Regulation (EPAAR)**

That portion of 48 CFR (Code of Federal Regulations) Chapter 15 that identifies, by addition and exception, specific EPA implementation of the law and the FAR.

## **Federal Acquisition Regulation (FAR)**

The primary regulation for use by all Federal agencies in the acquisition of supplies and services.

## **Fee Determination Official (FDO)**

That individual assigned responsibility for arriving at determinations regarding a contractor's entitlement to portions of the award fee pool under a cost-plus-award-fee contract, such determinations being made at specified times during the period of contract performance based on evaluation and assessment findings of a performance evaluation team.

### **Full and Open Competition**

The standard for use in Government acquisition, full and open competition, means all responsible sources are permitted to compete.

### **FMS and RMIS Object Class Codes**

Codes assigned to categories of goods or services for which the Agency spends funds. Specific definitions for Resources Management Information System (RMIS) and Financial Management System (FMS) Object Class Codes are given in Appendix B.3 of the EPA Planning and Budgeting Manual. These codes are used for tracking commitments, obligations, and disbursements on these two information systems.

### **Invitation for Bids (IFB)**

A form of solicitation to obtain bid prices in a formally advertised procurement.

### **Justification for Other than Full and Open Competition (JOFOC)**

The formal document prepared by the requiring activity substantiating and justifying that a particular procurement should be conducted on a non-competitive or a limited competitive basis for certain specified reasons.

### **Level of Effort (LOE)**

An expression of the number and type of employee-months or hours that the Government is purchasing under a contract. In a term type contract, the level of effort will be based on the period of performance.

### **Negotiation Memorandum**

That document prepared by the contract specialist covering the details of the conduct of negotiations and the sequence of events leading to their conclusion. Justifies any actions taken during the conduct of negotiations as having been made within the authority delegated to the contract specialist, especially as such actions may have departed in any way from the pre-negotiation objectives approved prior to the start of negotiations.

### **Obligations**

The result of executed contracts or other legal promises to lease, purchase and/or deliver real property or services. Obligations occur when contracts or other legal documents are signed by the parties involved, and submitted to financial management for recording and official designation of funds in accordance with the terms of the contract. A contract or other document is referred to as an obligating document.

### **Pricing Report**

Information furnished to the Contracting Officer by those who have conducted an analysis of contractor's pricing proposal that identifies the findings of that analysis concerning all elements of estimated cost or price, with special emphasis on any areas which are either questionable or nonallowable. This report is advisory to the Contracting Officer.

### **Procurement and Contracts Management Division (PCMD)**

The organization responsible for EPA contracting, which has operations offices in Washington Headquarters, Research Triangle Park, and Cincinnati, Ohio.

### **Procurement Request (PR)**

The document prepared by a requiring activity containing the information necessary to permit contracting. EPA Form 1900-8 (Procurement Request/Order) with accompanying instructions.

### **Project Officer**

That individual who because of superior technical, leadership, and management skills and capabilities is assigned technical responsibility from the inception of a requirement through its completion and closeout of the contract under which the requirement was satisfied.

### **Protest**

An action permitted by law and regulation by which an interested party, usually an unsuccessful offeror, may challenge circumstances surrounding a procurement. Protests are filed with the Contracting Officer and also may be forwarded to the General Accounting Office (GAO) to obtain a decision, either a denial or an acceptance, by the Comptroller General. Protests may be made to the General Services Board of Contract Appeals (GSBCA) relative to the acquisition of ADP equipment and services. Protest actions normally will hold up a procurement for which a contract has not been awarded. Protests usually encompass actions taken before and during the preaward phase of the procurement process.

### **Request for Proposals (RFP)**

A form of solicitation to obtain proposals in a negotiated procurement.

### **Responsible Planning and Implementation Officers (RPIOs)**

Agency top managers who are responsible for the review, control, and management over programs and resources assigned to them and for compliance with requirements related to the overall planning and budgeting process. They develop, submit, and implement their own Annual Operating Plan. The Chief of Staff, Associate Administrators, and Assistant Administrators serve as RPIOs over the Allowance Holders within their respective offices. All of the above are both RPIOs and Allowance Holders.

### **Revised Proposal**

Once written or oral discussions have been concluded, the Contracting Officer will issue a written notification to all offerors still in contention calling for the submission of their revised proposals. This is the final opportunity for an offeror to revise its proposal.

### **Small Purchases**

Small purchases include the following: (1) purchases where the sum involved in any one transaction does not exceed \$25,000 or (2) imprest fund transactions which may be used for procurements of \$250 or less (\$500 for emergencies); unless a lower limit is established by local procedures. The funds for these procurements will be planned against the appropriate RMIS object class codes and committed and obligated against the appropriate FMS object class codes. Small purchases and contract procurements may be charged to the same RMIS and/or FMS code.

### **Source Evaluation Board (SEB)**

That body of individuals of varying technical, legal, contractual, and other expertise that is assigned responsibility for evaluating offers and reporting its findings to the Source Selection Official.

### **Source Selection Official (SSO)**

That individual with the authority to make the final determination as to which source offers the arrangement most advantageous to the Government, all factors considered, and to authorize the award of a contract.

### **Supplemental Agreement**

A written agreement executed by both contracting parties for an agreed-to modification of a contract. Considers the impact of specifications for performance, delivery, price, alteration of terms and conditions, and any other matter appropriate to the modification.

### **Technical Direction**

The exercise of authority by an individual named and specifically authorized by the contract to direct the performance of the contractor within the expressed scope of work found in the contract, so long as such direction does not assign additional work, constitute changes to the contract, increase or decrease agreed-to estimated cost or price, or alter the agreed-to delivery schedule or any other terms and conditions of the contract.

## **APPENDIX B**

### **ACRONYMS**

The following is an alphabetical list of all acronyms used throughout this Handbook. Its purpose is to serve as a quick reference for those who may be unfamiliar with the lettered shortcuts that are used commonly to signify terms and phrases associated with the EPA acquisition/procurement process.

<b>ADP</b>	<b>Automatic Data Processing</b>
<b>ADPE</b>	<b>Automatic Data Processing Equipment</b>
<b>A-E</b>	<b>Architect-Engineer</b>
<b>BEP</b>	<b>Business Evaluation Panel</b>
<b>CBD</b>	<b>Commerce Business Daily</b>
<b>CFR</b>	<b>Code of Federal Regulations</b>
<b>CO</b>	<b>Contracting Officer</b>
<b>COI</b>	<b>Conflict of Interest</b>
<b>CPAF</b>	<b>Cost-Plus-Award-Fee</b>
<b>CPFF</b>	<b>Cost-Plus-Fixed-Fee</b>
<b>D&amp;F</b>	<b>Determination and Findings</b>
<b>EPA</b>	<b>Environmental Protection Agency</b>
<b>EPAAR</b>	<b>Environmental Protection Agency Acquisition Regulation</b>
<b>FAR</b>	<b>Federal Acquisition Regulation</b>
<b>FDO</b>	<b>Fee Determination Official</b>
<b>FFP</b>	<b>Firm Fixed-Price</b>

<b>FSS</b>	<b>Federal Supply Schedule</b>
<b>GAO</b>	<b>General Accounting Office</b>
<b>GPO</b>	<b>Government Printing Office</b>
<b>GSA</b>	<b>General Services Administration</b>
<b>IFB</b>	<b>Invitation for Bids</b>
<b>JOFOC</b>	<b>Justification for Other Than Full and Open Competition</b>
<b>LOE</b>	<b>Level of Effort</b>
<b>MBEO</b>	<b>Minority Business Enterprise Office</b>
<b>OFPP</b>	<b>Office of Federal Procurement Policy</b>
<b>OMB</b>	<b>Office of Management and Budget</b>
<b>PCMD</b>	<b>Procurement and Contracts Management Division</b>
<b>PEB</b>	<b>Performance Evaluation Board</b>
<b>P.L.</b>	<b>Public Law</b>
<b>PO</b>	<b>Project Officer</b>
<b>PR</b>	<b>Procurement Request/Order</b>
<b>RFP</b>	<b>Request for Proposals</b>
<b>SBA</b>	<b>Small Business Administration</b>
<b>SEB</b>	<b>Source Evaluation Board</b>
<b>SIC</b>	<b>Standard Industrial Classification (Code)</b>
<b>SOW</b>	<b>Statement of Work</b>
<b>SSO</b>	<b>Source Selection Official</b>
<b>TEP</b>	<b>Technical Evaluation Panel</b>
<b>TSP</b>	<b>Teleprocessing Services Program</b>

## **APPENDIX C**

### **WORK WORDS**

The following is an alphabetical list of work words that may be utilized to shape and support declarative identifications of need in preparing Statements of Work. They are reminders of the various shades of meaning that are conveyed through their use.

<b>analyze</b>	<b>solve by analysis</b>
<b>annotate</b>	<b>provide with comments</b>
<b>ascertain</b>	<b>find out with certainty</b>
<b>attend</b>	<b>be present at</b>
<b>audit</b>	<b>officially examine</b>
<b>build</b>	<b>make by putting together</b>
<b>calculate</b>	<b>find out by computation</b>
<b>compare</b>	<b>examine to determine likenesses or differences</b>
<b>consider</b>	<b>think about; decide</b>
<b>construct</b>	<b>put together; build</b>
<b>contribute</b>	<b>give along with others</b>
<b>control</b>	<b>direct; regulate</b>
<b>create</b>	<b>cause to be; make</b>
<b>define</b>	<b>make clear; settle the limits</b>
<b>design</b>	<b>perform an original act</b>
<b>determine</b>	<b>resolve; settle; decide</b>
<b>develop</b>	<b>bring into being or activity</b>

<b>differentiate</b>	<b>make a distinction between</b>
<b>erect</b>	<b>put together; set upright</b>
<b>establish</b>	<b>set up; settle; prove beyond dispute</b>
<b>estimate</b>	<b>approximate an opinion of</b>
<b>evaluate</b>	<b>find or fix the value of</b>
<b>evolve</b>	<b>develop gradually; work out</b>
<b>examine</b>	<b>look at closely; test quality of</b>
<b>explore</b>	<b>examine for discovery</b>
<b>extract</b>	<b>take out; deduce; select</b>
<b>fabricate</b>	<b>build; manufacture; invent</b>
<b>form</b>	<b>give shape to; establish</b>
<b>formulate</b>	<b>to put together and express</b>
<b>generate</b>	<b>produce; cause to be</b>
<b>inquire</b>	<b>ask; made a search of</b>
<b>inspect</b>	<b>examine carefully or officially</b>
<b>install</b>	<b>place; put into position</b>
<b>institute</b>	<b>set up; establish; begin</b>
<b>integrate</b>	<b>add parts to make whole</b>
<b>interpret</b>	<b>explain the meaning of</b>
<b>investigate</b>	<b>search into; examine closely</b>
<b>judge</b>	<b>decide; form an estimate of</b>
<b>make</b>	<b>cause to come into being</b>
<b>manufacture</b>	<b>fabricate from raw materials</b>
<b>notice</b>	<b>comment upon; review</b>
<b>observe</b>	<b>inspect; watch</b>
<b>organize</b>	<b>integrate; arrange in a coherent way</b>
<b>originate</b>	<b>initiate; give rise to</b>

<b>perform</b>	<b>do; carry out; accomplish</b>
<b>probe</b>	<b>investigate thoroughly</b>
<b>produce</b>	<b>give birth or rise to</b>
<b>pursue</b>	<b>seek; obtain or accomplish</b>
<b>reason</b>	<b>think; influence another's actions</b>
<b>recommend</b>	<b>advise; attract favor of</b>
<b>record</b>	<b>set down in writing; act of reproducing forms of communications</b>
<b>resolve</b>	<b>reduce by analysis; clear up</b>
<b>review</b>	<b>inspection; examination or evaluation</b>
<b>scan</b>	<b>look through hastily</b>
<b>search</b>	<b>examine to find something</b>
<b>seek</b>	<b>try to discover; make an attempt</b>
<b>shall</b>	<b>required</b>
<b>should</b>	<b>preferred but not required</b>
<b>solve</b>	<b>find an answer</b>
<b>study</b>	<b>careful examination or analysis</b>
<b>trace</b>	<b>to copy or find by searching</b>
<b>track</b>	<b>observe or plot the path of</b>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 20 1982

OFFICE OF  
PESTICIDES AND TOXIC SUBSTANCES

MEMORANDUM

TO: Office Directors  
Division Directors  
AA Budget Officers  
Regional Administrators

SUBJECT: Agency Extramural Activity Report (EAR) for  
Toxics-Related Projects Volume I, Issue 2

The second issue of the Extramural Activity Report (EAR), prepared by the Office of Toxics Integration (OTI), is attached for your use in developing future contract packages. This issue supplements Volume I, Issue 1 (April 1982) by providing FY82 plans for toxics-related projects/contract descriptions that have been developed since March 1982 and the projects of several ORD offices that were not included in Issue 1. In addition, Volume I, Issue 2 contains descriptions of toxics-related grants, cooperative agreements and Interagency Agreements awarded to date in FY82. Also, for FY81 research grants, the Office of Research Grants and Centers has prepared a description of each FY81 research grant. For further information on these as well as FY82 research grants, contact Bob Woodside in ORD (426-2355).

OTI developed the EAR with program office input to provide information across programs to help coordinate the planning and issuance of work assignments for level-of-effort (term) type contracts, as well as the issuance of new procurements. While the sponsoring office is indicated, OTI maintains a log of the project officer's name and phone number to assure that only legitimate EPA users are put in touch with project officers. This information can be obtained by contacting the OTI staff indicated below.

As in the past, we strongly urge you to use this new tool in the procurement planning process and in your contract review and certification procedure.

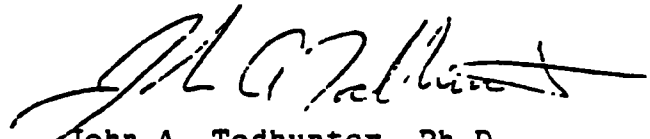
This fall, OTI will prepare another edition of the EAR covering headquarters FY83 procurement plans as well as the toxics-related activities of selected EPA regional offices. By working more closely with you as you generate FY83 contract plans, we plan to issue the next edition prior to the end of the first quarter.

In keeping with printing limitations, the EAR cannot be furnished to every EPA project officer; therefore, ensuring the availability of this document to appropriate personnel within your office is critical to its successful utilization.

If you have any questions, suggestions, or want to contact the project officer for any of the projects listed, please call Arnie Edelman or Joanne LaBaw of OTI at 382-2249.



John P. Horton, Ph.D.  
Assistant Administrator  
for Administration



John A. Todhunter, Ph.D.  
Assistant Administrator  
for Pesticides  
and Toxic Substances

Attachment

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## Extramural Activity Report (EAR)

The Extramural Activity Report was developed by the Office of Toxics Integration (OTI) to provide information to Agency staff on upcoming extramural (i.e. contract and grant) efforts regarding toxics-related topics. Prior to the development of the EAR, program offices had no mechanism to assure that their information gathering efforts on chemicals and industries were coordinated and did not overlap those planned by other program offices. To avoid such duplication, the offices could only rely upon such limited sources of information as the library (partial listings of completed contracts) and automated systems such as the now-discontinued Smithsonian Science Information Exchange (SSIE). These systems provided some information, but did not provide information concerning planned efforts, or task orders to be written under level of effort contracts. In order to better integrate efforts, as well as pool joint office resources, a mechanism was needed to provide information on emerging extramural needs that are in the early planning stages as well as projects just underway.

The EAR was developed for the purpose of fostering intra-Agency contract and grant integration. This report provides information on those upcoming extramural projects of cross-Agency interest concerning toxic chemicals and industries. The first EAR, issued in April, described about 150 contracts from the following EPA program offices: Office of the Solid Waste, Office of Emergency and Remedial Response, Office of Air Quality Planning and Standards, Office of Water, Office of Pesticide Programs, Office of Toxic Substances, Office of Toxics Integration and approximately half of the offices in the Office of Research and Development. The second issue includes new or additional contracts not included in the April issue as well as ORD contracts that were not previously covered. In addition, interagency agreements and research grants are included. OTI plans on issuing the EAR quarterly with the next issues planned for January, May and August.

To obtain copies of the EAR, contact Arnie Edelman in the Office of Toxics Integration (TS-777), telephone 382-2249.



**A daily list of U.S. Government procurement invitations, contract awards, subcontracting leads, sales of surplus property and foreign business opportunities**

## Services

**Experimental, Developmental, Test and Research Work**  
(research includes both basic and applied research)

\* 4 - ANALYSIS AND DESIGN OF AN AFLOAT CORRELATION SYSTEM  
 ST TRACKER SUBSYSTEM. Reproduction restricted to 5 total copies 2000 and  
 seven additional copies. 1000 RESEARCH AND DEV. 7-11112 DESIGN AND  
 CONSTRUCTION OF THE A6A RECOVERY NETWORK WHICH IS A MAJOR COMPONENT OF THE SYSTEM  
 CURRENT. 500 000001-57-2-04477 See also 45-71410

\* 1 - POLARIZATIONAL EFFECTS IN RADIAL GRATINGS REPRODUCED BY THE  
 UNITED STATES GOVERNMENT PRINTING OFFICE: 1969 O 347-778 50c PER COPY

Contracting Officer, ATIS: AFCEP/SCM/Program AF 501

4 A - ACCEPTANCE CHECKOUT EQUIPMENT TESTING AND SUPPORT  
9 ORBITER VEHICLE CHECKOUT AND TEST - PP 9-824-23-1-1 The  
2/1/82 DECISION TO OVERVIEW REQUISITION AND CABLE: Electric Company, San Jose  
Company Director: 120 NASA Room 1 - 100000, 77081, 2241  
NASA Lyndon B. Johnson Space Center, 815/Programmer Operations  
Office, Houston, TX 77058 Telephone 713/461-4512

1 - PILOT GEOTECHNICAL CENTRIFUGE STUDY TO DETERMINE THE  
USABILITY AND PRACTICALITY OF USING A GEOTECHNICAL CENTRIFUGE  
MODEL EMBANKMENTS SUBJECTED TO OVERTOPPING AND/OR  
TOUGHFLOW. The primary objective of this study is to determine failure mecha-  
nisms and those factors critical to performance of embankments under overtopping water  
conditions. The USAF Waterways Experiment Station is seeking Request for Proposals  
No. DAWC69-87-2-0020 on or about 1 September 1987 and contracts can only be  
filled after that time. See pages 55 and 65. (244)  
U.S. Army Engineer Waterways Experiment Station, Corps of En-  
gineers, Attention: Mr. Mary S. Manning, 881-434-4422, PO Box 637,  
Vicksburg, MS 39180.

4 - ASSESSMENT OF CURRENT QUALITY AND FORM OF MATERIALS IN  
THE NATIONAL DEFENSE STOCKPILES. Request for Proposal (RFP) DDPA 800-2-1022 to  
conduct a sample stock audit at the Arsenal Academy of Sciences, Shenyang  
People's Army Ordnance (PAO).

Federal Emergency Management Agency (FEMA), Research and Management Studies, 508 C Street, S.W., Washington, D.C. 20472. Attn: Research Group. 202/727-1820.

**► A - SMART TRANSPONDER ANTENNA DEVELOPMENT**—Comp. awarded the first contract award. Subsequent contracts with Electro-Magnetic Pro-  
cessing, 5515 Overland Avenue, Chino Hills, CA 91311. See also 46, RF  
575-57-5-1899

12-00000-10251  
 1 - ACQUISITION OF AERODYNAMIC DATA ON VARIABLE INCIDENCE  
 FORWARD SWEEP WING/CANARD CONCEPT with eight test series on the wing.  
 1 - "Research with Advanced Instruments, North American Aircraft Division, Cal-  
 ifornia" East Palo Alto, CA. PO Box 12250, Culver City, CA 90231, as a result of  
 contract, San Jose 44, DDP No. 733615-01-0-1000

**DEVELOPMENT OF DESIGN, TEST AND ACQUISITION CRITERIA**  
A 809-MATRIX Requirements contracting with defense engineering. 577  
Owens, Jackson. DA 45324. as a result of their interaction process. See also  
562-00. 270515-27-4-7613

9-A - SMART ACTIVE REFLECTOR FOR TARGET SYNTHESIS ON GROUND IS  
INVENTED AND USE OF ACTIVE CHANNEL REFLECTOR TO USE WITH SYNTHETIC SENSOR  
SYSTEMS. INVENTOR: CHARLES W. COOPER, ALABAMA; 100-1700-000000

STENO, PO Box 2357, La Jolla, California 92038. See item 46. RFP F33675-82-4-1886.  
CAG

Directorate of R&D Contracting, Attn ASD/PWR-1, Wright-Patterson  
AFB, Ohio 45433

\* A - BASIC RESEARCH RADAR IMAGE UNDERSTANDING AND CONCEPTS OF  
 TO RADAR IMAGE PROCESSING TECHNIQUES THROUGH OTHER RESEARCH EFFECTS AND CERTAIN OTHER  
 APPLICATIONS OF TECHNIQUES PREVIOUSLY DEVELOPED FOR RADAR IMAGES. REGISTRATION COORDINATOR  
 WITH GOVERNMENTAL RESEARCH INSTITUTE OF MACAPAL, PO BOX 8511, ANN ARBOR, MI 48107  
 THIS IS A CONTINUATION OF CONTRACT #33615-20-C-1195, #00005, SEE NOTE 46 EFF  
 #33615-20-C-1195 (7/64)

Directorate of R&D Contracting, Attn: ASD/PWR-1, Wright-Patterson  
AFB, OH 45433

• A - RESEARCH ON CAPABILITIES ENHANCEMENT OF THE MOBILE OPTICAL TRACKING SYSTEM LABORATORY. Independent to be confirmed with Security/Personnel Association, Inc. Phone: MD 207716 See para 45, 1740

Contracting Officer, Naval Research Laboratory, Washington, DC 20375

\* A - ADVANCED DEVELOPMENT OF TRIDENT FIRE CONTROL SYSTEM - Progression from General Electric Company, Portland, ME, since 1971 to 1974 - contract to test the system in the summer of 1974 (see also 40 74A). Strategic Systems Project Office, Navy Department, Washington, D.C. 20378.

— A — EFFECT OF ELEVATED PRESSURE ON FLUIDIZATION PHENOMENA.  
 Registrations conducted with Westinghouse 240 Center, Pittsburgh, PA 15215. See notes  
 16, 17, 18.

U.S. Department of Energy, Pittsburgh Energy Technology Center,  
PO Box 10840, Pittsburgh, Pennsylvania 15226.

\* A - ANALYSIS TO DETERMINE MISSION EFFECTIVENESS AND PRODUCTIVITY OF ARMCN EXTENDED TO DARKNESS AND ADVERSE WEATHER CONDITIONS - A contract is being negotiated exclusively with American Power Jet Company, 705 Grant Avenue, Roseland, NJ 07067 See also 48, (244)

**A -- PILOT STUDY TO DETERMINE THE QUALITY OF COBALT NOW HELD ON THE NATIONAL DEFENSE STOCKPILE**—INDEX OF PROGRAM (1977) DSW-4-1023 to be carried on a three month basis in the American Academy of Medicine. (27)

Federal Emergency Management Agency (FEMA), Research and Management Branch, 500 E Street S.W., Washington, D.C. 20472.  
Attn: Security Officer. 202/297-2889.

**A - HYBRIDOMA CELL LINES.** In the context of extending an ongoing study of anti-H-2 and anti-H-2-associated antigens to the Scientific Community, the National Cancer Institute is willing to supply to any requesting commercial source a number of overexpressing cell lines. These overexpressing cell lines are 3-83 (anti-H-2: 12-2-23 (anti-H-2: 14-1-83 (anti-H-2: 15-1-83 (anti-H-2: 15-1-83 (anti-H-2: 15-1-78 (anti-H-2:

20-65 國庫券 20-5-215 國庫券 20-10-15 國庫券 20-5-165 國庫券  
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[illegible][illegible]

E-1

1981. 4. Sachs, D.L., Mover, R. and Conze, K.: Myeloma antibodies directed over serum M-2 and its antigens. In: Hammerling, G.J., Hammerling, U., and Köppler, J.F. (Eds.), *Monoclonal Antibodies and T Cell Myelomas*. Academic, Elsevier/North-Holland Science Press, 1982, pp. 110-113. This is not a request for protection. 1. I am a researcher's interest and tendency to produce quality-controlled products is a myeloma. Therefore, a brief reading of experience and considerations must be sent will request for myeloma Cell Lines within 90 days from date of this publication. Reference is your request to Contract No. (M)-G-25885. The cells are provided as a service to a research community. They are provided without warranty of merchantability or fitness for particular purpose or any other warranty, express or implied. 2. I authorize the recipients the cell lines agree to indemnify and hold harmless the United States from any claim, costs, damages, or expenses resulting from any injury (including death, damage, or loss) may arise from the use of the cell lines. 2641

S. Buford, Contracting Officer, Research Contracts Branch, National Cancer Institute, National Institutes of Health, Star Building, Room 2A87, Bethesda, MD 20892.

★ A - SYSTEMS ENGINEERING STUDIES FOR THE AEDC M-15 BAT ACQUISITION AND CONTROL SYSTEM—Investigations will be conducted w/ Army Research Laboratory, Huntsville, AL, to determine the feasibility of developing a system for the acquisition and control of the M-15 BAT. The system will be designed to provide the necessary data for the acquisition and control of the M-15 BAT. The system will be designed to provide the necessary data for the acquisition and control of the M-15 BAT. The system will be designed to provide the necessary data for the acquisition and control of the M-15 BAT.

**Directorate of Contracting, Contracts Division, Armed Engineer Development Center, Ardmore AFS, TN 37389, Contracting Office. Ericsson M. Armas. 815-455-7611 Ext. 7841**

A - INDEPENDENT VERIFICATION AND VALIDATION (IV&V) OF THE PRIME MISSION OPERATIONAL FLIGHT PROGRAM (OPF) SOFTWARE FOR THE LOW ALTITUDE NAVIGATION AND TARGETING INFRARED SYSTEM FOR NIGHT (LANTIRN). LANTIRN is being developed to provide a self-contained low-altitude navigation and precision attack system for the F-15 and F-16 aircraft. The LANTIRN system is composed of two distinct systems. The Low Altitude System (LAS) uses computers of a Targeting Pod and Navigation Pod that are being developed by West Marine Corporation, in Orlando FL and a mission database (MIDB) System being developed by Raytheon Associates Ltd., in Rochester, England. The IV&V contractor will assist the LANTIRN SPO in assessing the integrity of the OPF software by reviewing technical and managerial records throughout the RDT&E approximately 12 months of effort with teams (1) 12 month contract task for the above referenced contracts. The following tasks/teams can be performed concurrently according to each task size of OP F33657-02-0111 Technical Evaluation, and are therefore requested to support Cost Proposal: Step Two task: OP F33657-02-0117 (1) The Software Technology Company, "power company, Inc. 201, 1140 Linden Avenue, Dayton, OH 45432 and (2) LANTIRN, The Aerospace Office Center, Suite 300, 571 Riverside Avenue, Dayton, OH 45431. See items 27 and 48, 24 ASD/PHITS, WFO-Procurement AFR, Rm 45432.

★ A - INTERCEPT RECEIVER MANAGEMENT STUDY Registrants have been contacted with Advanced Information and Decision Systems, Mountain View, CA 94040, a Division, Spawning Corp. 434NY2 7461

Room Air Development Center, Attn: PERL/Mr. L.C. Corbin, Griff  
AFB, NY 13441. Telephone 315-330-2773.

★ A — ENGINEERING AND TECHNICAL SUPPORT FOR THE ARTS VEN  
CLES AND ASSOCIATED SYSTEMS — USA/SGC. (Wanted to know) for P  
GAP OFFNS-8022/23) for support services to perform work on Arts Assoc  
systems, subprograms, storage control systems, data processing control systems  
is a subsidiary of Spaulding-Johnson Company in South Valley Corp. of Northridge, California. 5  
room 48. (714)

NASA, Goddard Space Flight Center (GSFC), Greenbelt Road, Greenbelt, MD 20771. Attn: Cheryl L. Jones, Room 207

## Content

SUBSCRIPTION INFORMATION SEE COL. 1 \_\_\_\_\_ P21  
Description of Legation, Col. 1 \_\_\_\_\_  
Procedures of Services and Sources \_\_\_\_\_ 1 to  
Research and Development Sources Sought, \_\_\_\_\_ 31 &  
Future Development Strategies \_\_\_\_\_

APPENDIX F

SAMPLE PEB REPORT

Performance Evaluation Board's Performance Evaluation Report

Contract No. 68-XX-XXXX

Company Name

Report No. (insert number)

Evaluation Period: From - To

Attendees: Performance Evaluation Board (PEB)

NAME	TITLE (If applicable)
------	-----------------------

Other Attendees:

NAME	TITLE (If applicable)
------	-----------------------

Summary: Quality of Contractor performance with respect to each of the performance categories defined in the Performance Evaluation Plan for the (insert number) evaluation period was evaluated based upon the performance event reports submitted to the Evaluation Coordinator.

The attached Table 1 provides a summary of the Award Fee awarded for the (insert number) evaluation period.

Table 1-a provides a summary of Award Fee determination from the inception of the contract to the (insert number) Performance Evaluation period.

SAMPLE PEB REPORT

Table 1

Period 6

Award Fee Determination for Contract No. 68-XX-XXX

(Company Name)

Performance Categories	Available Award Fee		Awarded Fee	
	% of Available Fee for Period	\$ Available	% of Available Fee \$ Awarded	Awarded
- Program Management	30%	23,113	85%	19,646
- Emergency Response	40%	30,817	90%	27,735
- Technical Support	30%	23,112	80%	18,490
TOTALS	100%	77,042	85.5%	65,871

SAMPLE PEB REPORT

Table 1-a

AWARD FEE DETERMINATION FOR CONTRACT OVER PERIOD OF PERFORMANCE

Performance Categories	AVAILABLE/AWARDED FEE PER CONTRACT PERIOD					
	End of Eval. Per. (Date) 1	2	3	4	5	6
<b>Project Management</b>						
Available	5,257	9,858	9,857	9,857	9,857	23,113
Awarded	100%	95%	90%	100%	70%	85%
<b>Emergency Response</b>						
Available	5,257	9,857	11,829	15,772	15,772	30,817
Awarded	50%	95%	100%	100%	85%	90%
<b>Technical Support</b>						
Available	5,257	9,857	9,857	13,800	13,800	23,112
Awarded	65%	75%	90%	80%	85%	80%
<b>Project Organization</b>						
Available	31,545	NA	NA	NA	NA	NA
Awarded	85%	NA	NA	NA	NA	NA
<b>Spill Prevention</b>						
Available	5,257	9,857	7,886	NA	NA	NA
Awarded	100%	90%	90%	NA	NA	NA
<b>Total</b>						
Available	52,573/ 100%	39,429/ 100%	39,429/ 100%	39,429/ 100%	39,429/ 100%	77,042/ 100%
Award	42,322/ 80.5%	34,993/ 88.7%	36,668/ 92.5%	36,669/ 93.3%	32,036/ 80.45%	65,871/ 88.5%

SAMPLE PEB REPORT

PEB EVALUATION

Category I - Program Management

Available	Awarded
\$23,113 - 30%	\$19,646 - 85%

(NARRATIVE EVALUATION)

Category II - Emergency Response

Available	Awarded
\$30,817 - 40%	\$27,735 - 90%

(NARRATIVE EVALUATION)

Category III - Technical Support

Available	Awarded
\$23,112 - 30%	\$18,490 - 80%

(NARRATIVE EVALUATION)

General

To better reflect programmatic emphasis, the PEB has made changes in the percentage of fee allocation. The Performance Evaluation Categories along with the appropriate percentage of fee allocation for period \_\_\_\_\_, through \_\_\_\_\_ is set forth in the attached Table No. 2.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name  
Chairman, Performance Evaluation Board  
Contract No. 68-XX-XXX

SAMPLE PEB REPORT

Table 2

Evaluation Period No. 7

From - To

Award Fee Allocation Matrix

for

Contract No. 68-XX-XXX

Company Name

<u>Performance Evaluation Categories</u>	<u>% of Award Fee for Period</u>	<u>\$ Available</u>
I Project Management	35%	26,965
II Emergency Response	40%	30,817
III Technical Support	25%	19,260
	100%	77,042

# APPENDIX G

## SAMPLE FEE ALLOCATION MATRIX

### FEE ALLOCATION MATRIX

Contract No:

Contractor:

EVALUATION CATEGORY	PERFORMANCE EVALUATION PERIODS					
	1/01/84 to 4/30/84	5/01/84 to 8/31/84	9/01/84 to 12/31/84	1/01/85 to 4/30/85	5/01/85 to 8/31/85	9/01/85 to 12/31/85
I	20%	20%	20%	20%	20%	20%
II	20%	15%	10%	5%	0%	0%
III	20%	20%	20%	20%	20%	20%
IV	20%	15%	10%	5%	0%	0%
V	20%	20%	20%	20%	20%	20%
VI	0%	10%	20%	30%	40%	40%
Total Available Dollars	100,000	120,000	120,000	120,000	120,000	100,000

Approved: \_\_\_\_\_  
Chairman, Performance Evaluation Board

Date: \_\_\_\_\_

Contract No: 68-01-6388

Contractor: JRB Associates, Inc.

EVALUATION CATEGORY	End of Performance Evaluation Period					
	9/11/81	12/4/81	3/26/82	6/18/82	9/10/82	12/31/82
1. Data Generation	20%	20%	25%	30%	20%	10%
Field Validation						
2. of Criteria	40%	40%	30%	20%	15%	10%
3. Economic Analysis	10%	10%	15%	20%	25%	30%
Preparation of Cost/						
4. Benefit Analysis	10%	10%	10%	10%	20%	30%
5. Program Management	20%	20%	20%	20%	20%	20%
Dollars Available	\$1/	\$1/	\$1/	\$1/	\$1/	\$/

1/The fee pool is allocated among evaluation periods in direct proportion to the level of effort expended during the period.

Approved: \_\_\_\_\_  
Chairman, Performance Evaluation Board

Effective Date: \_\_\_\_\_

## II. Performance Evaluation Categories

Five performance categories have been selected for evaluating performance under this contract. The available fee is distributed among these categories as indicated in the fee allocation matrix which is also part of this plan. The Contractor's performance will be assessed in the following categories:

### 1. Data Generation

This category includes the generation of all toxicity, ecological effects and chemical data needed for ambient water criteria development and preparation of hazard assessment profiles. Toxicity data will be generated for aquatic organisms and non-human mammals and will be obtained from standard acute, chronic and bioconcentration/biomagnification tests on a variety of animal and plant species. Ecological data will include bioconcentration and biodegradation measurements. Chemical data will include pH, dissolved oxygen, total suspended solids, hardness and specific chemical constituent analyses. Quality assurance, control activities and quality of reporting format are also included in this evaluation category.

### 2. Field Validation of Criteria

This category includes the refining and implementation of the organism testing protocol for criteria modification. A major task in this area is coordination of protocol implementation between the States and EPA. This category also includes supporting the development of the chemical model protocol by generating data specified in the first evaluation category and assisting in the validation of this protocol in the field.

### 3. Economic Analysis

This category includes the preparation of economic analyses and economic impact statements on the implementation of criteria into a water quality based control on point source dischargers throughout the NPDES permitting system. It is anticipated that the Contractor will be required to cost-out various treatment technologies and strategies during the course of the work.

### 4. Preparation of Cost/Benefit Analyses

This category includes assessing treatment costs for dischargers to attain water quality based standards and analyzing corresponding benefits achieved. Included in the analysis of benefits will be an enumeration of hierarchy of

beneficial uses for the water bodies with statements of expected impacts on human activities and on the ecosystem for each beneficial use.

5. Program Management

This category includes all those generalized activities most closely associated with managing and administering the work being done and the resources being expended under the contract. The Board will evaluate, for instance, the Contractor's performance in maintaining effective staffing, in controlling cost growth, in submitting work plans, in the timely submission of required reports which must reflect the highest degree of quality attainable, in administering its subcontracting program, and in taking appropriate management action when necessary.

This is a very broad category, and will include other management related activities not specifically mentioned in this plan.

Every effort has been made to describe the categories as clearly and concisely as possible. The Contractor will be cautioned, however, that as a result, the definitions given above may not be complete. If a reported performance event does not exactly fit one of the above defined categories, it will be evaluated under the most appropriate category by the Board.

### III. Performance Evaluation Criteria

In evaluating the performance of the Contractor, the Performance Evaluation Board will apply criteria that have traditionally been used by managers to evaluate performance in almost any context.

Performance criteria of special importance to the Board are as follows:

#### 1. Timeliness

This criterion includes the ability of the Contractor to follow an established period of performance for work assigned, and for delivering required reports.

#### 2. Responsiveness to Technical Direction

This criterion includes the Contractor's demonstrated response to the Project Officer's guidance of the technical aspects of the work.

#### 3. Initiative and Assumption of Responsibility

This criterion includes the ability to anticipate and respond to problems or issues identified by the Project Officer. It also measures the Contractor's ability to apply necessary resources.

#### 4. Ingenuity and Resourcefulness

This criterion includes the ability to provide new and innovative approaches or solutions to problems or issues which in the past have been addressed in a more traditional fashion.

Other recognized performance criteria that will be applied when appropriate are report quality, including accuracy, and timeliness of communications.

The Contractor should recognize that Government will apply other generally accepted performance related criteria not specifically mentioned when they are found to be appropriate.

SAMPLE PERFORMANCE EVALUATION AND FEE DETERMINATION SCHEDULE

	Optimum # of Days	Forecast Date	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1 End of Evaluation Period	0	4/30/84												
2 PEB Evaluation	15	5/15/84												
3 FDO Determination	15	5/30/84												
4 Funding Modification	0	5/30/84												
1 End of Evaluation Period	0	8/31/84												
2 PEB Evaluation	15	9/15/84												
3 FDO Determination	15	9/30/84												
4 Funding Modification	0	9/30/84												
1 End of Evaluation Period	0	12/31/84												
2 PEB Evaluation	15	1/15/85												
3 FDO Determination	15	1/30/85												
4 Funding Modification	0	1/30/85												
1 End of Evaluation Period	0	4/30/85												
2 PEB Evaluation	15	5/15/85												
3 FDO Determination	15	5/30/85												
4 Funding Modification	0	5/30/85												

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Second Edition  
April 1984

**APPENDIX H**  
**CONTRACT ADMINISTRATION CASE STUDY**

**BACKGROUND**

This case study involves situations which occurred with respect to an EPA cost-reimbursement level-of-effort contract with the Franklin Foundation.

**SITUATION**

On May 30, 198X, the Franklin Foundation received Task Assignment #5 under its cost-reimbursement level-of-effort contract. It required the Foundation to collect and analyze data on the electric utility industry. The estimated cost of the effort under this task was \$420,000 for 8400 hours.

Data collection would be effected utilizing forms developed by a previous contractor and cleared by OMB prior to issuance of the task.

The following were specified to be delivered under this task:

1. Monthly periodic progress reports.
2. Site visit reports pursuant to the Foundation's technical assistance to organizations concerning proper compliance with the data collection forms.
3. A final report analyzing data collected.

The final report represented the end product of the data collection effort and would be utilized by EPA in preparation of a Court-ordered report.

On July 25, 198X, the Chairman of the Franklin Foundation contacted Dr. Tobin, the EPA Project Officer, and informed him that a serious problem had developed in completion of the effort. It appeared that although the data entry forms contained over 24 pages, no instruction or glossary of terms was included with the package. Several technical assistance visits had uncovered the fact that many firms were experiencing total confusion in attempting to

complete the forms as required. The Foundation concluded that if the collection and analysis were to be completed in time for publication in the upcoming report, it was essential that an instruction manual and glossary be developed by the Foundation immediately.

Through his own contacts within industry, Dr. Tobin was able to verify the Foundation's assessment of the problem. The previous contractor had in truth not delivered the required manual and glossary and it appeared that the Foundation's solution was the most effective and least costly cure for the problem. The Chairman of the Foundation had estimated that development of the required manual and glossary, along with its circulation within industry, would increase the estimated cost of the task from \$420,000 to \$455,000.

Upon review of the status of hours available under the basic contract, Dr. Tobin found that the 30,000 hours originally available had been consumed with the placement of Task Assignment #5. However, Dr. Tobin reasoned that the additional 700 hours needed to complete the glossary and instructions represented a relatively minor increase, and that, coupled with the importance of the data collection effort to EPA's success in court, prompted him to submit a request for task modification to the Contracting Officer along with the required \$35,000.

Shortly thereafter, Dr. Tobin was surprised to learn from the Contracting Officer that the request could not be processed for the following reasons:

1. The increased number of hours and the establishment of an additional deliverable constituted a new procurement since the proposal modification was considered to be outside the scope of the basic contract.
2. All new procurement contracts had to be competitively procured in accordance with the FAR and EPAAR or exempted from the competitive process by an approved Justification for Other Than Full and Open Competition.

### QUESTIONS

1. Do you concur with the Contracting Officer? Why or why not?
2. Identify at least five possible solutions to the problem. Which situation is the best both contractually and technically? Why?
3. Would the situation have been any different had there been sufficient hours, but insufficient funds, available in the basic contract? Why? How does this affect your selection of possible solutions?
4. Would the situation have been any different had both hours and funds been available on another Task Assignment? Why? How does this affect your selection of possible solutions?

5. Would the situation have been any different if this had been a completion-type, cost-reimbursement contract? Why? How would this affect your selection of possible solutions?
6. What could the Project Officer have done to facilitate the accomplishment of this task modification?
7. How would an indefinite quantity type contract have helped in this situation if the IQ contract contained fixed loaded labor rates (labor hour) for category of skill that may be required?

#### **SITUATION**

When Dr. Tobin learned that the Contracting Officer would not process the purchase, he called the Chairman of Franklin Foundation and told him to proceed with the work pending receipt of an order. The Chairman agreed.

#### **QUESTIONS**

1. Does Dr. Tobin have the authority to direct the contractor to perform work?
2. Should the Chairman of Franklin Foundation have agreed to start performance or should he have asked Dr. Tobin to consult with the Contracting Officer?
3. What kind of action is required to solve this problem?
4. Can the action be ratified?

#### **SITUATION**

On the last day of the fiscal year, Dr. Tobin contacted the Contracting Officer and told him he wanted to get an order placed on the contract that day. He further explained that the particular requirement was budgeted for in the subsequent year program and he had planned to get it on contract by February of the next fiscal year; however, he had some current year funds that were going to expire that day and he wanted to use the funds for this project. He explained that he had discussed the technical effort with contractor personnel and they understood what was desired.

#### **QUESTIONS**

1. Would purchase of the requirement with current year funds be legal?
2. What "need" principle is involved?
3. Explain the bona fide need principle.

## CASE STUDIES

## **Writing A Statement Of Work**

### **PRACTICAL EXERCISE**

#### **"COURSES TO GO"**

**You have been assigned the responsibility to prepare a statement of work for the development and presentation of 25 courses to technical personnel entitled "Project Officer Course."**

**Management has decided that they wish to have a firm-fixed price contract awarded for both the development and instruction of the courses. The contractor will provide the developed text, all classroom materials, and instructor(s) for the course. All courses will be five days in length, be presented to 30 students per course, and be taught at Government facilities located in Washington D.C., New York, Boston, Cincinnati, San Francisco and Research Triangle Park.**

**The approximate number of classes per location follows:**

<b>Washington</b>	<b>8</b>
<b>New York</b>	<b>4</b>
<b>Boston</b>	<b>4</b>
<b>Cincinnati</b>	<b>3</b>
<b>San Francisco</b>	<b>3</b>
<b>Research Triangle Park</b>	<b>3</b>

**The course materials should be developed in structure and in substance to be most beneficial to those technical people involved in SOW and Specification preparation, evaluation of proposals and contract monitoring. In addition, examples should be used throughout the text which are agency specific.**

- 1. Establish a writing outline.**
- 2. Identify known and unknown risks to performance.**
- 3. Determine the type of SOW to be used—i.e., performance, design, etc.—and method of expression—i.e., job or level-of-effort.**
- 4. Legibly write a Statement of Work suitable for photocopying.**
- 5. Prepare the Government cost estimate.**

## **THE LEAK**

A Request for Proposals (RFP), DU-82-AO13, for the Evaluation of Time/Temperature History of Gases and Particles in the Radiant Furnace Zone of Pulverized Coal-Fired Generators was issued July 1, 198X. Offerors' proposals were to be submitted on a cost-plus-a-fixed-fee basis by July 31, 198X. Dr. Burton was the Project Officer for this particular contract.

On July 20, a meeting was held in Dr. Burton's office to discuss a subject of possibly grave concern to those involved in this procurement. Ms. Traivers, in her capacity as Contracting Officer, was asked to attend.

An unnamed member of Research International, Inc. (RII) had been anonymously contacted by a disgruntled employee of EPA. The employee had informed the RII's employee of the proposed budget for this procurement, as well as the names of the selected technical evaluation committee members. In an unconnected circumstance, a former EPA employee had contacted RII offering his services help in preparing their proposal and in negotiating and working on the resultant contract. The president of RII had contacted Dr. Burton to express indignation over the first contact and to request clarification of applicable regulations concerning the hiring of the former employee.

Dr. Burton expressed not only embarrassment over this unfortunate event, but also concern that: (i) the former employee possessed sufficient knowledge in the field to be a considerable asset in this undertaking; (ii) the Government's estimate might have to be disclosed to all potential offerors, thus negating possible cost competition; (iii) the firm may have to be eliminated from the competition; and (iv) the breach of confidentiality might seriously disrupt the procurement process, even precipitate cancellation of the solicitation. Dr. Burton also requested a reading by the Contracting Officer on the situation concerning the former employee.

## **QUESTIONS**

1. Consider how the disclosure of the estimate to one offeror might affect that offeror's relative standing in the selection process. Should this data be fully disclosed to all potential offerors? What action do you recommend?
2. If Research International, Inc. pursued the hiring of the former EPA employee for proposal preparation or contract performance, what legal implications might arise for either RII or the former employee?
3. What are the implications regarding the conduct of the anonymous employee?

## **"WHAT TYPE OF CONTRACT"**

**Review the attached "Remedial Investigation Model Statement of Work" and make the following determinations:**

- 1. List all known economic risks that you can identify in performing the statement of work. Support your statement of work. Support your statements.**
- 2. Identify any unknown risks that you feel may impact the cost of performance.**
- 3. What contract type should this statement of work be written for fixed-price or cost-reimbursement? Be prepared to express your rationale.**

## REMEDIAL INVESTIGATION MODEL STATEMENT OF WORK

### PURPOSE

The purpose of this remedial investigation is to determine the nature and extent of the problem at the site and to gather all necessary data to support the feasibility study. The Engineer will furnish all personnel, materials, and services necessary for, or incidental to, performing the remedial investigation at [specific site], an uncontrolled hazardous waste site.

### SCOPE

The remedial investigation consists of seven tasks<sup>1</sup>:

- Task 1 - Description of Current Situation
- Task 2 - Plans and Management
- Task 3 - Site Investigation
- Task 4 - Site Investigation Analysis
- Task 5 - Laboratory and Bench-Scale Studies
- Task 6 - Reports
- Task 7 - Community Relations Support

### TASK 1 - DESCRIPTION OF CURRENT SITUATION

Describe the background information pertinent to the site and its problems and outline the purpose for remedial investigation at the site. The data gathered during any previous investigations or inspections and other relevant data should be used.

This task may be conducted concurrently with Task 2, development of the work plan.

#### a. Site Background

Prepare a summary of the Regional location, pertinent area boundary features, and general site physiography, hydrology, and geology.

---

<sup>1</sup> The Remedial Investigation guidance should be consulted for additional information on the tasks listed below.

Define the total area of the site and the general nature of the problem, including pertinent history relative to the use of the site for hazardous waste disposal.

b. Nature and Extent of Problem

Prepare a summary of the actual and potential on-site and off-site health and environmental effects. This may include, but is not limited to, the types, physical states, and amounts of the hazardous substances; the existence and conditions of drums, landfills, and lagoons [substitute site-specific features if different]; affected media and pathways of exposure; contaminated releases such as leachate or runoff; and any human exposure. Emphasis should be placed on describing the threat or potential threat to public health and the environment.

c. History of Response Actions

Prepare a summary of any previous response actions conducted by either local, State, Federal, or private parties, including the site inspection and other technical reports, and their results. This summary should address any enforcement activities undertaken to identify responsible parties, compel private cleanup, and recover costs. A list of reference documents and their location shall be included. The scope of the remedial investigation should be developed to address the problems and questions that have resulted from previous work at the site.

d. Site Visit

Conduct an initial site visit to become familiar with site topography, access routes, and proximity of receptors to possible contamination and collect data for preparation of the site safety plan. The visit should be used to verify the site information developed in this Task.

e. Define Boundary Conditions

Establish site boundary conditions to limit the areas of site investigations. The boundary

conditions should be set so that subsequent investigations will cover the contaminated media in sufficient detail to support following activities (e.g., the feasibility study). The boundary conditions may also be used to identify boundaries for site access control and site security. [If not in existence, installation of a fence or other security measures should be considered.]

f. Site Map

Prepare a site map showing all wetlands, floodplains, water features, drainage patterns, tanks, buildings, utilities, paved areas, easements, rights-of-way, and other features. The site map and all topographical surveys should be of sufficient detail and accuracy to locate and report all existing and future work performed at the site. [Permanent baseline monuments, bench marks, and reference grid tied into any existing reference system (i.e., State or USGS) should be considered as an option.]

g. Site Office

If agreed to by EPA and the State, establish a temporary site office to support site work.

h. Contractor Procurement

[When SOW is used for Federal-lead, change to "Subcontractor Procurement" and modify as required.] Prepare contractor procurement documents and award subagreement to secure the services necessary to conduct the remedial investigation and feasibility study.

TASK 2 - PLANS AND MANAGEMENT

Prepare all necessary plans for the remedial investigation. The work plan should include a detailed discussion of the technical approach, budget, personnel requirements, and schedules, as well as the following:

a. Sampling Plan

Prepare a Sampling Plan to address all field activities to obtain additional site data. The plan will contain a statement of sampling objectives; specification of equipment, analyses of interest, sample types, and sample locations and frequency; and schedule. Consider use of field screening techniques to screen out samples that do not require off-site laboratory analysis. The plan will also include a quality assurance and quality control plan with documentation requirements and estimates of costs and labor. The plan must address all levels of the investigation as well as all types of investigations conducted (e.g., waste characterization, hydrogeologic, soils and sediments, air and surface water). The plan will identify potential remedial technologies and associated data that may be needed to evaluate alternatives for the feasibility study.

b. Health and Safety Plan

Prepare a Health and Safety Plan to address hazards that the investigation activities may present to the investigation team and to the surrounding community. The plan should address all applicable regulatory requirements and detail personnel responsibilities, protective equipment, procedures and protocols, decontamination, training, and medical surveillance. The plan should identify problems or hazards that may be encountered and their solutions. Procedures for protecting third parties, such as visitors or the surrounding community, will also be provided.

c. Data Management Plan

Develop and initiate a Data Management Plan to document and track investigation data and results. This plan should identify and set up laboratory and data documentation materials and procedures, project file requirements, and project-related progress and financial reporting procedures and documents.

d. Community Relations Plan

Prepare a plan, based on on-site discussions, for the dissemination of information to the public regarding investigation activities and results. Opportunities for comment and input by citizen, community and other groups must also be identified and incorporated into the plan. Staffing and budget requirements for implementation also must be included. [Not required if Community Relations Plan has been prepared.]

TASK 3 - SITE INVESTIGATION

Conduct only those investigations necessary to characterize the site and its actual or potential hazard to public health and the environment. The investigations should result in data of adequate technical content to support the development and evaluation of remedial alternatives during the feasibility study. Investigation activities will focus on problem definition and data to support the screening of remedial technologies, alternative development and screening, and detailed evaluation of alternatives.

The site investigation activities will follow the plans set forth in Task 2. All sample analyses will be conducted at laboratories following EPA protocols or their equivalents. Strict chain-of-custody procedures will be followed and all samples will be located on the site map [and grid system] established under Tasks 1 and 2.

a. Waste Characterization

Conduct a sampling and analysis program to characterize all materials of interest at the site. These materials should include wastes stored above or below ground in tanks, drums, lagoons, piles, or other structures.

b. Hydrogeologic Investigation

[Generally limited to investigations for off-site migration.] Conduct a program to determine the presence and potential extent of ground water contamination [and to evaluate the suitability of the site for on-site waste containment].

[Identify specific aquifer to be studied.] Efforts should begin with a survey of previous hydrogeologic studies and other existing data. The survey should address the degree of hazard, the mobility of pollutants considered (from Waste Characterization), the soils' attenuation capacity and mechanisms, discharge/recharge areas, regional flow directions and quality, and effects of any pumping alternatives that are developed, if applicable. Such information may be available from the USGS, the Soil Conservation Service, and local well drillers. An accompanying sampling program should determine the horizontal and vertical distribution of contaminants and predict the long-term disposition of contaminants.

c. Soils and Sediments Investigation

Conduct a program to determine the location and extent of contamination of surface and subsurface soils and sediments [identify specific areas to be studied]. This process may overlap with certain aspects of the hydrogeologic study (e.g., characteristics of soil strata are relevant to both the transport of contaminants by ground water and to the location of contaminants in the soil; cores from ground water monitoring wells may serve as soil samples). A survey of existing data on soils and sediments may be useful. The horizontal and vertical extent of contaminated soils and sediments should be determined. Information on local background levels, degree of hazard, location of samples, techniques utilized, and methods of analysis should be included. The investigation should identify the locations and probable quantities of subsurface wastes, such as buried drums, through the use of appropriate geophysical methods.

d. Surface Water Investigation

Conduct a program to determine the extent of contamination of [identify specific water bodies]. This process may overlap with the soils and sediments investigation; data from stream or lake sediments sampled may be relevant to surface water quality. A survey of existing data on

surface water flow quantity and quality may be a useful first step, particularly information on local background levels, location and frequency of samples, sampling techniques, and method of analysis.

e. Air Investigation

Conduct a program to determine the extent of atmospheric contamination. The program should address the tendency of substances (identified through Waste Characterization) to enter the atmosphere, local wind patterns, and the degree of hazard.

[Note: Other categories of investigations may be needed for specialized site problems. These could include biological and radiological investigations.]

TASK 4 - SITE INVESTIGATION ANALYSIS

Prepare a thorough analysis and summary of all site investigations and their results. The objective of this task will be to ensure that the investigation data are sufficient in quality (e.g., QA/QC procedures have been followed) and quantity to support the feasibility study.

The results and data from all site investigations must be organized and presented logically so that the relationships between site investigations for each medium are apparent. Analyze all site investigation data and develop a summary of the type and extent of contamination at the site. The summary should describe the quantities and concentrations of specific chemicals at the site and ambient levels surrounding the site. Describe the number, locations, and types of nearby populations and activities and pathways that may result in an actual or potential threat to public health, welfare, or the environment. [Specify whether a contamination, public health, and/or environmental assessment is to be conducted.]

TASK 5 - LABORATORY AND BENCH-SCALE STUDIES

[Note: The following applies when additional studies are necessary to fully evaluate remedial alternatives. The paragraphs may be modified to meet specific project conditions.]

Conduct laboratory and/or bench-scale studies to determine the applicability of remedial technologies to site conditions and problems. Analyze the technologies, based on literature review, vendor contacts, and past experience to determine the testing requirements.

Develop a testing plan identifying the type(s) and goal(s) of the study(ies), the level of effort needed, and data management and interpretation guidelines for submission to [specify EPA and State recipients] for review and approval.

Upon completion of the testing, evaluate the testing results to assess the technologies with respect to the site-specific questions identified in the test plan. Scale up those technologies selected based on testing results.

Prepare a report summarizing the testing program and its results, both positive and negative.

#### TASK 6 - REPORTS

##### a. Progress Reporting Requirements

[Note: The following paragraph applies when the SOW is being used in a contract between the State and an Engineer. Typical requirements are described but may be modified based on the size and complexity of the specific project. When the SOW is used in a Cooperative Agreement, this section should be replaced with reporting requirements consistent with 40 CFR Part 30 and the guidance "State Participation in the Superfund Remedial Program," February 1984.]

Monthly reports shall be prepared by the Engineer to describe the technical and financial progress of the project. These reports should discuss the following items:

1. Identification of site and activity
2. Status of work at the site and progress to date
3. Percentage of completion and schedule status

4. Difficulties encountered during the reporting period
5. Actions being taken to rectify problems
6. Activities planned for the next month
7. Changes in personnel
8. Actual expenditures (including fee) and direct labor hours expended for this period
9. Cumulative expenditures (including fee) and cumulative direct labor hours
10. Projection of expenditures for completing the project, including an explanation of any significant variation from the forecasted target
11. A graphic representation of proposed versus actual expenditures (plus fee) and comparison of actual versus target direct labor hours. A projection to completion will be made for both.

The monthly progress report will list target and actual completion dates for each element of activity, including project completion, and will provide an explanation of any deviation from the milestones in the work plan.

b. Final Report

Prepare a final report covering the remedial investigation and submit [specify number and distribution] copies to [specify EPA and State recipients, as appropriate]. The report shall include the results of Tasks 1 through 5, and should include additional information in appendices. The report shall be structured to enable the reader to cross-reference with ease.

## TASK 7 - COMMUNITY RELATIONS SUPPORT

[Note: The following paragraph applies when community relations support is conducted under the work covered in this SOW (e.g., under a Cooperative Agreement). The paragraph may be modified to meet specific site or project conditions.]

The Engineer may be required to furnish the personnel, services, materials, and equipment to undertake a community relations program. Although this may be a limited program, community relations must be integrated closely with all remedial response activities. The objectives of this effort are to achieve community understanding of the actions taken and to obtain community input and support prior to selection of the remedial alternative(s).

Community relations support should include, but may not be limited to, the following:

- . Revisions or additions to community relations plans, including definition of community relations program needs for each remedial activity
- . Analysis of community attitudes toward the proposed actions
- . Preparation and dissemination of news releases, fact sheets, slide shows, exhibits, and other audio-visual materials designed to apprise the community of current or proposed actions
- . Establishment of a community information center
- . Arrangements of briefings, press conferences, workshops, and public and other informal meetings
- . Assessment of the successes and failures of the community relations program
- . Preparation of reports and participation in public meetings, project review meetings, and other meetings as necessary to the normal progress of the work
- . Solicitation, selection, and approval of subcontractors, if needed.

All community relations support must be consistent with Superfund community relations policy, as stated in the "Guidance for Implementing the Superfund Program" and Community Relations in Superfund -- A Handbook.

## WHO GETS IT?

In response to a CPFF task order solicitation for Technical Analyses of the Energy and Mining Industry Groups, the following offers were received:

Stonewell International	\$1,250,000
JEM Associates, Inc.	1,210,000
LBG Corporation	942,000
Science International	1,205,000

The technical proposals were forwarded to Dr. Henry Burton by the Contracting Officer, who distributed them to the Technical Evaluation Panel on which he served as a nonvoting chairperson. The three voting members reviewed the proposals independently, reconvened to share their assessment, and reached a group consensus as to the technical merit of each submission. Each was scored on a scale of 0-100 points and a technical rating was assigned to each proposal as follows:

	<u>Rating</u>	<u>Score</u>
Science International	Acceptable	70
JEM Associates, Inc.	Acceptable	65
LBG Corporation	Unacceptable	31
Stonewell International	Unacceptable	24

The findings of the evaluation were summarized by Dr. Burton and submitted to the Contracting Officer on August 15, 198X. A copy of the Panel's report is included as Addendum A to this case. On reviewing the Panel's report, the Contracting Officer raised the following questions concerning its content:

1. Where were the Evaluators' worksheets and signatory concurrence with the Panel's report?
2. Why was Stonewell International, a source initially considered as being the only firm capable of performing the work, considered "nonresponsible"?

Furthermore, on personally examining the technical content of all proposals, Ms. Traivers sensed a greater discrepancy in the quality of the two top-ranked offerors than was suggested by the scoring and the accompanying commentary.

On August 17, the Contracting Officer contacted Dr. Burton, raised her concerns, and received the following explanation:

1. No worksheets had been completed since there was no apparent EPA requirement addressing this aspect of the evaluation process; in lieu of worksheets, the evaluators had decided to incorporate all of their comments and recommendations directly into the Committee report.
2. The Stonewell International proposal had been rated as nonresponsible since evaluators had determined in discussions with technical personnel at the Departments of Energy, Navy, DOD, and NASA that the contractor consistently performed poorly.

Finally, Dr. Burton commented that he agreed with the Contracting Officer's judgment that there was a much greater discrepancy between the technical presentations of JEM Associates, Inc. and Science International than had been evidenced by the scoring. Dr. Burton added that the Science International proposal had been reviewed in the context of previous work performed by them in 1978, which was considered unsatisfactory. The effort which had been the subject of the problem had involved program evaluation and consulting services to DOD and was therefore deemed similar enough to take into consideration. The panel members had been unaware of the prior effort during their individual reviews until Dr. Burton produced letters and memoranda from office files highlighting the severe contract administration difficulties on the 1978 effort. A sample of the evidence was forwarded to the Contracting Officer and is included as Addendum B to this exercise. Taking into account the problems experienced, the panel voted to reconsider the initial score of 95 points and drop their overall assessment of the proposal accordingly.

#### **QUESTIONS**

1. Consider Agency guidelines governing your own technical evaluations and resulting documentation. Did this panel comply with those guidelines?
2. Can the Panel in this case consider the evidence introduced by Dr. Burton as part of its scoring of the Science International proposal? What alternatives does the Panel have in this situation?
3. Is the panel correct in its handling of the Stonewell proposal? Explain.
4. Describe the mission of the Technical Evaluation Panel and discuss what aspects of the source evaluation process are left beyond the panel's immediate purview.

## **ADDENDUM A**

**August 15, 198X**

**TO: Ms. Delgato Traivers  
Contracting Officer**

**FROM: Chairperson, Technical Evaluation Committee**

**SUBJECT: TECHNICAL EVALUATION OF PROPOSALS**

**The Technical Evaluation Team of the subject procurement met on August 8, 198X to review and evaluate proposals submitted by Stonewell International, JEM Associates, Inc., LBG, Inc., and Science International for the technical analysis of the energy and mining industry group.**

**The team met to discuss the proposals and prepare a technical evaluation report. Prior to the team meeting, each panel member evaluated the proposals independently. It is the recommendation of the review panel that the two technically acceptable proposals from Science International and JEM Associates, Inc. be considered for negotiation based on the technical evaluation and relatively close scores.**

**Henry Burton, Ph.D.**

**OFFEROR: STONEWELL INTERNATIONAL**

**FACTORS**

**EVALUATORS**

		<b>A</b>	<b>B</b>	<b>C</b>	<b>TOTAL</b>
<b>Problem and Approach</b>	<b>(30)</b>				
a) Understanding the Problem	<b>(15)</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>10</b>
b) Soundness of Approach	<b>(15)</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>10</b>
<b>Personnel and Experience</b>	<b>(60)</b>				
a) Experience	<b>(30)</b>	<b>8</b>	<b>4</b>	<b>2</b>	<b>14</b>
b) Education	<b>(20)</b>	<b>5</b>	<b>8</b>	<b>4</b>	<b>17</b>
c) Staff Utilization	<b>(10)</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>4</b>
<b>Facilities</b>	<b>(10)</b>	<b>7</b>	<b>6</b>	<b>4</b>	<b>17</b>
		<hr/>			
		<b>29</b>	<b>26</b>	<b>17</b>	<b>72</b>
		<b>Avg 24-Technically Unacceptable</b>			

**COMMENTS**

**The proposal was nonresponsive to the RFP.**

**OFFEROR: LBG CORPORATION**

**FACTORS**

**EVALUATORS**

		A	B	C	TOTAL
<b>Problem and Approach</b>	<b>(30)</b>				
a) Understanding the Problem	(15)	6	4	3	13
b) Soundness of Approach	(15)	5	4	3	12
<b>Personnel and Experience</b>	<b>(60)</b>				
a) Experience	(30)	15	6	5	20
b) Education	(20)	10	4	4	18
c) Staff Utilization	(10)	4	6	5	18
<b>Facilities</b>	<b>(10)</b>	7	6	5	18
		<hr/>			
		47	26	21	94

**Avg 31-Technically  
Unacceptable**

**COMMENTS**

**Strengths:**

- One evaluator found the proposed staff to be fairly good, otherwise no particular strengths were listed.

**Weaknesses:**

- Fails to address major SOW requirements; unclear responses when issues are addressed.

**OFFEROR: SCIENCE INTERNATIONAL**

**FACTORS**

**EVALUATORS**

		<b>A</b>	<b>B</b>	<b>C</b>	<b>TOTAL</b>
<b>Problem and Approach</b>	<b>(30)</b>				
a) Understanding the Problem	(15)	13	9	15	37
b) Soundness of Approach	(15)	13	14	14	41
<b>Personnel and Experience</b>	<b>(60)</b>				
a) Experience	(30)	20	15	21	56
b) Education	(20)	11	16	13	40
c) Staff Utilization	(10)	8	8	5	17
<b>Facilities</b>	<b>(10)</b>	6	7	6	19

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**69   67   74   210**

**Avg 70-Technically  
Acceptable**

**COMMENTS**

**Strengths:**

- Accurate, clear assessment and understanding of the problem
- Sound, novel, practical approach proposed
- Full, complete understanding of underlying issues.
- Consultants proposed are experts and readily accessible geographically
- Facilities are adequate

**Weaknesses:**

- Could improve management concepts, perhaps with a team approach
- Need to better define specific use of staff and consultants
- Misleading and inaccurate statements sometimes indicating uncertainty.
- Protocols are questionable

**ADDENDUM B**

**October 1, 1978**

**TO: The Record**

**FROM: Project Officer**

**SUBJECT: MEETING WITH SCIENCE INTERNATIONAL ON CONTRACTUAL  
NON-COMPLIANCE, SEPTEMBER 12, 1978**

In accordance with Article I, Statement of Work, Science International is to implement the consulting services plan developed by Government staff as a result of program evaluation. On August 10, 1978, this office received the July 1978 monthly report from Science International in which two events occurred that seemed definitely in violation of this contract. First, the contractor provided assistance to the Secretary of the Army in the area of recruitment because "the program had been instructed via program audit to expand its recruitment." Second, the contractor developed a procedural manual for the Army without prior approval from this office and indicated that the need for a procedural manual had been identified during the program evaluation. As of this date, the program staff has not completed its program audits nor developed a technical assistance plan for implementation by the above contractor. The contractor met with the Project Officer and Contracting Officer on August 18, 1979, and an inquiry was made regarding the projected schedule of center visits for the purposes of financial inventory.

A letter dated August 27, 1978, was received by this office from Science International containing the financial inventories done during the month of August. The list of centers inventoried contains the Dallas center, which was not in the original list submitted to the contractor by this office.

Because of these repeated contract violations, as Project Officer for the above contract, I recommended to the Contracting Officer that he notify the contractor that it is in violation of the contract. Such notification was given verbally to the contractor during the September 12, 1978, meeting and a twix confirming same was sent on September 13, 1979.

**Charles O. Babbott, Ph.D.**

**OFFEROR: JEM ASSOCIATES**

**FACTORS**

**EVALUATORS**

		<b>A</b>	<b>B</b>	<b>C</b>	<b>TOTAL</b>
<b>Problem and Approach</b>	<b>(30)</b>				
a) Understanding the Problem	(15)	6	7	5	18
b) Soundness of Approach	(15)	7	7	6	20
<b>Personnel and Experience</b>	<b>(60)</b>				
a) Experience	(30)	20	30	24	74
b) Education	(20)	15	19	17	51
c) Staff Utilization	(10)	5	8	5	18
<b>Facilities</b>	<b>(10)</b>	5	5	5	15
		<hr/>			
		<b>58</b>	<b>76</b>	<b>62</b>	<b>196</b>
		<hr/>			
		<b>Avg 65-Technically Acceptable</b>			

**COMMENTS**

**Strengths:**

- Generally good understanding
- Proposes routine, time worn methodologies
- Generally well qualified staff and consultants
- Average facilities

**Weaknesses:**

- Nothing new here
- No real firm proposed approach—lacks specifics
- Will require extensive explanation to assure we get what we need
- Need to firm-up management aspects