

# U.S. NUCLEAR REGULATORY COMMISSION

## **DIRECTIVE TRANSMITTAL**

TN: DT-03-02

**To:** NRC Management Directives Custodians

**Subject:** Transmittal of Directive 11.1, "NRC Acquisition of Supplies and Services"

**Purpose:** Management Directive and Handbook 11.1, "NRC Acquisition of Supplies and Services," are being revised to include (1) agency organizational changes; (2) advertising procurement actions through FedBizOpps in lieu of the Commerce Business Daily; (3) guidance for terminating contractor access to NRC facilities and information systems when it is no longer required; (4) information related to prevention and reporting of fraud in the procurement process; (5) revision of Procurement Acquisition Lead Times to include GSA schedule buys; (6) text that reflects the revised NRC Acquisition Regulation; (7) updated information on performance-based contracting; (8) contractors' use of Internet "cookies" on the NRC Web site; (9) Section 508 requirements for procuring information technology for individuals with disabilities; (10) HUBZone small business preference program; (11) requirement for Request for Procurement Action for procurement actions valued at \$25,000 and above; and (12) the clarified A-76 process.

**Office and Division of Origin:** Office of Administration  
Division of Contracts

**Contact:** Beverly Anker, 415-6848

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**Volume:** 11 Procurement

**Directive:** 11.1 NRC Acquisition of Supplies and Services

**Availability:** Rules and Directives Branch  
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**OFFICE OF ADMINISTRATION**

# ***NRC Acquisition of Supplies and Services***

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## ***Directive 11.1***

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# U. S. Nuclear Regulatory Commission

Volume: 11 Procurement

ADM

## NRC Acquisition of Supplies and Services Directive 11.1

### Policy (11.1-01)

It is the policy of the U.S. Nuclear Regulatory Commission that the NRC's acquisition of supplies and services support the agency's mission; are planned, awarded, and administered efficiently and effectively; and are accomplished in accordance with applicable Federal statutes and procurement regulations. The primary implementing regulations are the Federal Acquisition Regulation (FAR) and the Nuclear Regulatory Commission Acquisition Regulation (NRCAR).

### Objectives (11.1-02)

- To provide guidance to achieve the best value for NRC's acquisition of supplies and services from commercial firms, nonprofit organizations, universities, States, and other Federal agencies. Interagency agreements with Department of Energy laboratories are covered by Management Directive (MD) 11.7, "NRC Procedures for Placement and Monitoring of Work With the U.S. Department of Energy (DOE)." Agreements with other Federal agencies are covered by MD 11.8, "NRC Procedures for Placement and Monitoring of Work With Other Federal Agencies Other Than DOE." (021)
- To provide for the promotion of full and open competition in agency procurement actions. (022)
- To support innovative ideas and procurement techniques to further streamline procurement processes within the legislative framework. (023)



## **Organizational Responsibilities and Delegations of Authority**

(11.1-03)

**Chairman**  
(031)

Approves contracts that the EDO has not been authorized to award (contracts in which aggregate estimated costs are \$3 million or more, including base and option years). Copies of a formal request to the Chairman for approval shall be submitted simultaneously to the Commission.

**Executive Director for Operations (EDO)**  
(032)

- As Head of Agency (an authority that cannot be delegated), in accordance with NRCAR 2002.100 and the Federal Acquisition Regulation, approves and recommends to the Chairman for approval requests for proposed contract actions as described above in Section (031) of this directive. This delegation does not extend to internal NRC requirements such as clearance levels and Commission papers that specify higher levels of authority. (a)
- Provides the Chairman with 5 workdays' notice when a contract previously approved by the Chairman is to be terminated. (b)
- As the Audit Followup Official, provides oversight and direction to ensure that recommendations of audit reports are appropriately resolved. (c)

**General Counsel, Office of the General Counsel (OGC)**  
(033)

- Reviews solicitation packages, unauthorized procurement actions, and contracts for legal sufficiency, as requested by the contracting officer (CO). (a)
- Advises the source evaluation panel, the designating official, and/or the CO, on an as-needed basis, during the acquisition process. (b)
- Represents the agency when contract award actions are protested by disappointed offerors, and coordinates the protest process with the Division of Contracts (DC), Office of Administration (ADM), and affected program offices. (c)

## **Organizational Responsibilities and Delegations of Authority**

(11.1-03) (continued)

### **General Counsel, Office of the General Counsel (OGC) (033) (continued)**

- Advises DC on significant procurement issues (e.g., major acquisition planning, terminations, claims such as those based on the Prompt Payment Act, debarment, suspension of payment, conflict of interest, ethics, ratifications and agency protests). (d)
- Represents the agency before the Energy Board of Contract Appeals and the courts when contractors file claims under the Contract Disputes Act and otherwise, and coordinates the handling of those claims with DC and affected program offices. (e)

### **Chief Information Officer (CIO) (034)**

- Is responsible for the management and accountability for information technology (IT) resources (a)
- Establishes and ensures that appropriate agencywide IT resource acquisition policies, plans, and procedures are in place to meet the requirements of IT-related Federal statutes, regulations, and policies. (b)
- Provides guidance to NRC offices that are planning for DC to procure IT resources. (c)
- Provides support to NRC offices as requested in preparing the statement of work for IT resource acquisitions. (d)
- Assists NRC offices in evaluating IT procurements to ensure consideration of access by individuals with disabilities in accordance with Section 508 of the Rehabilitation Act. (e)

## **Organizational Responsibilities and Delegations of Authority**

(11.1-03) (continued)

### **Inspector General (IG)** (035)

- Is responsible for the investigation of allegations of fraud within the procurement process. (a)
- Audits procurement processes and payments. (b)

### **Deputy Executive Director for Management Services (DEDM)** (036)

- As the Senior Procurement Executive for NRC, in accordance with Executive Order 12931, oversees development of procurement goals, guidelines, and innovation. (a)
- As required, prescribes and publishes agency procurement policies, regulations, and procedures. (b)
- Establishes clear lines of contracting authority and accountability. (c)
- Concurs on a formal request for approval by the Chairman of a contract in which the aggregate estimated cost is \$3 million or more, including base and option years. (d)
- Approves, when appropriate, justifications for use of a noncompetitive method of procurement for actions over \$10 million. (e)
- Evaluates and monitors the agency's procurement system performance. (f)
- Establishes career education programs for procurement professionals to ensure a highly qualified procurement work force. (g)
- Reviews agency procurement rules, reporting requirements, contractual requirements, certification procedures, and other administrative procedures over and above those required by statute and, where practicable, replaces them with guiding principles that encourage and reward innovation. (h)

## **Organizational Responsibilities and Delegations of Authority**

(11.1-03) (continued)

### **Deputy Executive Director for Management Services (DEDM)**

(036) (continued)

- After consulting with the EDO, approves subcontract or justification for award on a noncompetitive basis of a contract or task order to an individual who was employed by the NRC within 2 years from the date of the Request for Procurement Action. (i)
- Reviews appeals of procurement decisions made in accordance with the Office of Management and Budget (OMB) Circular A-76, dated August 4, 1983, and revised June 14, 1999, and its supplemental handbook dated April 1, 1996, revised June 14, 1999. (j)

### **Director, Office of Administration (ADM)**

(037)

- Develops policies and programs for contracting and procurement services for contracts with commercial firms, nonprofit organizations, and universities, in coordination with affected program offices. (a)
- Issues request to office directors for advance procurement plans (APPs) and APP updates, all of which are used to plan acquisition streamlining and work assignments to ensure efficient and timely awards. (b)

### **Director, Office of Human Resources (HR)**

(038)

- In the event of an OMB Circular A-76 study (see Section 4.2.4 of Handbook 11.1), verifies the number, grades, and kinds of positions associated with the activities that may be contracted out. (a)
- Assists DC with implementation of the Acquisition Training and Certification Program. (b)

### **Director, Office of Small Business and Civil Rights (SBCR)**

(039)

- Reviews all proposed procurements in the APP to make recommendations for small business participation to the requesting office. (a)

## **Organizational Responsibilities and Delegations of Authority**

(11.1-03) (continued)

### **Director, Office of Small Business and Civil Rights (SBCR)** (039) (continued)

- Provides capability statements of small business vendors who may be able to perform a requirement to DC and requesting offices. (b)
- Reviews subcontract plans for adequacy of small business participation. (c)
- Produces an annual forecast of contract opportunities for small businesses by coordinating with DC and office directors the identification of requirements suitable for small business participation. (d)
- Reviews all requests for procurement action in accordance with MD 11.4, "NRC Small Business Program," and makes recommendations for small business participation in the procurement process to DC. (e)
- Submits small business procurement goals to the Small Business Administration (SBA) in collaboration with DC for each fiscal year. (f)
- Provides data in collaboration with DC regarding small business procurement achievements to the SBA. (g)

### **Office Directors** (0310)

- Submit to the Director of ADM the annual office APP and any updates in response to an APP call from the Director of ADM. (a)
- Serve as designating officials (DOs) within their offices for approval of requests for procurement actions and requisitions for procurements of \$2500 or more, certify accuracy of technical information in a justification for other than full and open competition or ratification actions, and provide approval if appropriate. The responsibilities of the DO may not be redelegated

## **Organizational Responsibilities and Delegations of Authority**

(11.1-03) (continued)

### **Office Directors (0310) (continued)**

below the level of division director or deputy division director for actions valued at \$25,000 or more unless approved by the Head of Contracting Activity (Director of DC) (see Section (0312) of this directive). (b)

- Ensure that project officers (POs) receive adequate training in contract management skills consistent with agency guidelines. (c)
- Ensure completion of comprehensive technical evaluations of solicited and unsolicited proposals as requested by DC. (d)
- Ensure, in consultation with the contract specialist and OGC, that the proposed work does not create an organizational conflict of interest. (e)
- Ensure that POs and DOs carry out their responsibilities as prescribed in Handbook 11.1. (f)

### **Regional Administrators (0311)**

- Act within the scope of their authority as COs as delegated by the Director of DC (ADM). These authorities include executing and modifying delivery orders, financial assistance relationships and interagency actions, purchase orders, and Government bills of lading, and settling claims and terminations thereof. These authorities may not be redelegated. (a)
- Review and, when appropriate, ratify procurement actions valued at \$2500 or less in accordance with NRCAR 2001.602-3. (b)

### **Director, Division of Contracts (DC, ADM) (0312)**

- As Head of Contracting Activity, in accordance with NRCAR 2002.100, develops and implements agencywide contracting policies and

## **Organizational Responsibilities and Delegations of Authority**

(11.1-03) (continued)

### **Director, Division of Contracts (DC, ADM) (0312) (continued)**

procedures relating to NRC's acquisition of supplies and services in coordination with affected NRC offices, and ensures that assistance on procurement matters is provided to NRC offices as needed. (a)

- Executes and modifies contracts, financial assistance relationships, and certain interagency actions. Submits a formal request simultaneously to the Chairman and to the Commission for the Chairman's approval through the Director of ADM, the DEDM, and the EDO for contracts in which the aggregate estimated costs are \$3 million or more, including base and option years. Settles claims and terminations for convenience or default thereof (see Section (031) of this directive). (b)
- Selects and appoints individuals to serve as COs, sets limitations on their authority, and terminates such appointments as delegated by the Director of ADM. (c)
- Delegates micropurchase authority to designated staff. (d)
- Notifies the Audit Followup Official (EDO) of any disagreement with the Office of the Inspector General concerning contract audit recommendations before taking final action. (e)
- Notifies the EDO a minimum of 5 workdays in advance of any termination of a contract previously approved by the Chairman. (f)
- Provides 10 working days' notice to the Chairman of any unusual or significant items whether or not they exceed the dollar limit of delegated authority. In urgent and compelling situations, a shorter timeframe may be allowed if the basis for the urgency is included in the notice. (g)
- Ensures the implementation of Federal policy regarding the performance of commercial activities in accordance with OMB Circular A-76. (h)

## Organizational Responsibilities and Delegations of Authority

(11.1-03) (continued)

### Director, Division of Contracts (DC, ADM) (0312) (continued)

- Ensures that procurement documents are accurate and complete. (i)
- Reviews and, when appropriate, approves all ratifications of unauthorized procurement actions greater than \$2500, presented by COs at headquarters and procurement personnel in the regions. (j)
- Reviews and approves, if appropriate, actions of \$750,000 or greater. (k)
- Reviews all justifications for use of a noncompetitive method of procurement for actions over \$100,000, up to \$10 million, and all waivers of notices in *Federal Business Opportunities* (FedBizOpps) on the basis of urgent and compelling need. (l)
- Approves all proposed exceptions to the requirement to place a notice in FedBizOpps made on the basis of unusual and compelling urgency. (m)
- Approves extensions to 5-year contracts as outlined in Section 11.7 of Handbook 11.1. (n)
- Manages, with assistance from HR, the design, development, and implementation of the Acquisition Training and Certification Program. (o)

### Director, Division of Accounting and Finance (DAF), Office of the Chief Financial Officer (OCFO) (0313)

- Records obligations against those contracts that have been approved by DC, ADM, and forwarded to DAF and reviews documents for completeness and accuracy of accounting data (e.g., fiscal year, budget and reporting number, job code, and budget object classification). (a)



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**Organizational Responsibilities and Delegations of Authority**

(11.1-03) (continued)

**Director, Division of Accounting and Finance (DAF);  
Office of the Chief Financial  
Officer (OCFO)**  
(0313) (continued)

- Maintains records of payments and outstanding unpaid contract obligations and files of unpaid billings and provides reports to NRC program offices and DC. (b)

**Applicability**

(11.1-04)

The policy and guidance in this directive and handbook apply to all NRC employees.

**Handbook**

(11.1-05)

Handbook 11.1 contains explanations, guidelines, procedures, and management controls for acquiring supplies and services. Information regarding Department of Energy Laboratory Agreements may be found in MD 11.7. Refer to MD 2.4 for assistance with the requirements of IT acquisitions.

**References**

(11.1-06)

References made in this directive and handbook are listed below. This list is not all-inclusive; other authorities may affect specific procurement procedures not covered in detail in this material.

Anti-Deficiency Act (31 U.S.C. 1341).

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Bribery/Fraud Status (18 U.S.C. *passim*).

Business Opportunity Development Reform Act of 1988  
(Pub. L. 100-656).

## References

(11.1-06) (continued)

Buy American Act (41 U.S.C. 10).

Christian, G.L. and Associates v. United States, 312 F. 2d 418, 1963.

Cibinic and Nash, Formation of Government Contracts 688-95.

Competition in Contracting Act of 1984 (CICA) (Pub. L. 98-369).

Contract Disputes Act of 1978 (41 U.S.C. 601-613).

Davis-Bacon Act (40 U.S.C. 276a-7).

DC Instruction 91-05, "Duration of the Term of the Contract," DC, ADM, NRC.

Economy Act (31 U.S.C. 1535).

Energy Reorganization Act of 1974, as amended (42 U.S.C. 5801 et seq.).

Executive Order 12931, "Federal Procurement Reform," October 13, 1994.

—13101, "Greening the Government Through Recycling, Waste Prevention, and Acquisition," September 14, 1998.

—13123, "Greening the Government Through Efficient Energy Management," June 13, 1999.

Federal Acquisition Reform Act (FARA) of 1996 (Pub. L. 104-106).

Federal Acquisition Regulation (FAR) (48 CFR Part 1).

Federal Acquisition Streamlining Act (FASA) of 1994 (Pub. L. 103-355).

Federal Activities Inventory Reform Act (FAIR) of 1998 (Pub. L. 105-270).

Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253).

Federal Property Management Regulation (FPMR) (41 CFR 101-25.5).

Historically Underutilized Business Zone (HUBZone) Act of 1997.

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**References**

(11.1-06) (continued)

Information Technology Management Reform Act (ITMRA) of 1996 (Pub. L. 104-106).

Inspector General Act (5 U.S.C. App. 5).

Memorandum from James Taylor, Executive Director for Operations, to the Office Directors and Regional Administrators, "Improving Procurement Lead Time," August 17, 1993.

National Industrial Security Program Operating Manual, Document 5220.22m, Department of Defense, January 1995.

Nuclear Regulatory Commission Acquisition Regulation (NRCAR) (48 CFR Part 20).

"Nuclear Regulatory Commission's Procedures for the Use of the U.S. Government Purchase Card."

NRC Management Directives—

2.2, "Capital Planning and Investment Control."

2.4, "Acquisition of Information Technology Resources."

3.8, "Unclassified Contractor and Grantee Publications in the NUREG Series."

3.50, "Document Management."

4.2, "Administrative Control of Funds."

10.6, "Use of Consultants and Experts."

10.159, "Differing Professional Views or Opinions."

11.4, "NRC Small Business Program."

11.6, "Financial Assistance Program."

11.7, "NRC Procedures for Placement and Monitoring of Work With the U.S. Department of Energy (DOE)."

11.8, "NRC Procedures for Placement and Monitoring of Work With Other Federal Agencies Other Than DOE."

## References

(11.1-06) (continued)

12.1, "NRC Facility Security Program."

12.2, "NRC Classified Information Security Program."

12.3, "NRC Personnel Security Program."

13.1, "Property Management."

Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101).

Office of Federal Procurement Policy Act (OFPPA), as amended (Pub. L. 93-400), May 16, 1989.

Office of Federal Procurement Policy, Office of Management and Budget, Policy Letter 92-3, "Procurement Professionalism Program Policy-Training for Contracting Personnel," June 24, 1992.

—, Policy Letter 93-1, "Management Oversight of Service Contracting," November 19, 1993.

Office of Management and Budget, "A Guide to Best Practices for Past Performance," May 1995.

—, Circular A-76, "Performance of Commercial Activities," dated August 4, 1983, revised June 14, 1999, and its Supplemental Handbook dated April 1, 1996, revised June 14, 1999.

—, Circular A-94, "Discount Rates To Be Used in Evaluating Time-Distributed Costs and Benefits," October 29, 1992.

—, Circular A-120, "Guidelines for the Use of Advisory and Assistance Services," January 4, 1988.

Paperwork Reduction Act of 1980 (42 U.S.C. 3501 et seq.).

Privacy Act of 1974, as amended (5 U.S.C. 522a).

Procurement Integrity Act (41 U.S.C. 423).

Prompt Payment Act of 1982 (31 U.S.C. 3901 et seq.).

Prompt Payment Rules, September 29, 1999 (5 CFR Part 1315).

Rehabilitation Act (29 U.S.C. 7942), Section 508.

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**References**

(11.1-06) (continued)

Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches (18 U.S.C. 207).

Small Business Act of 1958, as amended (Pub. L. 95-507).

Small Business Innovation Development Act of 1982 (15 U.S.C. 638).

Standards of Conduct (5 CFR Part 2635 et seq.).

# ***NRC Acquisition of Supplies and Services***

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## ***Handbook 11.1***

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## Part 1 Introduction

This handbook provides procedures and guidance for the NRC's acquisition of supplies and services from commercial firms, nonprofit organizations, universities, States, and other Federal agencies. These supplies and services are acquired in a wide range of administrative, technical assistance, and research areas in support of NRC programs. NRC staff responsibilities are designated for each step of the procurement process, and flowcharts are provided as quick references to the process. Additional sources of information are given, whenever appropriate, to help the reader successfully complete the step.

The Federal Acquisition Regulation (FAR) is the primary source referenced. It is available through the Internet at <http://www.arnet.gov/far>. The NRC Acquisition Regulation (NRCAR) implements the FAR or supplements a parallel cite in the FAR. The NRCAR is available on the Division of Contracts (DC) Internet homepage. In the event that a topic discussed in this handbook appears to conflict with the FAR or the NRCAR, the requirements of the NRCAR and the FAR will prevail.

Understanding the procurement process and the need for teamwork between NRC staff from different offices will help ensure the timely, efficient, and successful procurement of goods and services. The following is a brief overview of agency actions that lead to the successful acquisition of a product or service and the orderly closeout of procurements.

In the budget planning phase of the contracting process, NRC offices outline objectives, develop program plans to meet these objectives, define the resources, and estimate the funds needed. After the Office of Management and Budget apportions those funds appropriated to the NRC and the Director of the Division of Budget and Analysis, Office of the Chief Financial Officer, allocates these funds to the individual allowance holders of each office through an advice of allowances and financial plan, the funds designated for procurement actions become available. Funds for the procurement, at least equal to any planned minimum to be stated in the contract, are normally certified on the request for procurement action (RFP).

Each NRC office contributes to the process of timely commitment and obligation of funds when a fiscal year advance procurement plan (APP) is developed and updated semiannually and sent to DC through the Director of ADM. These APPs provide an overall view of all procurement actions anticipated for the ensuing fiscal year, including intended actions for ongoing commercial contracts and Department of Energy laboratory agreements, and provides the submitting office a prospective of when funds need to be committed. The APP also helps DC ensure timely awards by enabling an efficient distribution of procurement actions to personnel (see Exhibit 1 of this handbook). DC and the requesting office should communicate to further develop the APP. A contract specialist (CS) will be assigned to the procurement at the time the office submits the annual APP, or when the procurement is first

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brought to the attention of the contracting officer. The CS will then contact the Project Officer (PO) to discuss the procurement.

In the preparation of the RFPA, the active involvement of a source evaluation panel for competitive procurements, or the PO for noncompetitive contracts, will ensure a complete and useful product that will include a complete statement of work, possible sources, evaluation factors, and approvals. This involvement will increase the efficiency of the acquisition process. When DC receives a RFPA for a specific procurement (see NRC Form 400, which may be accessed through the online forms icon), the appropriate PO and the responsible CS discuss and mutually agree on the acquisition strategy for a particular procurement request, if this step has not been taken during earlier planning meetings. A copy of the RFPA is also forwarded to the Office of Small Business and Civil Rights for recommendations of small business sources.

For recurring contract needs, offices should submit RFPA's to DC sufficiently in advance to allow for completion of the procurement process, adequate transitioning between the incumbent and the successful contractor, and award of a contract before the scheduled expiration of the current contract. Early award of a contract, before the required start date, lessens the likelihood of disruptions in service and the need for noncompetitive extensions. Attentive project management during the contract period also is important, including oversight efforts that can be mutually beneficial to the contractor and the agency by lessening the possibility of costly performance problems.

Good management practice requires ongoing and final evaluations of the contract effort, including an assessment of the contractor's performance for future reference and an evaluation of NRC's effort, through customer surveys and internal reviews, to determine if improvements can be made in other procurements.

Finally, a good overview of the NRC procurement program may be found on the Internet at <http://www.nrc.gov/NRC/contract.html>, "Contracting with NRC." A user may access information about NRC's approach to procurement, forecast of contract opportunities, the solicitation mailing list and other Federal documents, acquisition regulations, and acquisition materials.

DC also has developed an internal homepage where acquisition information, shopping and market research, newsletters, and professional connections may be accessed. Its many links provide easy access to useful information such as the *Code of Federal Regulations* and per diem rates. It serves as a one-stop site for useful procurement-related information. It is located through the NRC internal homepage site, Program Offices, ADM, Division of Contracts.

## **Part 2 Principles of Government Contracting**

### **2.1 Statutory and Regulatory References**

The Federal Acquisition Regulation (FAR), originally effective in 1983, is the primary regulation required for use by all Federal agencies in their acquisition of supplies and services with appropriated funds.

The Competition in Contracting Act of 1984 (CICA) extensively changed the Federal Property and Administrative Services Act of 1949, which is the procurement statute for NRC and most civilian Federal agencies. The changes affected all solicitations issued after March 31, 1985. The CICA requires the use of competitive procedures to obtain full and open competition and stringent restrictions limiting the use of noncompetitive procedures (other than full and open competition).

On May 16, 1989, amendments to the Office of Federal Procurement Policy Act placed new requirements and restrictions on Federal employees involved in the Federal commercial procurement process. Specifically, the law defines the procurement process. It also places prohibitions on Federal employees, private firms, and individuals against knowingly discussing, offering, or accepting anything of value, including job offers, while participating in the procurement process.

NRC promulgated the Nuclear Regulatory Commission Acquisition Regulation to implement and supplement the Governmentwide FAR. This rule became effective on January 22, 1993. Ten years after CICA brought significant changes to procurement, the Federal Acquisition Streamlining Act of 1994 significantly changed a number of laws affecting the procurement process. It establishes a new category of micropurchases, sets the framework for a new, simplified acquisition procedure, and promotes electronic commerce, establishes a procedure for multiple awards from one solicitation, and promotes contracting for commercial items. The Federal Acquisition Reform Act of 1996 affected the approach to areas of procurement, including competition, purchase of commercial items, and certifications. The Information Technology Management Reform Act of 1996 repealed the Brooks Act, assigned new responsibilities to the Director of the Office of Management and Budget, and initiated new approaches to purchasing information technology. In September 1997, FAR Part 15 was revised to implement streamlining initiatives covering acquisition techniques, source selection, and competitive range determinations.

## **2.2 Contract Law**

A contract is a relationship that exists when parties have reached a mutual agreement concerning the rights and duties of each toward the other. A carefully prepared contract can eliminate many problems that arise because of misunderstandings after the contract has been signed. Loosely written requirements, ambiguous clauses, unreasonable performance schedules, and inaccurate or faulty specifications or requirements can create serious problems for procurement and technical staff responsible for administering contracts and agency programs.

The courts have taken the approach that individuals who enter into valid contracts are duly bound to live up to their promises and are expected to make every effort to conform to their contractual obligations.

## Part 3 Procurement Roles and Responsibilities

### 3.1 Project Officer (PO)

The PO is an NRC employee, designated by the requesting office, who is familiar with the contracting process as a result of training and experience. In some offices, the position is designated as the "project manager." Although these terms are interchangeable, "project officer" is used in this handbook.

The PO has a variety of responsibilities during the procurement process and is authorized by the contracting officer (CO) to accomplish specified contract administration functions. The PO should complete the agency-sponsored acquisition training courses consistent with agency guidelines and become familiar with any agency or office guidance on acquisition procedures. As procurement officials, POs need to understand procurement procedures and take responsibility for performing the PO's duties. Completion of the Acquisition Training and Certification Program ensures that POs can meet their responsibilities.

The duties discussed below are normally performed by the PO. Some duties, such as those associated with procurement planning and the competitive process, including serving as the source evaluation panel chair, may sometimes be performed by other individuals designated within the requesting office. This is especially true if the PO is designated close to the date of contract award. However, once the PO has been designated at contract award, the PO's contract administration duties must be formally reassigned through a request for procurement action and subsequent contract modification.

#### 3.1.1 Planning and Initiation Phase

From the time an NRC office decides that a contract should be placed to meet NRC's needs until the request for procurement action (RFP) is sent to the Division of Contracts (DC), Office of Administration (ADM), it is critical to have adequate planning and coordination among staff. During this process, the PO, or the office representative, pending PO designation—

- (1) Develops the advance procurement plan (APP) for office director approval (see Exhibit 1) and obtains organizational approval, including budget approval for the project.
- (2) Conducts market research in conjunction with the contract specialist (CS) to determine whether agency needs can be met by items or services available in the commercial marketplace (see Section 6.5.5 of this handbook).

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- (3) Prepares a statement of work (SOW) for new projects and any necessary modifications to existing projects that change the scope of work and obtains organizational approval, including budget approvals for the project. Also prepares any justification or background information necessary to support the requirement.
- (4) Prepares documentation for information technology acquisitions in accordance with regulations, office procedures, and Management Directive (MD) 2.4, "Acquisition of Information Technology Resources."
- (5) Prepares an independent Government cost estimate (NRC Form 554, which may be accessed through the online forms icon) for any project, individual task order, or modification estimated to be in excess of \$100,000. For any project, individual task order, or modification estimated to be \$100,000 or less, the PO develops a cost estimate and retains it in the technical files.
- (6) Develops a Government-furnished equipment (GFE) list with the NRC Property Management Officer, Administrative Services Center (ASC), ADM.
- (7) Prepares NRC Form 187, "Security/Classification Requirements," for the signature of the office director or designee for any work requiring a contractor's access to classified or sensitive unclassified information or automatic data processing sensitive systems or information. Refer to appropriate sections of MD 12.3, "NRC Personnel Security Program," for further information (e.g., Part I(C),(D), and (E) of Handbook 12.3; also see Section 5.6 of this handbook).
- (8) Obtains required approvals if using classified material for a project. In this regard, the PO refers to the National Industrial Security Program Operating Manual, which contains the U.S. Government policy on the protection of classified information at industrial facilities, including contractors that use, process, or store classified information in the performance of a contract with the Government.
- (9) Develops the RFPA (NRC Form 400, which may be accessed through the online forms icon), including any supporting documentation, for submission to DC. For new competitive procurements, the PO will include source evaluation criteria and source evaluation panel (SEP) nominations.
- (10) Assists the CS in the development of a milestone schedule by providing input to establish completion dates for each aspect of the procurement process.
- (11) Evaluates responses to a sources sought notice, when used, and determines the qualification of the organization(s) to perform the work (see Section 6.5.4 of this handbook for more information on use of a sources sought notice).
- (12) Reviews, as the SEP chair or member, each proposal against the evaluation criteria addressed in the solicitation; determines strengths and weaknesses, as well as identifies

any potential for organizational conflict of interest, after consulting with the Office of the General Counsel (OGC) and DC, as appropriate; documents evaluation results on the individual evaluation worksheets and prepares a competitive range report (see Exhibit 2 of this handbook).

- (13) Develops, for negotiation purposes and on the basis of the proposal evaluation, technical questions or requests for clarification that address specific proposal weaknesses.
- (14) Develops cost questions that address concerns regarding the proposed level of effort, skill mix, travel, and equipment needed for the project.
- (15) Prepares a final evaluation report, which includes the technical evaluation and documentation (see Exhibit 3 of this handbook), and recommends a contractor for award.

### **3.1.2 Performance Phase**

During the performance phase, the PO functions as the primary point of contact with the contractor on all technical project matters and provides technical direction to the contractor, monitors costs, and inspects and accepts deliverables. Specifically, the PO—

- (1) Ensures the contractor obtains badges for onsite personnel (see Section 5.7 of the handbook).
- (2) Reviews all contractor costs reported on the voucher against performance and the costs reported in the monthly technical progress reports (often called monthly business letter reports) and monthly financial status reports, including spending plans. The PO analyzes and compares reported costs and spending plan updates against technical progress to—
  - ensure that expenditures are reasonable and within scope for the level of technical effort expended, including any travel reported during the period
  - evaluate the impact of performance problems on cost and schedule, and recommend additional funding or a reduction in the effort to stay within costs
  - take aggressive action to avoid schedule slippages, overruns, and delays
  - advise the CO of appropriate action in case of schedule slippage or funding problems, including suspension or disallowance of payment for supplies and services required under the contract or a stop-work order or termination of a project
  - monitor and audit the use of GFE
- (3) Ensures that the contractor complies with the SOW. That is, the PO confirms that delivery schedules are met, ensures that problems are addressed and solved

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expeditiously and that the contractor's expenditures remain within the estimated cost, and recommends modification(s) to the contract, as necessary.

- (4) Provides technical direction and guidance to the contractor at the time of award in accordance with the delegation memorandum from the CO and Nuclear Regulatory Commission Acquisition Regulation (NRCAR) 2052.215-71. Issues direction in writing or confirms verbal direction and guidance to the contractor in writing within 10 days after verbal issuance and sends a copy of the confirmation to the CO for review and retention in the official contract file retained by DC. A copy of the approved NRC Form 445, "Request for Approval of Official Foreign Travel," must be furnished to the CO. Technical direction must be within the general SOW stated in the contract. Technical direction includes—
- direction to the contractor that shifts work emphasis between areas of work or tasks, authorizes travel unanticipated in the schedule, fills in details, or utilizes alternative services to accomplish the contractual SOW
  - advice and guidance to the contractor in the preparation of drawings, specifications, or technical portions of the work description
  - review, and where required by the contract, approval of technical reports, drawings, specifications, and technical information delivered by the contractor to the NRC

The PO does not have the authority to and may not issue any technical direction that—

- constitutes an assignment of work outside the general scope of the contract or a change as defined in the "Changes" clause of the contract
  - may create or authorize an obligation in excess of funds available
  - in any way causes an increase or a decrease in the total estimated contract cost, fixed fee, if any, or the time required for contract performance
  - changes any of the expressed terms, conditions, or specifications of the contract
  - terminates the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatsoever
- (5) Ensures that the CS is apprised of any substantive day-to-day discussions and that technical meetings with the contractor are documented and a copy of the documentation is provided to the CS for review and placement in the DC official contract file.
- (6) Monitors performance and costs in accordance with the contractor spending plan and notifies the CO if there is a deviation in spending.
- (7) Provides interim evaluations of contractor performance during the contract (see Section 11.2 of this handbook).



- (8) Immediately notifies the Division of Facilities and Security (DFS), ADM, via e-mail whenever a contractor employee's access to NRC facilities, to the NRC local area network (LAN), and/or to information systems is no longer required and should be terminated (see Sections 11.2.4 and 11.15 of this handbook).

### **3.1.3 Work Completion and Closeout Phase**

During the closeout of the contract, the PO—

- (1) Approves final acceptance of the contractor's deliverables/services for technical sufficiency.
- (2) Completes a final written evaluation of the contractor's performance on the project.
- (3) Ensures that interim and final technical reports and any other appropriate deliverables are submitted as required by the contract and follows up to determine that the documents have been entered (see MD 3.50, "Document Management").
- (4) Responds to DC closeout requests regarding property utilization and other contractual matters under an assigned project.
- (5) Advises DFS in writing when all work and services have been completed so that the contractor employee's access to NRC facilities, to the LAN, and/or to information systems may be terminated (see Section 11.15 of this handbook).

## **3.2 Contracting Officer (CO)**

The CO is an exclusive agent of NRC who enters into, administers, or terminates contracts, ensuring that all applicable requirements of law, Executive orders, regulations, and other procedures are met before the execution of any contract or any modification of an existing contract. The Director of DC appoints COs, and these COs may bind the Government only to the extent and term of their delegated authority. The CO—

- (1) Ensures performance of all necessary actions for contracting effectively, complying with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.
- (2) Requests and considers the advice of specialists in audit, law, engineering, science, administration, transportation, and other fields, as appropriate.
- (3) Reviews and analyzes APP information and RFPA's and provides feedback to offices on appropriate procurement strategies and streamlining initiatives to ensure the acquisition is achieved efficiently.

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- (4) Reviews and concurs on each justification for other than full and open competition or simplified acquisition sole-source determinations.
- (5) Reviews list of individuals nominated by the designating official (DO) to serve as a technical evaluator for concerns such as obvious conflict of interest.
- (6) Determines the competitive range after consultation with the DO and a review of the SEP's competitive range report.
- (7) Selects the successful offeror after reviewing the SEP's written analysis contained in the final evaluation report (see Exhibit 3 of this handbook).
- (8) When a claim by a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, prepares a statement of the CO's final decision.
- (9) Approves ratification actions of \$2500 or less.
- (10) Ensures an orderly closeout of the contract.
- (11) Makes determinations as to whether a termination of a contract for default or convenience is in the Government's best interest.
- (12) Is responsible for disposition and referral of suspected fraud and fraud allegations to the Office of the Inspector General (OIG).
- (13) Approves sole-source procurements up to \$100,000.
- (14) Performs other duties and responsibilities as may be prescribed by the FAR.

### **3.3 Contract Specialist (CS)**

The CS is an administrative staff member of the contract team responsible for the procedural actions in the procurement process.

#### **3.3.1 Planning and Initiation Phase**

The CS will coordinate with the requesting office staff to ensure a complete development of the RFP. Specifically, the CS—

- (1) Assists the PO with the office acquisition plan.
- (2) Conducts market research in conjunction with the PO to determine if agency needs can be met by items or services available in the commercial market place (see Section 6.5.5 of this handbook).

- (3) With input from the SEP and the PO, develops a realistic milestone schedule to establish completion dates for each aspect of the procurement process.
- (4) Prepares the solicitation package.
- (5) Acts as the SEP secretary (see Section 5.10.6 of this handbook).
- (6) Conducts cost and price analyses of offerors' cost proposals with input from the PO and SEP.
- (7) Conducts negotiations with potential offerors and prepares correspondence and the backup documentation for contract award, including the summary of negotiations for the CO's signature.
- (8) Ensures all requirements of the Federal Acquisition Regulation (FAR) (e.g., Defense Contract Audit Agency, Department of Health and Human Services audits, equal employment opportunity review, Small Business Administration approval, and NRC Acquisition Regulation requirements such as project approvals and coordinations) have been met. Forwards a copy of all contract audit requests and contract audit reports to the OIG.
- (9) Prepares and provides the OGC with documentation in support of the agency's position when a protest is lodged against an agency procurement action (e.g., specification, solicitation, or evaluation protest issue).
- (10) Prepares contract award documents for the CO's signature.

### **3.3.2 Performance Phase**

During this phase, the CS—

- (1) Prepares and conducts post-award contractor orientation briefings.
- (2) Prepares both unilateral (signed by CO only) and bilateral (signed by CO and contractor) modifications initiated by the requesting office for the CO's signature (see Section 11.6 of this handbook).
- (3) Obtains all necessary administrative approvals and clearances (e.g., justification for other than full and open competition [see Exhibit 4 of this handbook]) related to the performance of the contract administration functions identified herein.
- (4) Prepares all required findings and determinations for the CO's signature, as well as findings of fact and decisions under the disputes clause.

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- (5) Negotiates and recommends awards of task orders within the contract ceiling.
- (6) Reviews all contractor requests for payments and approves or suspends costs, or recommends disallowance to the CO.
- (7) Reviews annual cost audits by contractors having cost reimbursement contracts in excess of \$500,000, as well as annual indirect rate audits performed on cost reimbursement contracts. Provides a copy of all contract audit requests and contract audit reports to the OIG.
- (8) Monitors the monthly technical progress (sometimes known as the monthly business letter report) and financial reports, including spending plan update information and contractor's vouchers, and advises the CO of anticipated overruns and underruns of the estimated cost on cost-type contracts.
- (9) Monitors the PO's technical direction to ensure consistency with delegated authority.
- (10) Recommends to the CO for approval or disapproval contract actions such as those concerning overtime, travel, and equipment.
- (11) Coordinates the procedures for control of Government property provided to contractors with the NRC Property Management Officer, ASC, ADM, recommending action to be taken in case of loss, damage, or destruction of Government property, as well as delay in delivery or completion of performance under contracts.
- (12) Evaluates and advises the CO of the contractor's progress toward delivery of required contract items through a review of contractor progress reports, subcontracting plan reports (SF 294, "Subcontracting Report for Individual Contracts," and SF 295, "Summary Subcontract Report"), correspondence, contact with the PO, conferences, visits to the contractor's site, and so forth.
- (13) Ensures timely submission of reports required by clauses or provisions of the contract other than the SOW.
- (14) Monitors subcontract plans to ensure the contractor's compliance.
- (15) Monitors the contractor's adherence to NRC's conflict-of-interest requirements and security regulations.
- (16) Recommends to the CO agency positions in response to contractor claims.
- (17) Advises the CO of situations that may indicate fraud.

- (18) Performs all required actions to deobligate excess funds after expiration of individual task orders.

### **3.3.3 Work Completion and Closeout Phase**

The CS performs all required actions to administratively close out contracts, including reconciling costs, performing property utilization screening, and authorizing the deobligation of excess funds. Within 90 days of contract expiration, the CS shall deobligate any excess funds remaining in the contract and subsequently request the closeout and performance documentation required by DC guidelines.

## **3.4 Procurement Specialist**

A procurement specialist is an administrative staff member within DC or a regional official\* who performs all required actions to obtain a wide variety of supplies, services, materials, and equipment through the use of simplified acquisitions not exceeding \$100,000, Federal Supply Schedules, and interagency agreements. Responsibilities for this person include but are not limited to—

- (1) Conducting market research to determine whether agency needs can be met by items or services available in the commercial marketplace (see Section 6.5.5 of this handbook).
- (2) Preparing award and modification documents for the signature of the CO.
- (3) Modifying simplified acquisitions and, when requested by the PO, assisting with performance issues and preparing necessary procurement actions to ensure that acquisitions support the agency needs.
- (4) Coordinating the procedures for control of Government property with the NRC Property Management Officer, ASC, ADM, and recommending action to be taken in case of loss, damage, or destruction of Government property, as well as delay in delivery or completion of performance.
- (5) Advising the CO of situations that indicate fraud.
- (6) Preparing terminations for convenience or default for review by the CO.
- (7) Performing all required actions to administratively close out purchase orders and other awards and orders.

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\*A regional official who serves as procurement specialist acts within the contracting officer authority as delegated by the Director of DC.

### **3.5 Designating Official (DO)**

The DO is an NRC official who approves requests for procurement action within his or her area of responsibility. The DO executes the technical certification required to justify using other than full and open competitive procedures for proposed noncompetitive contract actions and signs requisitions to indicate concurrence on a sole-source purchase. The DO appoints representatives to serve on an SEP and monitors the SEP's progress in developing the solicitation package, which is approved jointly by the SEP and the CO. The DO (or his or her designee) reviews the technical evaluation of offers received in response to the solicitation and approves and submits to the CO reports that include a recommendation for the competitive range and award.

### **3.6 Competition Advocate**

The Competition Advocate challenges barriers to and promotes full and open competition of the agency's procurements and promotes the acquisition of commercial items. The Competition Advocate's approval is required for the Justification for Other Than Full and Open Competition for actions over \$100,000, all exceptions to FedBizOpps notices made on the basis of unusual and compelling urgency, and contracts expected to exceed 5 years. The Competition Advocate is appointed by the Executive Director for Operations (EDO). As of the date of issuance of this handbook, the Competition Advocate is the Deputy Director of ADM.

### **3.7 Advocate for Procurement Reform (APR)**

The APR promotes innovative processes and procurement reforms to reduce procurement lead times for acquisitions and to encourage that milestones are completed in a timely manner. The APR is available to program offices for whatever assistance is needed in breaking down barriers to the efficient completion of procurement requirements. The APR is a senior staff member of DC appointed by the Director of ADM.

### **3.8 Task and Delivery Order Ombudsman**

FAR 16.505(b)(4) implements 10 U.S.C. Section 2304c (d) and 41 U.S.C. Section 253j (d), which require agencies to establish an ombudsman to hear complaints pertaining to issuance of task and delivery orders on multiple award delivery order contracts and task order contracts. The ombudsman ensures that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders, when required. The ombudsman investigates the matter and proposes or implements a solution if the complaint is warranted or explains the matter if the complaint has no merit. The Task and Delivery Order Ombudsman at the NRC is the Director of DC.

## Part 4 Acquisition Planning

Early planning of the office's procurement needs helps ensure timely awards. Central to sound acquisition planning is the completion of an advance procurement plan (APP) for anticipated procurement actions.

### 4.1 Purpose of Advance Procurement Plans

The offices are required to submit timely APPs to allow for an efficient procurement planning process and efficient allocation and obligation of funds throughout the fiscal year. The format of the APP includes a description of the work, approximate dollar value, type of procurement, and target date for award (see Exhibit 1 of this handbook). The Division of Contracts (DC), Office of Administration, analyzes the APP information so that it may efficiently distribute acquisitions to procurement personnel, resulting in a more improved work flow and a decrease in the time necessary to process contract requirements. Timely APP submission also enhances financial management planning.

Through the office directors, APPs are submitted annually to DC and updated 6 months after each annual submission. The APP identifies—

- projects that must be accomplished through commercial contracts, grants, cooperative agreements, and interagency agreements
- task orders and planned modifications to commercial contracts, grants, cooperative agreements, and interagency agreements
- Department of Energy projects

### 4.2 Ensure a Valid Need for Contracting When Developing the APP

During development of the APP, the office should consider if there is a valid need for contracting by considering the issues discussed in this section.

#### 4.2.1 Duplication

The director of the requesting office is responsible for ensuring that a procurement does not unnecessarily duplicate other NRC work. A review of APPs among the technical staff and with the procurement staff can often avoid duplicate efforts.

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#### **4.2.2 Personal Services**

Services that are designated “nonpersonal” may be acquired by procurement. However, services rendered in the context of an employer-employee relationship, designated “personal services,” will be obtained through the personnel appointment process, not by procurement.

The contracting officer (CO) will make a determination that services to be procured are not personal, using the information supplied in response to the questions on the request for procurement action (RFPA, NRC Form 400, which can be accessed through the online forms icon). The CO, through the contract specialist (CS), also may ask a source evaluation panel (SEP), project officer (PO), or legal counsel for their recommendations. In addition, certain criteria for distinguishing personal from nonpersonal services appear in Federal Acquisition Regulation (FAR) 37.104 and in Exhibit 5 of this handbook.

#### **4.2.3 Inherently Governmental Functions**

The procurement of services also is restricted to those services that are not inherently governmental functions. The requesting office needs to carefully consider this restriction to avoid delay in meeting a need that must be met by Government employees. The Office of Federal Procurement Policy, in Policy Letter 92-1, defines an “inherently governmental function” as one that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the application of value judgments in making decisions for the Government. The Federal Activities Inventory Reform Act of 1998 (Pub. L. 105-270) provides a process for identifying the functions of the Federal Government that are not inherently governmental functions.

There are certain services and actions that, while generally not considered to be inherently governmental functions, must be carefully considered. If these types of services are to be procured, the requesting office should ensure that appropriate controls are placed in the statement of work so that the contractor does not perform, even inadvertently, inherently governmental functions. (See Exhibit 5 of this handbook for a list of inherently governmental functions and those that must be carefully considered.)

#### **4.2.4 Performance of Commercial Activities (OMB Circular A-76)**

The Office of Management and Budget (OMB) Circular A-76, “Performance of Commercial Activities,” dated August 4, 1983 (revised June 14, 1999), and its supplemental handbook dated April 1, 1996 (revised June 14, 1999), establish Federal policy regarding the performance of activities by contractors versus Government employees. These documents set forth the procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel. OMB Circular A-76 requires, except for national security activities, mission-critical core activities, and temporary emergency requirements, a cost analysis and review of commercial activities proposed to be contracted (see Exhibit 6 of this handbook for generic and streamlined sample worksheets), unless such activities are exempt from the purview of the



circular. Inherently governmental functions cannot be contracted. (See Section 4.2.3 of this part.) The managerial cost accounting and performance standards established in support of the Chief Financial Officers Act of 1990, the Government Performance and Results Act, and the Federal accounting standards are the bases of the cost and performance information developed for cost comparisons required by the circular and handbook.

The Director of DC is the official responsible for implementation of OMB Circular A-76 and its handbook. The Office of Human Resources will verify personnel information provided for Circular A-76 studies.

Commercial activities involving 10 or fewer full-time-equivalent employees (FTEs) may be designated as direct conversions to be contracted out without conducting cost comparisons if fair and reasonable prices can be obtained from qualified commercial sources.

Whenever a procurement is being planned to perform the work of more than 10 NRC FTEs, the requesting office should contact the CO as soon as possible to determine if the proposed procurement should be subject to A-76 review. For any commercial activity where NRC determines that a streamlined cost comparison study is warranted, the study will indicate whether it is more cost-effective to retain the activity in-house. The requesting office completes the in-house cost estimate, through a streamlined cost comparison study team approved by the Competition Advocate (Deputy Director of ADM). The study team must include a representative from the Office of the Chief Financial Officer. The streamlined cost comparison form is sealed. The designated DC CO completes a market survey of four existing contacts for the same activity. The survey and in-house cost estimate are reviewed and certified for adequacy and accuracy by an independent review officer designated by the Director of DC. Subsequently, the CO performs a cost analysis to compare the in-house cost estimate for performing the commercial activity versus the cost for performing the activity through out-sourcing. After the A-76 review is completed, the Director of DC will make the final decision, on the basis of the cost comparison process, to contract out or to continue performing the activity in-house. The Director of DC will also ensure that all affected parties receive notice of the results of the cost study. Final decisions may be appealed to the Senior Procurement Executive.

#### **4.2.5 Equipment Lease or Purchase**

For procurement of equipment normally available through both lease and purchase acquisitions, the CO will determine, on a case-by-case basis, whether acquisition by lease, purchase, or lease-to-purchase is more advantageous to the agency. The determination must be supported by comparisons of costs of the various acquisition alternatives in accordance with the guidance contained in FAR 7.4.

When requested by an agency, the General Services Administration (GSA) will assist in lease or purchase decisions by providing such information as—

- pending price adjustments to Federal Supply Schedule contracts

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- recent or imminent technological developments
- new techniques
- industry or market trends

Agencies may request information from the following GSA offices:

- Center for Strategic Information Technology Analysis (also known as MKS), Washington, DC 20405, for information on acquisition of information technology
- Office of Commodity Management (also known as FC), Washington, DC 20406, for information on other types of equipment

#### **4.2.6 Acquisition of Commercial Items or Services**

To encourage the acquisition of commercial items and components, the FAR requires that agencies conduct market research before issuance of a solicitation. The purpose of the market research is to determine whether commercial items or nondevelopmental items or commercial services are available that could meet the agency's requirements (see FAR 2.101 and 10).

Commercial services include those offered and sold competitively in substantial quantities in the commercial marketplace on the basis of established catalog or market prices for specific tasks performed under standard commercial terms and conditions. Commercial services do not include services that are sold on the basis of hourly rates without an established catalog or market price for a specific service performed.

Requesting offices are encouraged to acquire commercial items, services, or nondevelopmental items when possible. Prime contractors and subcontractors are required to incorporate, to the maximum extent practicable, commercial items services, or nondevelopmental items as components of items supplied to the agency.

Special simplified procedures can be used for the purchase of commercial property and services in amounts greater than the simplified acquisition threshold but not greater than \$5 million (see Section 10.4.6 of this handbook).

Requesting offices should contact a DC CO as soon as possible after a need for a procurement is identified. An approach for conducting market research will be developed with the CS. Techniques for conducting market research may include any or all of the following:

- contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements
- reviewing the results of recent market research undertaken to meet similar or identical requirements

- publishing formal requests for information in appropriate technical or scientific journals or business publications
- querying Government databases that provide information relevant to agency acquisitions
- participating in interactive, online communication among industry, acquisition personnel, and customers
- obtaining source lists of similar items from other contracting activities or agencies, trade associations, or other sources
- reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available online
- conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process

If market research establishes that the agency's need may be met by a commercial item or service, the CO shall solicit and award any resultant contract in accordance with the policies and procedures in FAR Part 12 in conjunction with the policies and procedures for solicitation, evaluation, and award prescribed in FAR Part 13, Simplified Acquisition Procedures, FAR Part 14, Sealed Bid, or FAR Part 15, Contracting by Negotiation, as appropriate for the particular acquisition.

Additional information regarding commercial procurements may be found in Section 10.4.6 of this handbook.

### **4.3 APP Format**

Although NRC offices may use their own formats as long as all the required information is provided, Exhibit 1 provides two recommended formats for the annual submission of an APP. DC developed the first format (Forms A and B). The completed APP will identify the project, the estimated cost, the proposed procurement method, the name of the PO, the estimated date for submission of a request for procurement action to DC, and the requested date for implementation of action.

Offices must take into consideration the possible procurement administrative lead time (PALT) when submitting RFPA's to DC. While the average processing times vary for different types of procurements depending on complexity, extent of market research conducted, quality and completeness of the procurement request, and other factors, the following timeframes may be used for planning purposes:

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<b>Estimated Dollar Value</b>	<b>PALT</b>
\$2,500 or less (Purchase Card)	1-3 days
\$25,000 or less (open market)	2-4 weeks
Over \$25,000 through \$100,000 (open market)	4-6 weeks
Governmentwide area contracts	1-2 weeks
GSA schedule (without SOW)	1-2 weeks
GSA schedule (with SOW)	2-6 weeks
Over \$100,000	
— Competitive	2-5 months
— Noncompetitive 8(a) set-aside	1-2 months
— Other noncompetitive	3 months
— Interagency agreements	4-6 weeks
Task Orders	3-6 weeks
Contract/task order modifications	3-6 weeks

The requesting office should contact a DC CO to obtain additional guidance regarding lead times required for an individual procurement because the time necessary for the award of a contract varies. Factors that may influence the schedule include—

- dollar value of the action
- extent of market research conducted
- complexity of the procurement
- adequacy of the request for procurement action package (e.g., all required documents attached and appropriate approvals obtained)
- existing DC workload
- legal review
- urgency of the requirement
- receipt of audit
- requirement for approvals (e.g., Chairman, Small Business Administration, equal employment opportunity)
- availability of an SEP

Offices are encouraged to submit requirements as soon as a need and necessary funding are identified. Urgent requirements should be discussed with the DC CO so that individual needs may be taken into consideration in developing individual schedules.

DC will send a copy of the APP to the Office of Small Business and Civil Rights (SBCR) to be analyzed for potential small business procurement opportunities. SBCR is available to assist in identifying potential small women-owned and minority contractors to requesting offices during the APP process. For additional information on the small business program, see Management Directive 11.4.

#### **4.4 Initial Contact With the Division of Contracts**

As soon as a procurement need is identified, the requesting office is encouraged to solicit the advice and assistance of a CO. The CO will assign a CS who will help in forming an effective team consisting of procurement, legal, and technical staff to plan and carry out the procurement.

The CS can help to ensure that the following key factors pertinent to the proposed acquisition are considered early in the planning process:

- (1) acquisition strategy (e.g., 8(a) set-aside, HUBZone\* set-aside, small business set-aside (see Sections 5.2.2 and 5.3), full and open competition, sole source, interagency agreements)
- (2) measurable performance specifications, clear description of deliverables, quality assurance surveillance plans, and incentives, whenever applicable
- (3) schedules for the performance of work
- (4) an in-house independent Government cost estimate (NRC Form 554, which may be accessed through the online forms icon)
- (5) availability of adequate funds
- (6) procurement approvals and clearances (discussed in Part 5 of this handbook)
- (7) security requirements (discussed in Section 5.6 of this handbook)
- (8) discussion of potential conflict-of-interest concerns
- (9) market research to determine whether agency needs can be met by items or service available in the commercial marketplace (discussed in Section 6.5.5 of this handbook)

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\*The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631 note) created the HUBZone Program (sometimes referred to as the "HUBZone Empowerment Contracting Program").

## Part 5 Considerations and Approvals Before Submitting a Request for Procurement Action (RFPA)

### 5.1 Interaction With the Division of Contracts

After submitting the advance procurement plan (APP) to the Division of Contracts (DC), Office of Administration (ADM), the requesting office prepares the RFPA (NRC Form 400, which may be accessed through the online forms icon) for all procurements valued at \$25,000 or more. The RFPA is forwarded to DC, at or before the time set forth in the APP. Before initiating the RFPA, the requesting office is encouraged to contact the contracting officer (CO) who will assign a contract specialist (CS) to assist in defining the requirements in terms of work to be performed and estimated cost.

At this point the CS, upon request, can meet with the requesting office to discuss—

- statement of work (SOW)
- documentation and approvals that are required with the RFPA
- acquisition strategy (e.g., determining procurement method, such as full and open competition, sole source, 8(a) set-aside, HUBZone\* set-aside, small business set-aside [see Sections 5.2.2 and 5.3], interagency agreements)
- contract type
- proposal information and evaluation criteria
- suggestions to streamline the procurement
- procurement milestone schedule, including a schedule for interviewing 8(a) firms or HUBZone firms, if appropriate
- conflict-of-interest concerns

Before initiating the RFPA, the requesting office should consider the use of in-house resources or use of another agency's resources (e.g., the agency's personnel facilities, equipment, or the

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\*The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631 note) created the HUBZone Program (sometimes referred to as the "HUBZone Empowerment Contracting Program").

agency's contracts). Once it is decided that a RFPA is needed, the considerations discussed below need to be assessed (see Flowchart 5-1 at the end of this part for an overview of these considerations).

## **5.2 Competition Requirements**

In planning for a procurement, the extent of competition must be evaluated by the requesting office. If there are two or more known sources available to satisfy a requirement, a full and open competition method normally must be used.

### **5.2.1 Limited Competition or Sole-Source Acquisitions**

With certain limited exceptions, the Competition in Contracting Act requires that COs promote and provide for full and open competition in soliciting offers and awarding Government contracts. Except for procurements using the simplified acquisition procedures, all negotiated acquisitions must be conducted through competitive full and open procedures, as required by Federal Acquisition Regulation (FAR) 6.101, unless compelling and convincing reasons and/or circumstances determine other than full and open competition to be in the best interest of the Government (see Section 9.2 of this handbook). The Government benefits from competitive prices and from current contractors who exert their best effort to deliver high-quality products and services. When noncompetitive acquisitions are determined justifiable, all possible actions must be taken to avoid the need for subsequent or continuing noncompetitive acquisitions, except for 8(a), HUBZone, and small business set-aside contracts (see Section 5.2.2 and 5.2.3 of this part), which are encouraged by the FAR.

Procurements using other than full and open competition include those that limit competition or those that are sole-source acquisitions (see Flowchart 5-2 at the end of this part for an overview of considerations with regard to other than full and open competition).

#### **5.2.1.1 Circumstances Permitting Other Than Full and Open Competition**

Regulations (see FAR 6.302) permit other than full and open competition (limited competition or sole-source acquisitions) under the following circumstances:

- (1) Property or services are available from only one responsible source and no other type of property or services will satisfy the agency's needs. These circumstances include follow-on contracts for production of major systems or specialized equipment when competition would result in duplication of cost or unacceptable delays in fulfilling the agency's needs and unsolicited research proposals demonstrating unique and innovative concepts that do not resemble a pending competitive procurement. This type of procurement is referred to as a "sole-source procurement."
- (2) The requirement is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources. The agency must still request offers from as many potential sources as practicable under the circumstances.

- (3) The agency must award to a particular source in order to maintain a facility or supplier in case of a national emergency or to establish or maintain an essential engineering, research, or development capability provided by an educational or other nonprofit institution or a federally funded research and development center. This is also a type of sole-source procurement.
- (4) Procurement is required by the terms of an international agreement or treaty or by written direction of a foreign government that is reimbursing the agency for the cost of the procurement.
- (5) A statute expressly authorizes or requires procurement through another agency or from a specified source or the agency needs a brand-name commercial item for authorized resale.
- (6) Disclosure of the agency's needs would compromise national security unless the number of sources is limited. The agency must request offers from as many potential sources as is practicable under the circumstances.
- (7) The Executive Director for Operations (EDO) determines it is not in the public interest to use competitive procedures and gives Congress written notice 30 days before award. This authority cannot be delegated.

#### **5.2.1.2 Approvals of Other Than Full and Open Competition**

Except under extreme circumstances (see next paragraph), a procurement for other than full and open competition may not proceed until the rationale for doing so provided in a written justification for other than full and open competition (JOFOC). The designating official (DO) must provide the necessary data in a draft JOFOC submitted with the RFPA package that supports the determination. The CS works with the Project Officer (PO) to finalize the JOFOC for review and approval by the authorities listed in this section once the PO and the CO certify it as accurate and complete. The CO will submit the final JOFOC to the appropriate approving official(s). (See Exhibit 4 for various examples of a JOFOC.) Guidance regarding the format and content of a JOFOC may be found in FAR Part 6.303.

Under urgent circumstances, such as when it is necessary to obtain emergency supplies or services, the CO may determine that a written justification for procurements under the second exception, unusual and compelling urgency, may be executed after award. However, a documented verbal approval or an electronic mail approval must be obtained from the Competition Advocate (Deputy Director of ADM) before proceeding with a procurement that is greater than \$100,000.

The Competition Advocate challenges barriers to and promotes full and open competition of the agency's procurements and promotes the acquisition of commercial items.

All exceptions to the requirement to place a notice on the *Federal Business Opportunities* Web site (FedBizOpps), made on the basis of unusual and compelling urgency, shall be approved by the Competition Advocate.



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For procurements of \$2500 up to \$100,000 when only one source or item is capable of fulfilling the requirement and simplified acquisition procedures are used, a formal JOFOC is not required. A determination from the requesting office in the form of a brief note must be developed and either included on or attached to the requisition (NRC Form 30). The determination must show or state that other sources or items were considered and provide the reason why only one source or item is available or able to meet the requirement. By signing the requisition, the DO concurs on the purchase. The CO signs the determination, indicating approval of the purchase.

The approval section of the JOFOC, for procurements over \$100,000 and up to \$10 million, shall cite Handbook 11.1, Part 5, Section 5.2.1.2, in addition to FAR 6.304 (a)(1), (2) or (3), to account for the different approving levels established by these agency procedures. The JOFOC must be approved as follows:

<b>Value Certified</b>	<b>Agency Approving Authority</b>
Over \$100,000 to \$10 million	Designating official Contracting officer Head of Contracting Activity (Director of DC) Competition Advocate (Deputy Director of ADM)
Over \$10 million	Designating official Contracting officer Head of Contracting Activity (Director of DC) Competition Advocate (Deputy Director of ADM) Senior Procurement Executive (Deputy Executive Director for Management Services)

Once the JOFOC has been approved, the procurement for other than full and open competition proceeds as a normal negotiated acquisition (see Section 9.1 of this handbook).

**5.2.1.3 Procedures for Limited Competition or Sole-Source Acquisitions**

Offices should discuss procurements using other than full and open competition with DC staff as early as possible during the acquisition planning stage, preferably before submitting the RFPA (NRC Form 400) or requisition (NRC Form 30). These discussions may clarify a need for other than full and open competition, provide offices with the names of other sources, allow proper scheduling of the procurement, and avoid delays that might otherwise occur if the CO determines that a noncompetitive acquisition is not justified.

When other than full and open competition is contemplated for simplified acquisitions, procedures stated in Section 5.2.1.2 should be followed. For acquisitions greater than \$100,000, a JOFOC should be prepared in draft and submitted with the RFPA. (See Exhibit 4 for various examples of a JOFOC.) Guidance regarding the format and content of a JOFOC

■ may be found in FAR 6.303. When the CO reviews a JOFOC, the CO will make one of the following decisions based on the JOFOC and clarifications from the requesting office.

**(1) Other Than Full and Open Competition Is Not Justified; Proceed With Full and Open Competition**

If the CO determines that a sole-source procurement is not justified, the CO will discuss the decision with the requesting office. If the decision remains firm, the RFPA will be returned to the requesting office for development of a competitive procurement.

**(2) CO Agreement to Other Than Full and Open Competition**

If the CO agrees that the proposed procurement should be awarded without full and open competition after reviewing a draft JOFOC, the CO will immediately place a notice of intent to contract on a sole-source basis or a limited-source basis in FedBizOpps (also see Section 9.2.1 of this handbook). FAR 5.203 requires that a notice of the contract action be published in FedBizOpps at least 15 days before issuance of a solicitation and that the agency allow at least 30 days from the issuance date of the solicitation to receive proposals/bids. Therefore, award may not occur earlier than 45 days after publication of the requirement in FedBizOpps.

The FedBizOpps notice of intent to negotiate with one source should—

- provide detailed information on the scope of work or specifications so that interested parties may respond
- invite interested sources to identify their ability to carry out the requirements
- include a statement explaining why NRC believes only one source is available, if appropriate

The CO will respond to questions from potential offerors concerning the requirement only during the 45-day response time. Responses to the FedBizOpps notice should be reviewed upon receipt, when possible, rather than at the end of the 45-day period. The CO may use personnel from the requesting office to aid the CO in evaluating the responses. This topic is further discussed in Section 9.2.1 of this handbook.

**(3) Response to FedBizOpps Notice Results in Competitive Action**

In the event responses to the FedBizOpps notice of intent to contract on a sole-source basis indicate that there are two or more qualified parties that can meet the agency's need, the proposed procurement will be processed as a competitive action, as discussed in Section 9.1 of this handbook.

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**(4) Agreement to Sole-Source Acquisition Because of Unusual and Compelling Circumstances**

If the CO is satisfied that a sole-source acquisition is bona fide and determines that the NRC's need for the item or services is of unusual and compelling urgency, the CO may forego the requirement to place a notice in FedBizOpps describing the procurement and can waive approval of the JOFOC until after award (see Section 5.2.1.2 of this part).

If other than full and open competition is justified, a final justification is developed and approved as discussed in Section 5.2.1.2 of this part.

**5.2.2 Sole-Source Acquisitions Not Requiring a JOFOC (8(a) Set-Aside, HUBZone 8(a) Set-Aside, HUBZone Sole Source)**

Under Section 8(a) of the Small Business Act, certain small businesses are certified by the Small Business Administration (SBA) as eligible to participate in the 8(a) program for small, disadvantaged, minority-owned businesses (see FAR 19.000 and 19.801). The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631 note) created the HUBZone Program (sometimes referred to as the "HUBZone Empowerment Contracting Program").

The purpose of the HUBZone Program is to provide contracting opportunities for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in those areas. A sole-source contract may be awarded to a HUBZone contractor if only one HUBZone small business can satisfy the requirement. The threshold for this type of action is up to \$3 million (\$5 million for manufacturing).

The NRC sets aside certain procurements, valued at \$3 million or less, which are offered noncompetitively to 8(a) firms under the 8(a) program. Procurements exceeding \$3 million require competition among 8(a) firms.

Contracting under the 8(a) program is a time-saving method that also contributes to the agency achieving its small business goals mandated by SBA. Effective September 1999, NRC entered into a Partnership Agreement with SBA to streamline 8(a) contracting procedures. SBA delegated authority to the NRC to directly enter into 8(a) contracts, requiring no co-signature from the SBA. This initiative reduces procurement acquisition lead time to an even greater extent.

**5.2.2.1 An 8(a) Designation on the APP and the RFP**

The procurement should be identified early as an 8(a) procurement (if possible, as early as when completing the APP form).

When preparing the RFP, the requesting office should identify the requirement as an 8(a) procurement and may name one or more companies as the sources suggested to perform the work. The Office of Small Business and Civil Rights (SBCR) can assist the program office

in identifying potential 8(a) firms. If neither can identify a source, the CS sends an offering letter to SBA identifying the requirement and requesting the name of a contractor. If a source has been identified, the CS sends an offering letter to SBA that requests approval of the contractor. In accordance with the MOU, if the CS does not receive approval within 5 working days, the CS may proceed with the procurement with no further delay.

### **5.2.3 Limited Competitions Not Requiring a JOFOC (HUBZone Small Business Set-Aside (Competitive), Small Business Set-Aside)**

A small business set-aside is an acquisition exclusively or partially reserved for the participation of small business concerns pursuant to the Small Business Act. It restricts the competition to small business concerns that qualify under the applicable standards. A total set-aside restricts the entire procurement, whereas a partial set-aside restricts only a stated portion of it. A HUBZone small business set-aside is reserved for HUBZone small businesses it offers from at least two HUBZone small business firms are expected. The CO decides (with input from SBCR) whether an acquisition should be set aside.

## **5.3 Small Business Preference Programs**

The NRC negotiates small business procurement goals annually with SBA. In order to meet these Federally mandated goals, the NRC is committed to include small businesses, small disadvantaged businesses, women-owned small businesses, HUBZone small businesses, veteran-owned small businesses, and service-disabled veteran-owned small businesses in competitive acquisitions and schedule buys to the maximum extent possible. Information regarding these programs may be found in the Federal Acquisition Regulation (FAR), Part 19.201, entitled "Small Business Programs—Policies," and throughout the SBA.gov Web site. NRC's Office of Small Business and Civil Rights (SBCR) maintains a Web page with small business information pertaining to the NRC. The Web page may be accessed through the SBCR Program Office link on the NRC Web site.

## **5.4 Performance-Based Contracting**

"Performance-based contracting" (PBC) is a method of acquisition in which all aspects of the acquisition are structured around the purpose of the work to be performed rather than either the manner by which it is to be done or broad and imprecise SOWs.

Effective May 2, 2001, the FAR was changed to reflect that PBC (see FAR Subpart 37.6) is the preferred method for acquiring services, including those acquired under supply contracts. "Performance-based contracting" means structuring all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed to broad and imprecise SOWs.

PBC methods are intended to ensure that required performance is achieved and that total payment is related to the degree to which services performed meet contract standards.

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Exceptions to using PBC include the following:

- Architect-engineer services acquired in accordance with 40 U.S.C. 541-544 (see FAR Part 36);
- Construction (see FAR Part 36);
- Utility services (see FAR Part 41); or
- Services that are incidental to supply purchases.

Performance-based contracts contain the following:

- Requirements described in terms of results required rather than the methods of performance of the work;
- Measurable performance standards (i.e., terms of quality, timeliness, quantity, etc.) used to assess work performance;
- Quality assurance surveillance plans (see FAR 46.103(a) and FAR 46.401(a)), also known as performance assessment plans;
- Procedures for reductions of fee for cost-plus-fixed-fee contracts or for reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements (see FAR 46.407); and
- Performance incentives, where appropriate.

Performance-based SOWs should—

- Define requirements in clear, concise language identifying specific work to be accomplished in terms of “what” is to be the required output rather than either “how” the work is to be accomplished or the number of hours to be provided.
- Rely on the use of measurable performance standards, acceptance criteria, and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work.

Other considerations for using PBC include the following:

(a) Quality Assurance

In accordance with FAR 46.103 and FAR 46.401, quality assurance surveillance plans should be prepared in conjunction with the preparation of the SOW. The plans, which require the contractor to ensure that quality work is performed, should specify the following:

- All work requiring surveillance by the Government (what)

- The method of surveillance (how)
- The place or places where the Government reserves the right to perform quality assurance surveillance (where)

These plans should accomplish the following:

- Recognize the responsibility of the contractor (see FAR 46.105) to carry out its quality assurance obligations
- Contain measurable inspection and acceptance criteria corresponding to the performance standards in the SOW
- Focus on the level of performance required by the SOW, rather than the methodology used by the contractor to achieve that level of performance

Government contract quality assurance surveillance shall be performed when necessary to determine that the supplies or services conform to contract requirements.

FAR 46.401 states that the program office receiving the service is responsible for prescribing contract quality requirements for a quality assurance surveillance plan.

**(b) Incentives**

To the maximum extent, performance incentives, either positive or negative or both, shall be incorporated into the contract to encourage contractors to increase efficiency and maximize performance (see FAR 16.4). These incentives should correspond to specific performance standards in the quality assurance surveillance plan and should be capable of being measured objectively.

**(c)** For IT services, FAR 39.104 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of IT services unless the contracting officer first determines that the needs of the agency cannot be met without such a requirement or the needs of the agency require the use of a type of contract other than a performance-based contract. The contractor will tell us how the work will be done and by whom.

## **5.5 Contracts Between NRC and Former NRC Employees**

NRC policy is to place only competitively awarded contracts with an individual who was employed by the NRC within 2 years from the date of the RFPA. The policy also applies to the noncompetitive award of contracts to organizations where former NRC employees have dominant ownership interests in the organization, such as partners or majority stockholders; the noncompetitive award of contracts to organizations where former NRC employees have dominant management interests, such as principal officers, or where the organization is predominantly staffed by former NRC employees; and the noncompetitive award of contracts,

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task orders, or other NRC work assignments where the particular assignment is to be performed by designated former NRC employees, including principal investigators, key personnel, and others who will perform more than a nominal amount of the work in question.

The following procurement actions are considered noncompetitive for the purposes of this policy:

- contracts awarded noncompetitively under the SBA's 8(a) Program
- individual task orders if the former employee was not identified as "key personnel" in a proposal that was evaluated under competitive procedures
- unsolicited proposals
- subcontracts that require review for the purpose of granting consent under NRC prime contracts

The term "NRC employee" includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, if—

- The contract arises directly out of the individual's activity as a special employee.
- The individual is in a position to influence the award of the contract.
- The contracting officer determines that another conflict of interest exists.

A justification explaining why it is in the best interest of the Government to contract with an individual or firm described above in this section on a noncompetitive basis may be approved by the Senior Procurement Executive after consulting with the EDO. This justification is in addition to any justification and approvals that may be required by the FAR for use of other than full and open competition.

Nothing in this policy statement relieves former employees from obligations prescribed by law. For example, "Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches," 18 U.S.C. 207, restricts officers and employees in the following circumstances:

- A former employee is forever foreclosed from representing a party in a particular matter in which the former employee participated personally and substantially as a Government employee.
- A former employee is foreclosed for 2 years from representing a party when the particular matter in question had been pending under his or her official responsibility.
- A former senior-level employee is foreclosed for 1 year from representing any party before the department or agency in which he or she served regardless of his or her prior involvement in the matter.

Further, it is not NRC policy to encourage offerors and contractors to propose current/former NRC employees to perform work under NRC contracts:

## 5.6 Contracts Expected To Exceed Five Years

FAR 17.204(e) states that the total of the basic and option years shall not exceed 5 years in the case of both services and supplies. Statutes applicable to various classes of contracts may place additional restrictions on the length of contracts. Certain research and development contracts and information technology (IT) contracts may exceed 5 years. If it is known in advance that the term of a contract is required in excess of the provisions in FAR 17.204(e), a written justification must be approved by the Competition Advocate (Deputy Director of ADM). (For information regarding existing 5-year contracts requiring noncompetitive contract extensions, see Section 11.7 of this handbook.) interagency agreements are not subject to the 5-year performance limitation.

## 5.7 Security Requirements

When preparing to submit the request for procurement action, the PO needs to consider whether performance of the contract or subcontract may require contractor employees to undergo personnel security screening for unescorted access to the NRC site or buildings; access to sensitive IT systems or information; unescorted access to nuclear power plants; or access to unclassified safeguards information. In addition, the PO needs to consider whether the performance of the contract may require the contractor's facility to be cleared to use, process, store, reproduce, transmit, or otherwise handle NRC classified information. The PO may request guidance and assistance from the Division of Facilities and Security (DFS, ADM), regarding the review of the security considerations for contractor personnel or facility clearances and from the Office of the Chief Information Officer for determining the sensitivity of IT systems and information.

If any type of clearance is needed for contract performance, the requesting office will forward the original of NRC Form 187, "Security/Classification Requirements" (see Management Directive [MD] 12.1, "NRC Facility Security Program"), to DC as part of its RFP package. This form provides the necessary classification or security specifications and furnishes the basis for providing security and classification requirements to contractors who will have access to Government or power reactor facilities, classified information, sensitive IT information, power reactor access or access to safeguards information. DC forwards the NRC Form 187 and a detailed SOW to the Director of DFS for approval.

The signed NRC Form 187 is included in the solicitation, as appropriate. However, solicitations will not be issued until DC has received an approved NRC Form 187, unless the Director of DC approves an exception to this policy. DFS approval of NRC Form 187 does not constitute any security approval to begin work; it does, however, indicate the following:

- DFS anticipates no fundamental security or classification problems in the recommended procurement action, on the basis of the information provided on NRC Form 187.



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- DFS agrees with the basic classification levels and guidance provided by the authorized classifier of the requesting office.

The following types of clearances may be required:

- **Site Access Facility Clearance**

The requesting office should indicate on the RFPA package if contractor personnel will require continuous access to NRC buildings during the course of contract performance so that DC Instruction 94-2, "Site Access Badge Requirements," may be included in the solicitation as a term and condition of the contract. Background screening of contractor personnel may be necessary if access to NRC buildings is required on a continuous basis (in excess of 30 or more days) or access otherwise requires an NRC photo identification badge or keycard. Background screening also may be necessary if the contractor requires unescorted access to a nuclear power facility in performance of the contract. Facility security approval, which includes a foreign ownership control or influence determination, is required if the contractor needs to store classified information at a facility.

Facility security approval is also required when employees of the contractor require access to classified information in connection with contract performance but do not use, store, or possess classified information outside of NRC facilities. When contractor personnel perform unclassified work at NRC buildings only infrequently, access will be controlled by the issuance of visitors' badges.

NRC employees shall discourage contractor personnel from engaging in any marketing and/or soliciting activities while performing under an NRC contract. All instances of such activity must be reported to the cognizant CO.

The contractor is responsible for ensuring that all its employees, including any subcontractor employees and any subsequent new employees who are assigned to perform the work on site, are approved by the NRC for building access. All contractor personnel whose contract duties require their presence on site require a distinctive badge furnished by the NRC. The PO shall assist the contractor in obtaining the badges for the contractor personnel. A contractor employee shall not have access to NRC facilities until he or she is approved by the Security Branch, Division of Facilities and Security (SB/DFS), first for temporary access (based on a favorable adjudication of their security forms) and final access (based on favorably adjudicated background checks by General Services Administration (GSA)). In accordance with the procedures found in NRC MD 12.3, and after notice of selection by the CO, the contractor representative will submit to the PO a completed security forms packet, including the GSA 176, "Statement of Personal History," and fingerprint charts (FD 258) for each contractor personnel whose contract duties will require their presence on site, as well as any officers of the firm who, for any reason, may visit the work site(s) for an extended period of time. The PO shall review the names to ensure that the list of people requested to receive onsite authorization are limited to only those with a real need to be on site. On the basis of the PO's review, the

GSA 176 and the fingerprint charts (FD 258) shall be provided to SB/DFS, which is responsible for granting or denying temporary building access approval to an individual upon its review of the information. Subsequently, the GSA may grant or deny permanent building access approval on the basis of the results of its investigation and adjudication guidelines. Timely receipt of properly completed security applications shall be included as a contract requirement. Failure of the contractor to comply with this condition within the 10-workday period may be a basis for voiding the notice of selection. In that event, the NRC may select another firm for award. An individual will be subject to a reinvestigation every 5 years.

- **IT Access Clearance**

DFS operates a Government-sponsored personnel screening program for contractors providing computer-related supplies or services to ensure that the contractor's employees are eligible for access to the agency's sensitive IT systems and data.

The proposer/contractor must identify all individuals and propose the level of IT approval for each (see MD 12.3, "NRC Personnel Security Program"). The NRC requesting office shall make the final determination of the level, if any, of IT approval required for all individuals working under a contract.

- **Classified Information Clearance**

When contract performance involves access to or development of classified information, personnel and/or facility security requirements must be imposed on prospective NRC contractors. The requesting office, with the assistance of DFS, must establish the following:

- the level and type of classified information the contractor requires
- whether reports, including interim and final documents, will be classified
- the restrictions that must be placed on the proposed dissemination of information developed under the contract
- whether the proposed contract should contain special classification or security clauses
- whether a contract awarded initially on a nonclassified basis may produce classified results or become classified during the course of the contract

The contractor submits clearance forms as designated in MD 12.3 to the PO. The PO will forward the forms to DFS.

DFS notifies the requesting office by letter of security facility approval and personnel access authorizations. A copy of the security approval letter is sent to the PO. The PO then notifies the contractor as to whether the security facility approval has been allowed or denied. DC provides DFS with a copy of the final contract and all modifications involving classified information or security matters.

## **5.8 Chairman Approval**

The Chairman's approval is required for all projects that exceed the EDO's authorized limit to award (contracts in which aggregate estimated costs are \$3 million or more, including base and option years). The requesting office and DC jointly prepare a Chairman paper to be submitted through the EDO to the Chairman for approval. The EDO's office will submit the paper simultaneously to the Commission. A sample of the format for a Chairman paper may be found in Exhibit 7.

## **5.9 Intraoffice and Interoffice Concurrences**

There are intraoffice and interoffice concurrences that are required apart from and before the initiation of the procurement process. Obtaining these concurrences is the responsibility of the requesting office. These concurrences, discussed below, should be kept in the requesting office's file.

### **5.9.1 Information Technology Acquisitions**

IT resources are any equipment or interconnected system or subsystem of equipment used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data by a Federal agency or under a contract with a Federal agency, if the contract either requires use of such equipment or requires a service performed or a product produced that makes significant use of such equipment. IT resources include equipment, maintenance, software, services, support services, systems, and related supplies. IT resources are classified as a special category acquisition and subject to the requirements of the FAR. NRC policy guidance regarding IT acquisitions may be found in MD 2.4. Certain preacquisition approvals need to be obtained in accordance with MD 2.4 before procuring IT resources. These approvals are applicable to all IT acquisitions, including those awarded for services or equipment whether procured through simplified acquisitions, commercial contracts, blanket purchase agreements, or interagency agreements. Certain IT acquisitions also require Capital Planning and Investment Control (CPIC) related approvals specifically discussed in MD 2.2. The structured CPIC review process helps ensure that projects have clear requirements, a sound business case justification, and adequate planning for development and implementation in accordance with Federal statutes and regulations.

IT resources also may be referred to as automatic data processing (ADP) resources and Federal information processing (FIP) resources.

### **5.9.2 Coordination of Facility Use and Property**

If NRC facilities will be used, the requesting office should contact the Facilities Branch, DFS, before submitting the RFPA. If property will be procured or furnished under the proposed procurement, the requesting office should coordinate the effort with the NRC Property Management Officer, Administrative Services Center, ADM. Discussions are held to ensure

that needed NRC facilities are available for onsite requirements and duplicate materials are not purchased if already available within the agency.

### **5.9.3 Justification for Use of Task Order Contracts**

If a task order contract is requested on the RFPA, the DO's signature on the RFPA form certifies that the need for a task order contract is justified. A justification for use of a task order contract must be developed and maintained in the requesting office file. The justification must indicate the basis for task order contracting and describe the specific circumstances that apply from the following categories:

- (1) A combination of professional skills and highly specialized experience is needed and is not available from the NRC staff.
- (2) The work to be performed is for a one-time project or emergency that could not be anticipated and staff are not available to complete the work within the desired timeframe.
- (3) Intentional duplication is necessary to draw upon independent, impartial expertise to verify results previously obtained.
- (4) Unique facilities are needed but are not available to NRC staff.

If it is determined after submittal of the RFPA that a task order contract is preferred, it remains the responsibility of the DO to ensure that a justification is developed and maintained on file in the requesting office.

Before completing a RFPA for any individual task order to be issued under a task order contract, the DO shall ensure that the use of a contractor rather than an NRC employee is necessary and consistent with the justification developed for the basic contract. The DO's signature certifies that the justification for use of a task order contract that was prepared for the basic contract has been reviewed and that acquiring contractor support for the task is consistent with the justification. As indicated in the instructions for NRC Form 400, justifications must be retained in the requiring office files.

## **5.10 Considerations of Year-End Procurement Actions**

The following restrictions apply to procurement actions in the last quarter of the fiscal year:

- (1) Funds must not be obligated for requirements-type or task order contracts in excess of anticipated needs except for minimum guarantees.
- (2) Funds for letter contracts must not be obligated in excess of the amount expected to be used during the period before award of the complete contract; nor must letter contracts be used to obligate funds that would otherwise lapse.

- (3) Funds obligated to cover unpriced items, such as changes, spare parts, and data, must not be in excess of the current cost estimate for those items. Additional obligations in excess of the original procurement cost must be fully justified.
- (4) Any new work requested under a contract must be fully justified for other than full and open competition. It cannot be included in the contract simply to exhaust available funding.
- (5) Contracts must not be awarded to avoid the lapse of funds if prices are unreasonable.

### **5.11 Use of a Source Selection Process and a Source Evaluation Panel (SEP) for Negotiated Procurements**

Source selection is the process of selecting a contractor through competitive negotiation. The objective of source selection is to select the proposal that represents the best value. Source selection procedures are designed to—

- maximize competition
- minimize the complexity of the solicitation, evaluation, and selection process
- ensure the impartial and comprehensive evaluation of proposals
- ensure selection of the source whose proposal is most advantageous and realistic and whose performance is expected to best meet stated requirements

The proper conduct of a competitive negotiation involves the collective judgments and cooperative efforts of technical, contracting, and other management personnel. Recognizing the value of cooperative effort, the NRC requires an SEP for all competitive procurements over the simplified acquisition threshold. The source selection authority is the CO. The DO (office director or designee) initiating the procurement designates SEP members by memorandum. The names of the designees are included in the RFPA package. The CO reviews the list of individuals for concerns such as obvious conflict of interest. The SEP works with the CS in the development of the solicitation package, the evaluation of proposals received in response to the solicitation, and the development of a recommendation for the award of the procurement. An overview of SEP activities may be found in Flowchart 5-3 at the end of this part.

#### **5.11.1 Source Selection Processes and Techniques: Best Value Continuum and Oral Presentations**

There are several source selection techniques that may be used for a competitive procurement.

##### **5.11.1.1 Best Value Continuum**

An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost

or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, or the greater the performance risk, then technical or past-performance considerations may play a more dominant role in source selection.

#### **5.11.1.1.1 Tradeoff Source Selection Process**

A tradeoff process is a competitive negotiation process in which the Government evaluates both price and nonprice factors and awards the contract to the offeror proposing the combination of factors that offers the best value to the Government. This process is appropriate when it is in the best interest of the Government to consider award to other than the lowest price offeror or the highest technically rated offeror. In making the award decision under this process, the Government makes a tradeoff analysis of the proposals among cost or price and noncost factors ascertaining which offers the best overall value. Previously, this process was described as the best value process. (See Sections 6.8 and 9.1.11 of this handbook for more information on tradeoff source selection.)

#### **5.11.1.1.2 Lowest Price, Technically Acceptable Source Selection Process**

The lowest price, technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price. Tradeoffs are not permitted. Proposals are evaluated for acceptability but not ranked using the noncost/nonprice factors.

#### **5.11.1.2 Oral Presentations**

An agency may request that all offerors make oral presentations, which may substitute for, or augment, written information. Using oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. An oral presentation is a presentation by the offeror that demonstrates its capability to perform a proposed contract. The most common use of oral presentations is to present a summary of the methods the offeror will use to perform the contract followed by questions and answers or a solution of a sample task. The advantage of the oral presentation is that it permits the agency evaluators to speak directly with the key personnel who will perform the contract if it is awarded to the offeror. Written documentation is usually limited to certifications, representations, and a signed offer sheet.

When oral presentations are required, the solicitation shall provide offerors with sufficient information to prepare them. Oral presentations also are discussed in Section 6.8.5 of this handbook.

#### **5.11.2 Membership of an SEP**

An SEP includes at least one or more technical members and a CS. The technical members evaluate technical proposals using weighted evaluation criteria. One of these technical members also serves as the SEP chairperson. The chairperson should be a technical expert in

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the area of the supplies or services being procured, and should be a senior official, normally at the GG-15 level, who has authority to ensure that the SEP promptly conducts the required evaluation and submits its report. Furthermore, the SEP chairperson should be a branch chief if the procurement represents a major resource commitment (\$1 million or more annually) or if the SEP technical membership includes senior staff from more than one office or major component within an office. The CS serves as the SEP secretary and negotiates the contract on behalf of the CO.

Except in unusual cases, the SEP generally should not exceed five members, including the chairperson, when conducting major or consolidated procurements. However, with procurement streamlining efforts, a limit of one to two technical members is encouraged. If a larger technical membership is required, the SEP should include, where practicable, one member employed outside the office for which the acquisition is being undertaken and one member within the requiring office who has a key technical assignment on the project. There are a number of variables to consider when determining the number of SEP members, such as complexity and dollar value, for a particular type of procurement. The requesting office should consult with a DC CO if guidance is needed in this area.

Because SEP members must declare any financial or other relationships that may create a conflict of interest with their SEP duties, an SEP certification statement (see Exhibit 8 of this handbook) is included with the SEP memorandum of designation. The certification statement, which is signed by each panel member, addresses such issues as nondisclosure of information, stock ownership, and former employment.

The chairperson may obtain the services of advisors from the Office of the General Counsel or the Office of the Chief Financial Officer, an expert from another Federal agency, or another source, to assist the SEP as necessary. The CO governs the extent of the advisor's participation in the SEP. Although these advisors are not SEP members, the potential for conflict of interest must be carefully evaluated. All advisors must declare any financial or other relationships that may create conflicts of interest with their SEP duties. An SEP certification statement is included with the SEP memorandum of designation for this purpose.

### **5.11.3 Conduct of an SEP**

Each SEP member must be able to devote the time and effort necessary to ensure successful conduct of SEP activities and the timely submission of high-quality products. If this total commitment is impossible, the DO should replace the SEP member with an individual able to devote the requisite time to this responsibility. The DO makes changes in membership by memorandum only after consultation with the CO.

Full discussion is encouraged on all matters considered by the SEP. If differences of opinion cannot be resolved, SEP reports will state the issue, reflect the majority opinion, and include the reasons for any dissenting view.

#### **5.11.4 Responsibilities of an SEP**

The CS prepares the request for proposals (RFPs) with assistance from the SEP. Some elements of the RFP, such as an initial draft of the SOW (see Section 6.1 of this handbook), are prepared by the staff of the requiring office before the SEP is established. Familiarity with the SOW is vital to the role of SEP members and the SOW should be attached to their memorandum of designation. Duties of SEP members include—

- participating in the development of evaluation criteria
- finalizing the SOW at initial meeting
- suggesting a list of firms (a source list) to be invited to submit proposals
- developing a milestone schedule (see Section 7.3.1 of this handbook)
- participating in any preproposal conference
- evaluating the offerors using the weighted evaluation criteria established in the RFP package (only technical members of the SEP will score the proposals; see Section 9.1.3 of this handbook)
- preparing the competitive range report and the final evaluation report (see Exhibits 9 and 3 of this handbook, respectively)
- assisting the CS in the negotiation of the contract, as necessary
- assisting the CO and the CS in any debriefing of the unsuccessful offerors
- assisting with response to protest(s)

#### **5.11.5 Responsibilities of the SEP Chairperson**

The SEP chairperson—

- ensures that all SEP members review guidelines regarding SEP functions
- designates tasks among members according to their background and experience
- ensures the effective preparation of all SEP reports and documents and the effective conduct of the SEP's activities in support of the overall procurement
- resolves all SEP procedural matters
- ensures prompt preparation of the SEP's competitive range report and the final evaluation report
- transmits, with the final evaluation report, a consolidated list of all persons having access to the source selection material reviewed or generated by the panel (e.g., proposals, the competitive range report, and the final evaluation report)



### **5.11.6 Responsibilities of the SEP Secretary**

The CS acts as the SEP secretary. In the role of SEP secretary, the CS—

- reviews the SEP certification statement (see Exhibit 8 of this handbook) with SEP members. If there is an actual or potential conflict of interest, the views of the Office of the General Counsel may be solicited
- maintains the milestone schedules for the procurement
- provides procurement advice to other panel members
- obtains and distributes documents such as applicable procedures policies and instructions, to SEP members and advisors
- controls access to SEP work areas, SEP proceedings and data
- arranges for the preparation, reproduction, control, and distribution of all materials relating to the activity of the SEP (These materials include lists of firms to be invited to submit proposals, evaluation criteria, the RFP, records of preproposal conference proceedings, and meeting notes on significant issues. Access to documents by anyone other than procurement officials is not acceptable.)
- prepares and distributes agendas for SEP meetings and records substantive issues discussed
- follows up on action items assigned to SEP members to ensure that the SEP schedule is maintained
- maintains official SEP records
- schedules and organizes negotiation sessions with offerors in the competitive range
- schedules and conducts debriefings of unsuccessful offerors
- arranges for and conducts any site visits with offerors

### **5.11.7 Procurement Integrity: Access to Information/Release of Information**

Both current and former Federal employees who have had access to procurement information are responsible for protecting it from disclosure. The Federal Acquisition Reform Act of 1996 amended the Procurement Integrity Act to expand the breadth of procurement information under competitive procurements that must be protected from disclosure before award of the contract. The information to be restricted from disclosure now includes source selection information as well as bid and proposal information.

The requirement for procurement integrity certifications previously imposed on POs and COs has been lifted. Although procurement integrity certification requirements have changed, SEP

member certification requirements have not. This certification is an internal NRC requirement from each individual appointed to the SEP and from each individual identified as a technical advisor. Each SEP member is required to complete a certification statement. The SEP certification statement advises each member of requirements and restrictions dealing with proprietary and source selection information (see Exhibit 8 of this handbook). It advises members of their responsibility to protect bid and proposal and source selection information during the SEP process. SEP members must declare any financial or other relationships that may create conflict of interest with their SEP duties.

NRC managers responsible for programs or projects to be awarded through the competitive procurement process may request and have access to information concerning proposed changes to the SOW, proposed schedule changes, and the probable cost effect of these changes to the SOW and/or schedule.

Information concerning an acquisition in process must not be released outside the agency before solicitation except for—

- (1) presolicitation notices (FAR 14.205-4 (c) or 36.302)
- (2) estimates of long-range acquisition requirements (FAR 5.404)
- (3) Public notices (FAR 5.201)
- (4) “The Forecast of Contract Opportunities” issued by the NRC SBCR

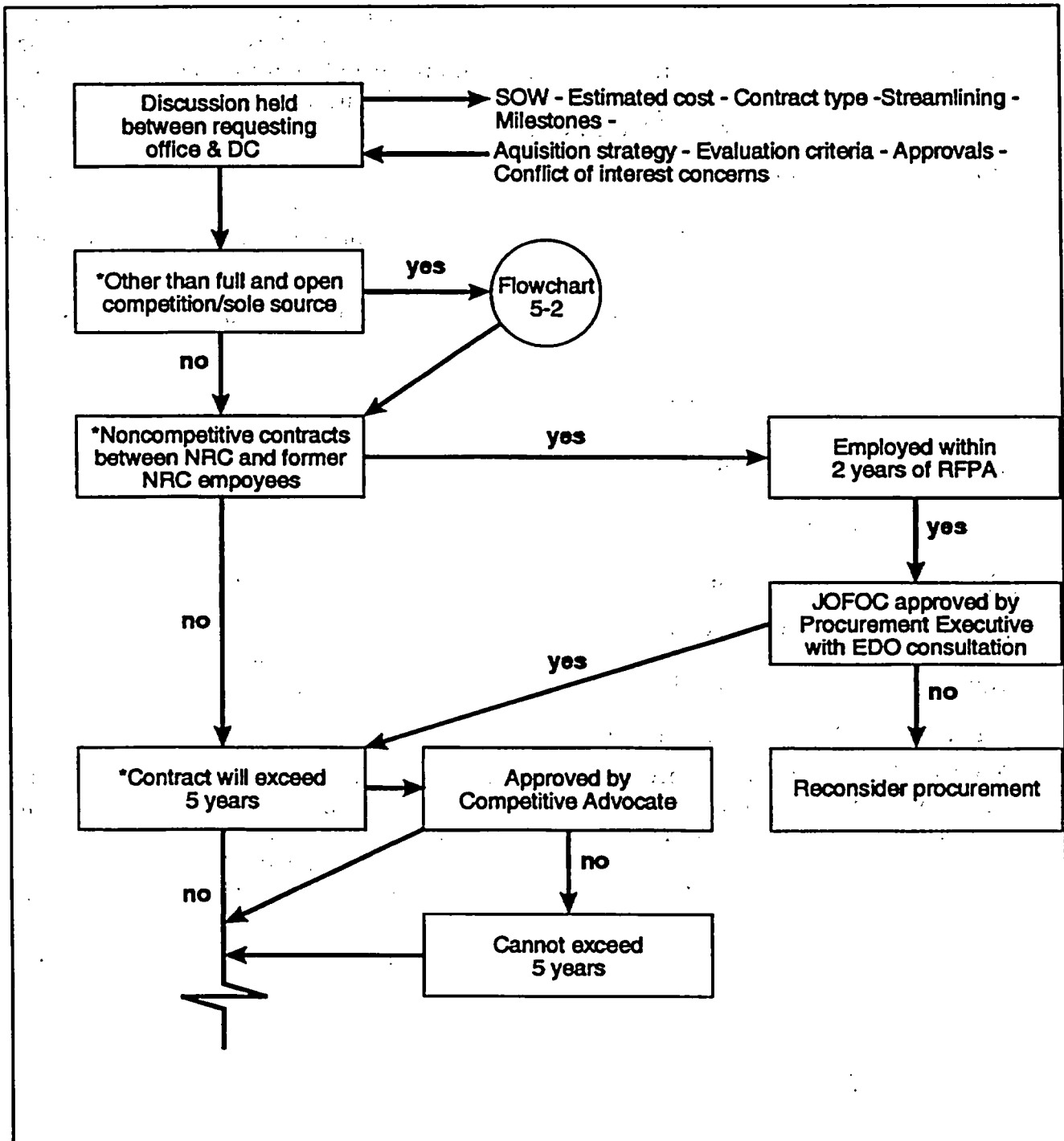
Any discussion of the procurement is strictly limited to the SEP and other procurement officials associated with the acquisition. The SEP certification statement explains requirements and restrictions dealing with proprietary and source selection information.

#### **5.11.7.1 Fraud Prevention and Reporting**

Fraud in the procurement process is prohibited by criminal statutes and administrative regulation. The Inspector General Act vests the NRC Inspector General (IG) with responsibility for prevention and detection of fraud and abuse in agency programs and operations. Investigation of suspected fraud in procurement is within the exclusive authority of the IG. Allegations of fraud in procurement are to be reported to the Office of the IG in writing or via the “hotline” by calling 1-800-233-3497.

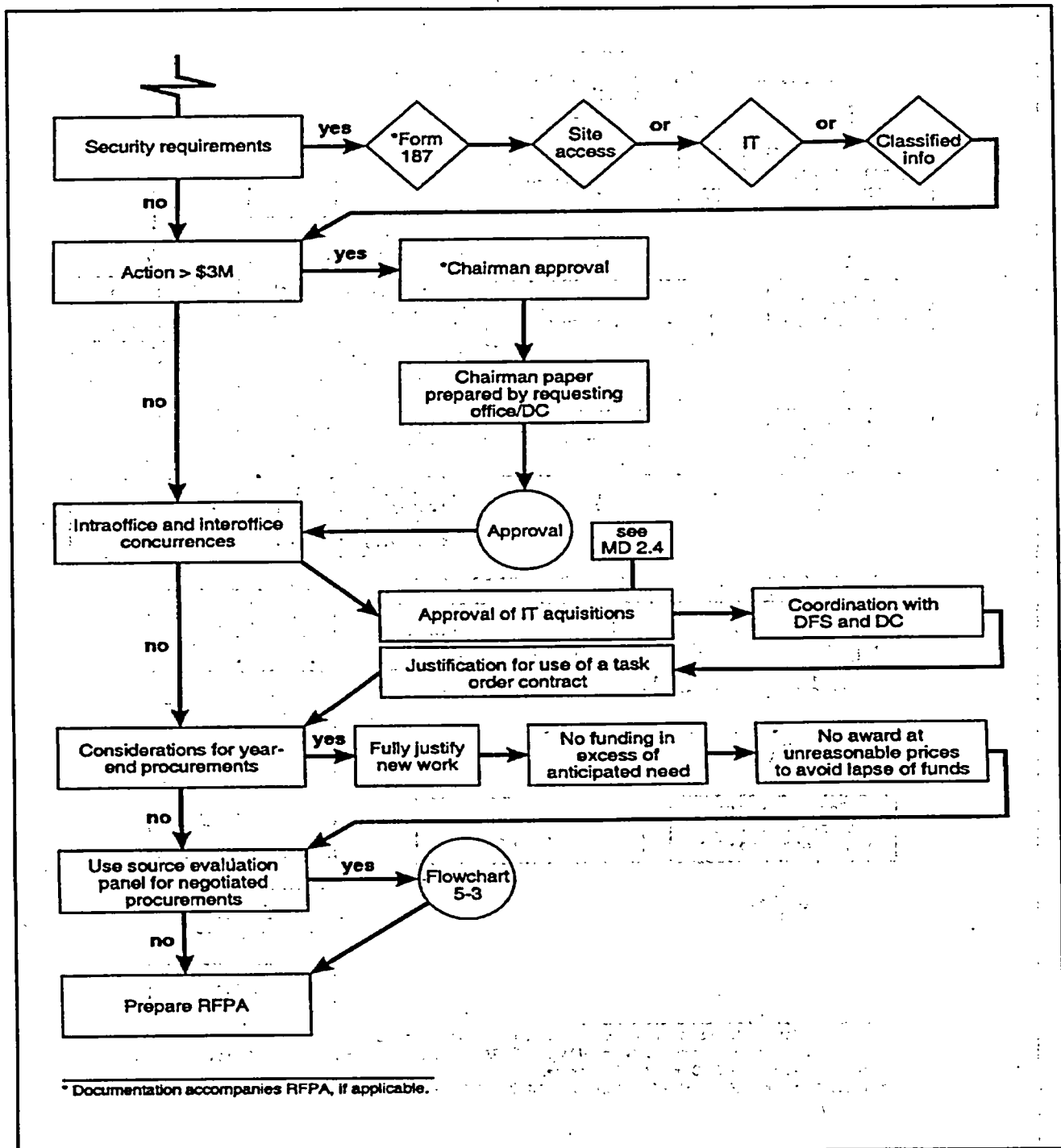
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**Flowchart 5-1 Considerations/Approvals Before Submitting a Request for Procurement Action**

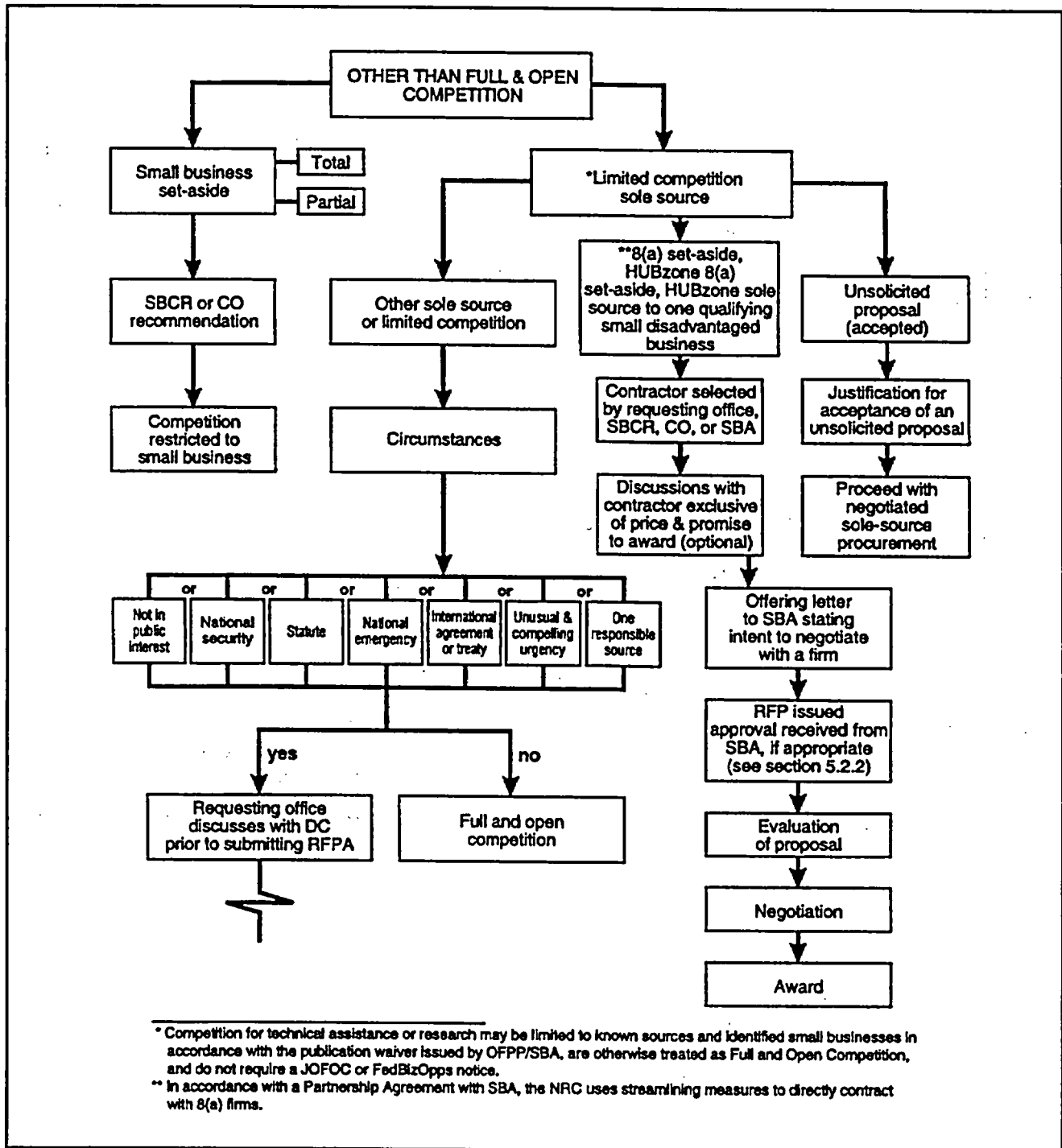


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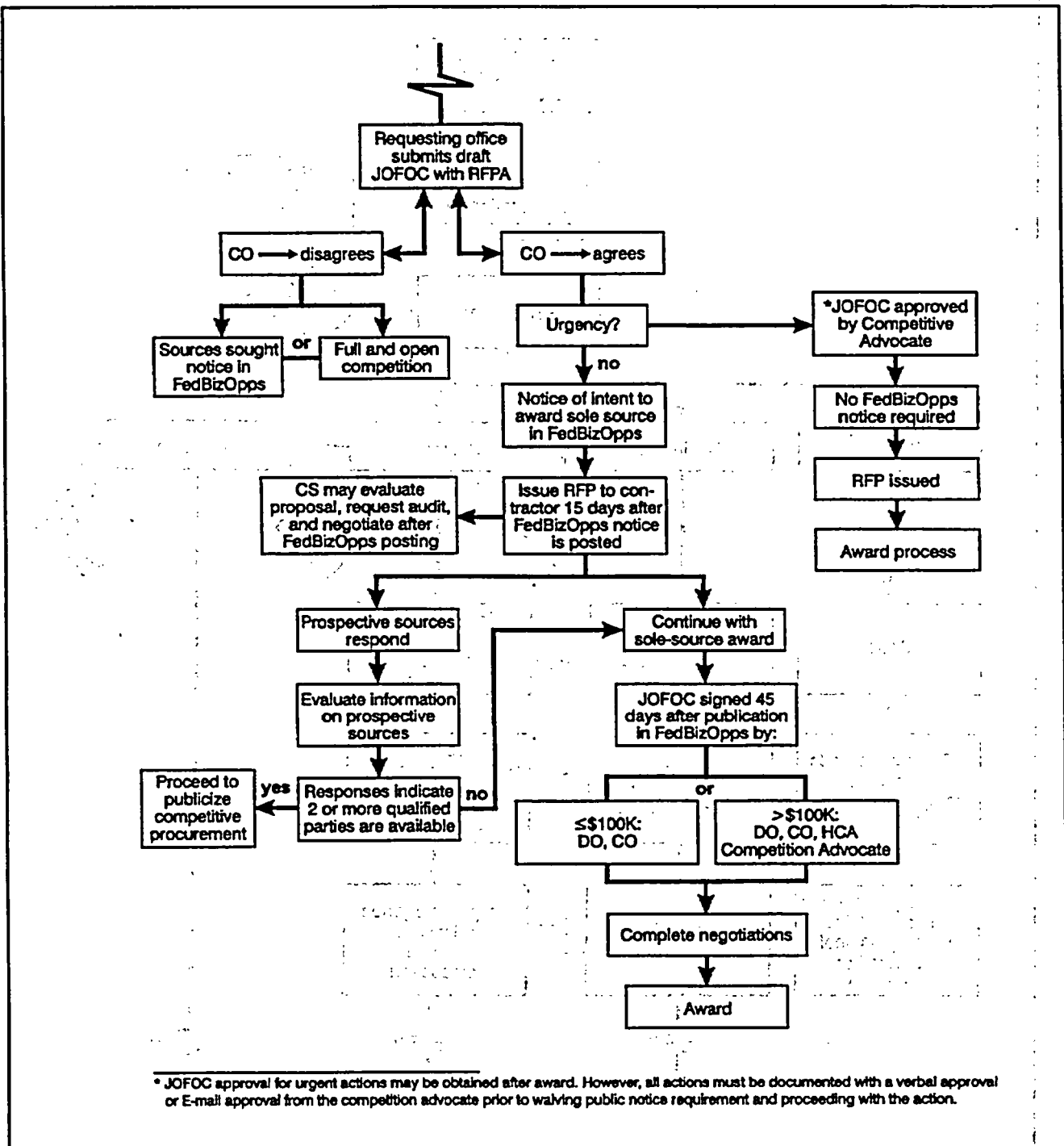
Flowchart 5-1 (Continued)



Flowchart 5-2 Procurements Using Other Than Full and Open Competition

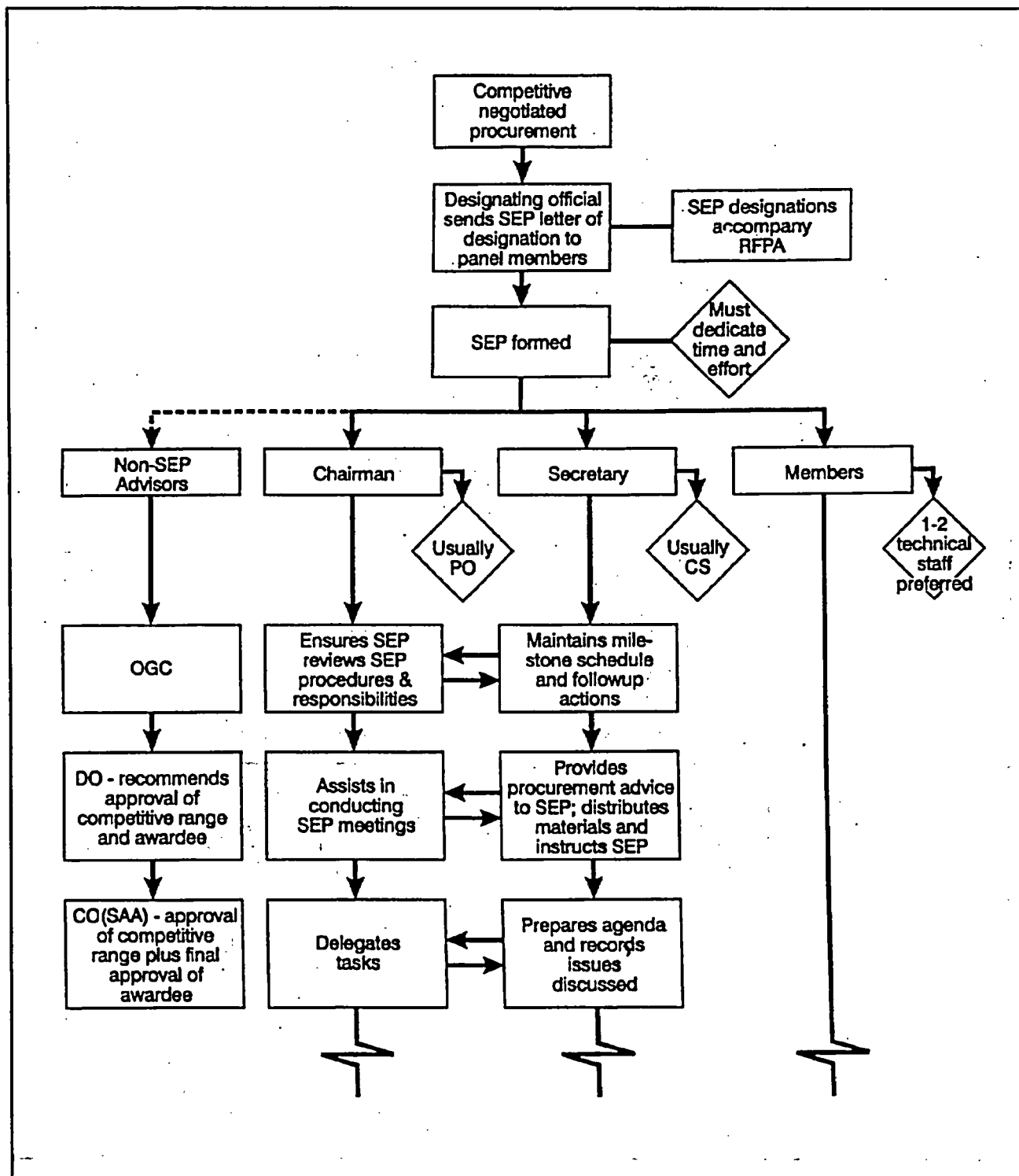


Flowchart 5-2 (Continued)

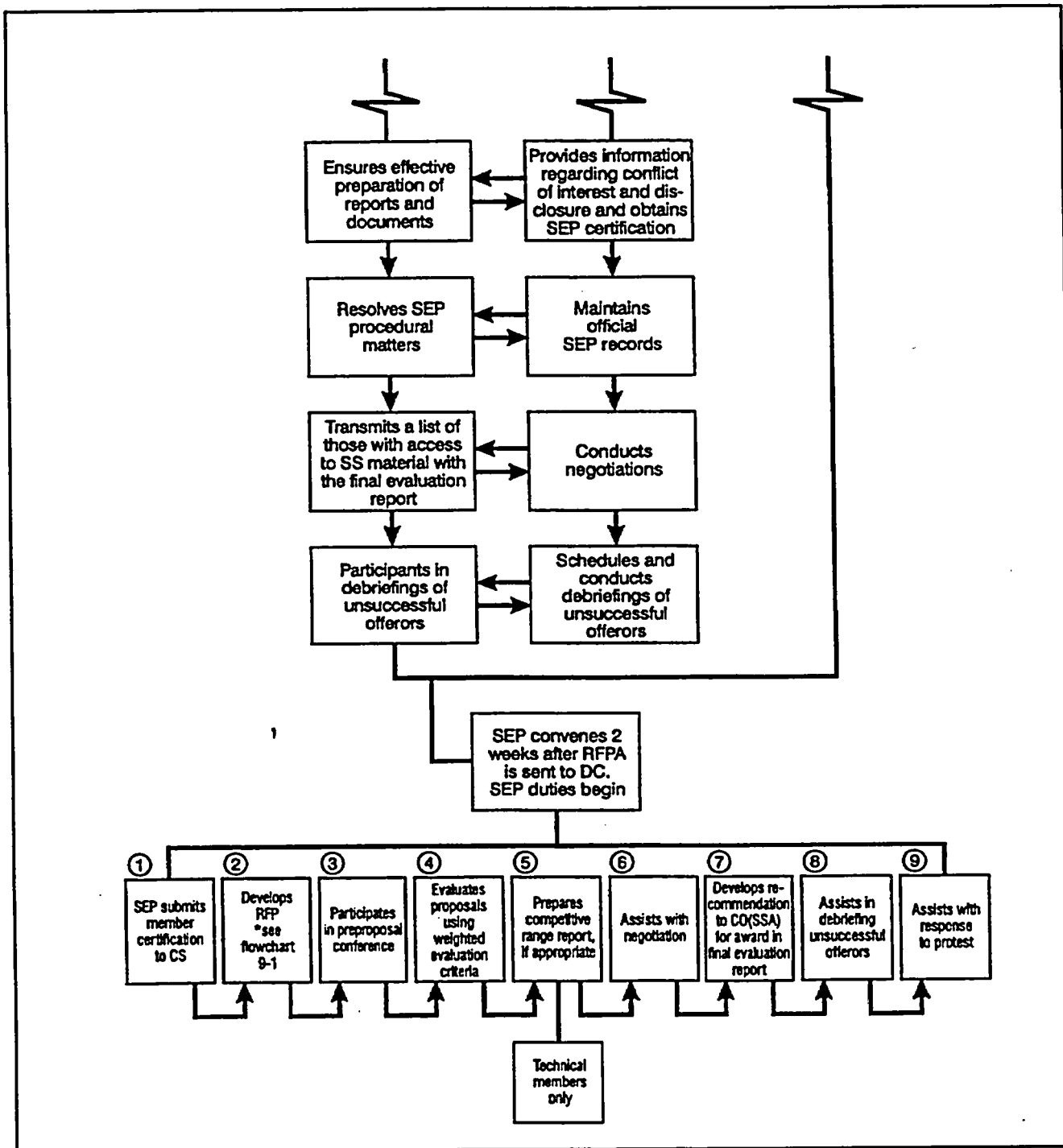


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**Flowchart 5-3 Use of Source Evaluation Panel (SEP) for Competitive Negotiated Procurements**



Flowchart 5-3 (Continued)





## **Part 6 Development of the Request for Procurement Action (RFPA)**

The requesting office prepares the RFPA (NRC Form 400, which may be accessed through the online forms icon InForms) and submits it to the Division of Contracts (DC), Office of Administration (ADM). The RFPA package includes a number of components such as the statement of work, the independent Government cost estimate, procurement approvals, funding, suggested sources, a list of source evaluation panel (SEP) nominations and procurement officials, and suggested evaluation criteria. A draft justification for other than full and open competition (JOFOC) should be attached, if appropriate (see Sections 5.2.1.3, 5.4, and 5.5 of this handbook). These components are discussed below. An overview of the RFPA package may be found in Flowchart 6-1 at the end of this part. (For information related to preparing a package for a simplified acquisition, see Section 10.4 of this handbook.)

### **6.1 Statement of Work (SOW)**

The SOW is the portion of the RFPA that describes the overall technical requirements and provides prospective contractors with the essential information needed to prepare proposals. It describes introductory and background material, the tasks to be performed, the items or equipment to be acquired, the criteria NRC will use to determine that the requirements of the SOW have been met, and the technical and management data to be delivered under the contract. A performance-based SOW is required unless otherwise justified. A performance-based SOW emphasizes the purpose of the work to be performed with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes as opposed to either how the work is to be performed or broad and imprecise statements of work. This approach ensures that the required performance is achieved and that total payment is related to the degree to which services performed meet contract standards (see Section 5.4). Performance-based contracting is a method of acquisition based on performance specification and is the preferred method for acquiring services, for example, maintenance; advisory and assistance services; operation of Government-owned equipment, facilities, and systems; communication services; and research and development. If a requesting office determines that a performance-based contract is not appropriate for performance of a specific service, a written rationale should be provided to DC by the requesting office.

The SOW may contain discussions of technical problems and technical guidelines. It also should include research references, related information, and other data that in the judgment of the requiring office will assist offerors in preparing technical proposals. When issued in a solicitation, the information presented in the SOW may affect the number of qualified prospective contractors willing and able to respond. If the SOW is not sufficiently definitive,

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some prospective contractors may not submit a proposal either because of uncertainty about the risks involved or because they do not understand if the requirements relate to their capabilities. If the SOW is too restrictive, contractors who are actually qualified may not respond.

The clarity and definition of requirements presented in a properly drafted SOW will usually result in the submission of a well-conceived proposal, reduce the time and cost of proposal preparation, and facilitate agency evaluation of proposals. Failure to specify exactly what the requiring office desires may encourage offerors to build in inflated cost contingencies or to underestimate costs. The SOW should be described in terms of functional or performance characteristics and establish the contractor and Government responsibilities.

After a contract has been awarded, the requirements set forth in the SOW constitute the definitive standard for measuring the contractor's performance. The SOW serves as the foundation of every contract. All other elements of a contract evolve around it, are affected by it, or are dependent on it. Problems during contract performance are often traceable to the approach, terminology, and content of the SOW. Regardless of other communication between the agency and the contractor as the work progresses, the parties must look to the language of the SOW as the final determinant of scope, responsibilities, and obligations.

The type of contract negotiated also relates to the requirements of the SOW (see Part 8 of this handbook for a description of contract types). Generally, if the requiring office describes the technical requirements of the proposed work in detail and has an adequate understanding of time and cost factors, a fixed-price type of contract may be feasible. On the other hand, if the performance, time, and cost factors are uncertain, a cost-reimbursement type of contract may be the only alternative.

### **6.1.1 Elements of the SOW**

#### **6.1.1.1 Background**

This section of the SOW should include a brief statement of the purpose of the work and discussions of pertinent work previously accomplished, technical problems, and expected results. It also should provide explanations or constraints necessary to understand the requirement; how the requirement arose and its relationship to previous, concurrent, and future programs; and details that reveal the purpose and significance of the requirement.

A well-written brief discussion of the various aspects of the technical problem requiring solution can set the stage for preparation of technical proposals by prospective contractors. Statements on the importance of the new work may be included, along with techniques that have been tried and found effective.

#### **6.1.1.2 Contract Objectives**

The specific objectives, as well as broader program objectives of the proposed contract, should be concisely but clearly stated. Each task to be performed by the contractor should be consistent with these objectives.

#### 6.1.1.3 Description of the Scope of Work

Some guidelines for developing the scope of work follow:

- (1) Provide a detailed description of work required, outlining the various phases of the work program.
- (2) Define the overall limits of the work scope in terms of specific technical objectives, time, and any special provisions or limitations, consistent with detailed requirements.
- (3) Include estimated project start and end date. Clearly describe the desired end result or final product.
- (4) Specify technical and other special qualifications required to perform the effort.
- (5) Clearly and unambiguously state what is expected from the contractor. List the tasks and subtasks, if any, that comprise the work structure.
- (6) Incorporate initial tasks, if known, in a basic task order contract (see Section 8.3.4.2 of this handbook for information on this type of contract).

#### 6.1.1.4 Performance-based SOWs

Performance-based SOWs contain—

- (1) Requirements described in terms of results required rather than the methods of performance of the work;
- (2) Measurable performance standards (i.e., terms of quality, timeliness, quantity, etc.) used to assess work performance;
- (3) Quality assurance surveillance plans (see Federal Acquisition Regulation [FAR] Part 46.103(a) and FAR Part 46.401(a)), also known as performance assessment plans;
- (4) Procedures for reductions of fee for cost-type contracts or for reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements (see FAR Part 46.407); and
- (5) Performance incentives when appropriate.

See Section 5.4 for additional information.

#### 6.1.1.5 Deliverables

The SOW should itemize reports, documentation, and other deliverable end products, together with a delivery schedule. Due dates (e.g., review and approval of draft documents,

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acceptance testing of deliverables, or furnishing of Government property) for any NRC-required actions should be included.

If the deliverable or end product of the contract is a written report, the SOW should specify qualitative standards for the document, the required delivery date, and the format of the report. If the report is to be published in the NRC's NUREG series, the camera-ready copy must comply with the policy found in Management Directive (MD) 3.8. The SOW also should require the contractor to supply a diskette of the report using the type of software specified in the contract. Although qualitative standards may be difficult to prescribe in advance, the ultimate use of contract reports may be indicated by using such language as "The final report must be in such detail that operating laboratories and bench level scientists and engineers can obtain useful technical guidance."

The SOW clearly prescribes the essential elements of subject matter required in progress, interim, special, and final reports. Describe the hard copy or electronic format and distribution requirements.

**6.1.1.6 Acceptance Criteria**

The SOW should establish standards for acceptance of supplies or services that will ensure that performance complies with contract requirements.

Information technology (IT) end product requirements and such IT acceptance criteria as performance and capability validation are contained in MD 2.4, "Acquisition of Information Technology Resources."

**6.1.1.7 Meetings and Travel**

The requesting office should identify necessary domestic and foreign travel, including destination, purpose of each meeting or trip, number of people necessary, and estimated length of time.

**6.1.1.8 NRC Furnished Material and Equipment**

The requesting office should identify specific reports, journals, documents, equipment or other items that NRC will provide to the contractor.

**6.1.1.9 Additional Guidance and/or References**

When technical information must be included in the SOW, such as theoretical discussions, scientific explanations, or guidance, direction, and methodology, segregate instructions on this material so that clear boundaries exist between the why, the what, and the how of the proposed endeavor.

List by full title, author, publisher, and date all guidance documents that have immediate relevance to technical performance and explain their applicability and availability. Advise the prospective contractor of where and how to obtain any mandatory reference material and other sources of information; or include this material in the solicitation. Materials related to the procurement may be attached to the RFPA for inclusion in the solicitation.

### 6.1.2 Writing the SOW

The development of an SOW is a joint responsibility of the requiring office and DC. Great care should be exercised by all who participate in preparing and reviewing the SOW to ensure that it states exactly what is needed and avoids contradictions and inconsistencies.

Use illustrations such as circuit diagrams, characteristic curves, and tabulated data to show detail that is difficult to describe in words. Use schematic diagrams and location charts to orient the reader.

Ensure that FAR guidance and the agency's metrication policy have been considered in preparing the specification of the SOW, when appropriate.

#### 6.1.2.1 Specification

The specification is a part of the SOW that describes the essential technical requirements for items, materials, or services, including criteria for determining that the requirements have been met. Specifications should not be restrictive and should be designed to promote full and open competition, with regard to the nature of the supplies or services to be acquired. Determine what types of specifications will be used, for example, design, functional, performance, or a combination of these types of specifications. Each is described below.

- **Performance-based specifications** provide the technical requirements that set forth the operational characteristics desired for an item. They state what the final product will be capable of accomplishing rather than describing how a product should be designed (see Section 5.4).
- **Functional specifications** describe work to be performed in terms of end purpose rather than the way in which the work is to be performed. They are broader than performance specifications and are aimed at permitting more competition.
- **Design specifications** set forth precise measurements, tolerances, materials, in-process and finished product tests, quality control measures, inspection requirements, and other specific information. They are used when the technical requirements are definite and can be communicated clearly to potential offerors. Design specifications permit award solely on the basis of price and price-related factors, since no flexibility is allowed and all responsive bids are therefore design-identical.

Specifications should be listed in order of preferred usage. Performance-based specifications are preferred over functional and design specifications.

#### 6.1.2.2 Style

Arrange ideas in an orderly fashion, keep sentences as short and concise as possible, use proper punctuation, and use the active voice for greater emphasis.

Avoid redundancy, contradictions, ambiguities, duplication, and overlap. Identify tasks and subtasks and arrange them in performance sequence.

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Use language that clearly states the exact intent of the NRC; a reader should not have to search for meaning and interpretation. Consistency in terminology is critical. Evaluate the SOW for clarity, precision, and completeness. Answer four basic questions:

- What needs to be done?
- When (and sometimes where) must it be done?
- What must be the final output?
- How will the final output be inspected and accepted?

Avoid or eliminate all material that is not essential for describing the work required, that might add to the ultimate cost of the work, or that might detract from the actual requirement. While SOWs should be complete, they should not be used as a catchall for special terms and conditions under the contract. These requirements should be listed separately in the RFPA package.

In SOWs and contracts, the word "shall," which is the imperative mood of the verb, is used to require the contractor to do something. Simple futurity or optional requirements are expressed by "will," "should," or "may." For example: "The indicator unit shall be designed to display the following data." or "The indicator shall be turned to zero and 200 volts alternating current applied." For specific test procedures, the imperative mood may be used, preceded by such wording as "The following tests shall be performed." Simple futurity is expressed by the word "will," for example, "The emergency diesel generator will supply power to the motor."

#### **6.1.2.3 Review**

The close review of the draft SOW by the project officer (PO) and other appropriate requesting office staff is critical to achieving an effective SOW. Sufficient time should be allowed for a critical reading of the draft to detect errors or lack of clarity.

#### **6.1.3 Unique Considerations for an SOW Relating to Waste Characterization, Packaging, and Disposal**

Development of an SOW relating to waste characterization, packaging, and disposal include specific considerations (see Exhibit 10 for guidance). Assistance for these projects may be provided by the Office of Nuclear Material Safety and Safeguards, Division of Waste Management.

#### **6.1.4 Acquisition of Recycled and Recyclable Products and Environmentally Preferable Products and Services - Greening the Government**

Executive Order 13101, "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition," encourages Federal agencies to purchase recycled and recyclable products (e.g., recycled paper, remanufactured toner cartridges) and environmentally preferable products and services (e.g., technical support, renovation or construction, printing, facilities management, and information technology requirements). The order states that all agencies shall require that, to the extent practicable, their purchases of products and services

meet or exceed the Comprehensive Procurement Guidelines (CPGs) of the Environmental Protection Agency (EPA).

To facilitate this initiative, contract specialists (CSs) should review all SOWs over the simplified acquisition level with POs to determine if use or delivery of environmentally preferable and energy-efficient materials should be required or if possible general waste prevention and reduction actions should be taken during the course of the contract. If a procurement includes a waste reduction program, the CS and the PO should contact the Senior Administrative Services Specialist, Administrative Services Center, ADM, who is the Agency Environmental Manager, to ensure that the SOW provides guidance for the contractor to carry out the program in accordance with EPA's CPGs. At a minimum, all contractors should continue to implement existing programs that encourage recycling, energy and water efficiency, waste prevention, and waste reduction in accordance with EPA guidelines.

The CS and the PO may encourage potential contractors to propose waste prevention programs by stating in solicitations that proposed recycling programs, energy efficiency programs, and water efficiency programs will be taken into account when evaluating the firm to determine the best value for the agency.

The procurement specialist (PS) will spot-check simplified acquisition specifications for products containing environmentally preferable and energy-efficient materials designated under EPA's CPGs and will ensure that the most current information required for those products by EPA has been included.

### **6.1.5 Procuring Information Technology for Individuals With Disabilities**

Effective after June 25, 2001, Section 508 of the Rehabilitation Act (29 U.S.C. 794d) requires that when Federal agencies develop, procure, maintain, or use electronic IT, Federal employees with disabilities have comparable access to and use of information and data as Federal employees who have no disabilities. Section 508 also requires that individuals with disabilities who are members of the public seeking information or services from a Federal agency have comparable access to and use of information and data as the public without disabilities. Section 508 is implemented in FAR Part 39.200

These requirements are applicable to—

- Contracts for IT deliverables
- Task and delivery orders for IT deliverables
- Orders of any value for which a Purchase Card is used
- Note: Task and delivery orders for IT include those issued against NRC's current, ongoing indefinite quantity/indefinite delivery contracts, as well as Federal Supply Schedule (FSS) contracts, UNICOR, Economy Act sources, Governmentwide agency contracts (GWACs), other multiagency and interagency contracts, and multiple award contracts (MACs).

The applicable technical standards and functional performance criteria for IT procurements are available via the Internet at <http://www.section508.gov>. The technical standards and functional performance criteria cover acquisition of software applications and operating systems; Web-based Intranet and Internet applications; telecommunication products; video and multimedia products; self-contained, closed products; and desktop and portable computers.

Exceptions to Section 508 IT standards include—

- IT for a national security system;
- IT that is acquired by a contractor for the contractor's own use incidental to a contract;
- IT located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment; or
- IT that would impose an undue burden on the agency in accordance with FAR Parts 39.202 and 39.204(e).

## **6.2 Independent Government Cost Estimate (IGCE)**

An IGCE shall be developed when the work to be procured by contract is expected to exceed \$100,000. NRC Form 554 (which may be accessed through the online forms icon) provides a step-by-step narrative and worksheet for developing the cost estimate. The guidelines are designed primarily for the acquisition of research and technical assistance; however, they also will assist in developing sound cost estimates for the acquisition of supplies and equipment.

The IGCE should be realistic and be as accurate as possible in order for the CS to use it as a source of comparison to proposed prices. Completed cost estimates for proposed contractual actions shall be transmitted as an attachment to the RFPA (NRC Form 400).

NRC cost estimates are for Government use only; therefore, they may not be revealed to a potential contractor. For procurements valued at \$100,000 or less, an estimate shall be developed in a level of detail commensurate with the complexity of the procurement. This estimate is retained in the requesting office's files. The PO should discuss the details of any cost estimate with the CS.

## **6.3 Approvals and Coordinations**

Procurement approvals required to accompany the RFPA package are discussed in Part 5 of this handbook. For further assistance see Flowchart 5-1, which designates the items that shall accompany the RFPA with an asterisk. In addition to these approvals, the RFPA form itself shall be certified by the designating official (DO). The DO's signature certifies that the proposed procurement is an appropriate requirement.



## 6.4 Certification of Funds

The RFPA (NRC Form 400) must contain assurance that the requesting office will make available funds adequate to cover the project's estimated cost. This step can be accomplished through a certification of funds or a statement indicating that adequate funds have been budgeted for the project and appropriate certification of funds availability will be provided before issuance of the request for proposal (RFP). DC will issue the RFP and proceed with the procurement up to the time of award in those instances in which funding is to be provided from a subsequent year's appropriation. Offices shall provide DC with the required funds certification following allocation of the NRC appropriations.

## 6.5 Determining Sources To Be Solicited

The selection of solicitation sources is a critical step in the procurement process. Successful contract performance depends largely on the solicitation of potential responsible sources by one or a combination of the methods described below.

### 6.5.1 Sources Recommended by the Requesting Office

The requesting office or the SEP is encouraged to attach a recommended list of sources (company name, address, and telephone number) to the RFPA for solicitation. Recommendations should be made on the basis of capability of physical resources and staff personnel, past performance or experience in a given service area or with a particular item or product line, and available capacity. The contracting officer (CO) may add to the list of recommended sources on the RFPA.

### 6.5.2 Advertising Through FedBizOpps

Advertising contracting opportunities provides industry with information concerning current Government contracting and subcontracting needs. Effective January 1, 2002, the *Federal Business Opportunities* Web site, FedBizOpps ([www.fedbizopps.gov](http://www.fedbizopps.gov)), has been designated as a single point of electronic public access to Governmentwide procurement opportunities. It includes a Federalwide bidders mailing list. FedBizOpps is an effective method for adding to the competitive base in Federal procurement because it is a comprehensive and timely way to publicize procurement information. Generally, an agency announces its requirement in FedBizOpps as a notice that identifies the requirement and an anticipated issue date for the solicitation. FedBizOpps also forwards the notice to the Commerce Business Daily (CBD), a well-known publication of procurement information that is still in use.

Unless the procurement is excepted from the requirement for a public notice, such as certain competitive simplified acquisitions, any proposed competitive procurement is required to be advertised online in FedBizOpps—and, when appropriate, in trade journals—if the open market procurement is greater than \$25,000 (see Section 6.5.4 of this part).

The CS prepares the FedBizOpps notice with assistance from the requesting office. The FedBizOpps notice shall clearly describe the requirement and all important details, such as

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locations, options, timeframes, and desired areas of expertise. It should state the issue date for the RFP solicitation or invitation for bid as a specific calendar date. The notice must be published 15 days before issuance of a solicitation, except for acquisition of commercial items.

Information regarding preparation and transmittal of a FedBizOpps notice may be found in FAR 5.207.

### **6.5.3 Establishing and Maintaining a Bidders Mailing List (BML)**

The FAR requires that the agency acquisition office maintain a list of potential sources for procuring activities unless electronic commerce methods are used that transmit solicitations or notices of procurement opportunities automatically to all interested sources. NRC no longer maintains an agency BML since all competitive solicitations are transmitted through FedBizOpps (see Section 6.5.2). Vendors are able to register on FedBizOpps to automatically receive notices and solicitations issued by Federal agencies for NAICS code procurements of their choice. Vendors may also register on PRO-Net, SBA's small business database. Buyers can access both of these databases for sources. In addition, SBCR maintains a listing of small businesses that have expressed an interest in doing business with the NRC.

### **6.5.4 Sources Sought Notice**

If the CO or the requesting office wishes to determine whether other sources are available for a requirement, the requesting office and the CS jointly prepare a sources sought notice, which is placed in FedBizOpps. This notice includes a description of the requirement and invites interested sources to identify their ability to carry out the requirement. Sources sought notices shall be titled, for example, "Research and Development Sources Sought," and include the name and telephone number of the CO or the CS from whom technical details of the project can be obtained. The notice may include a statement explaining why NRC believes only one source is available. The sources sought notice enables potential sources to learn of programs and provides an opportunity for sources to submit information that will permit agency evaluation of their capabilities.

Potential sources responding to a sources sought notice will be added to the appropriate solicitation mailing list for subsequent solicitation.

The CO shall advertise all subsequent solicitations for this requirement unless one of the exceptions in FAR 5.202 applies (see Section 5.2.1.1 of this handbook).

### **6.5.5 Market Research**

Market research is conducted to determine whether agency needs can be met by items or services available in the commercial marketplace. Market research identifies commercial practices regarding customizing, modifying, or tailoring items to meet customer needs. It identifies customary industry terms and conditions such as warranties, acceptance, inspection, and maintenance. The FAR requires market research be conducted before new requirements are developed. Effective research will determine the availability of suitable commercial items to satisfy agency needs, provide valuable product and industry information, and identify

existing, desirable systems and technology. Market research also is required before soliciting any offers above the simplified acquisition threshold, as well as for requirements below the simplified acquisition threshold when adequate information is not available and the cost of research is justified.

The PS and/or the CS and the requesting office perform preliminary market research to determine if the requirement—

- can be met through the General Services Administration (GSA)/Government stock (supply item)
- can be met through use of a mandatory source (UNICOR/Committee for Purchase From People Who Are Blind or Severely Disabled [also known as NISH])
- can be procured through GSA schedule
- is an 8(a) or HUBZone item or a sole-source procurement
- can be fulfilled through use of another agency's GWAC or a multiple award schedule (MAS) contract
- can be met by a commercial item/service on the open market
- can be met by a noncommercial item on the open market
- warrants more extensive market research in accordance with its complexity.

Formal market research is conducted through such approaches as contacting knowledgeable people, reviewing the results of recent market research for the same or similar items, obtaining information by Internet, checking the Yellow Pages, using the Small Business Administration's PRO-Net small business Internet resource, obtaining sources from other contracting offices, or reviewing catalogs. The individual conducting the market research should summarize the activities in writing in a manner appropriate to the size and complexity of the acquisition and place the summary in the contract file.

SBCR maintains a list of sources with different capabilities that are available to do business with the NRC.

#### **6.5.6 Presolicitation Exchanges With Industry**

Exchanges of information are encouraged among all interested parties, from the earliest identification of a requirement through receipt of proposals. Any exchange of information must be consistent with procurement integrity requirements (see Section 5.10.7 of this handbook). Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition. To avoid any perception of preferential treatment, exchanges should be held with more than one source.

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The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities. This, in turn, allows potential offerors to judge whether or how they can satisfy the Government's requirements and enhance the Government's ability to obtain quality supplies and services at reasonable prices, as well as increase efficiency in proposal preparation and evaluation, negotiation, and contract award.

Early exchanges can be accomplished through conferences, market research, one-on-one meetings, presolicitation notices, draft RFPs, presolicitation or preproposal conference, and site visits.

### **6.5.7 Public Documents in ADAMS**

Staff may refer interested parties to ADAMS [Agencywide Documents Access and Management System] to view solicitations, amendments, and other applicable documents.

## **6.6 Expert and Consultant Services (Advisory and Assistance Services)**

Expert and consultant services are considered advisory and assistance services. Persons providing these services possess special and current knowledge or skill that may be combined with extensive operational experience. This background enables them to provide information, opinions, advice, or recommendations to enhance understanding of complex issues, or to support or improve the quality and timeliness of policy development or decision making, management and administration. These services also are used to support or improve the operation of management systems. Advisory and assistance services mean those services provided under contract by nongovernmental sources to support or improve organizational policy development; decision-making; management and administration; program and/or project management and administration; or research and development (R&D) activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the services mentioned above, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations.

Advisory and assistance services, generally, do not include the routine use of engineering, scientific, legal, accounting, or other professional services to support NRC's existing administrative and regulatory functions. Advisory and assistance services involve reviewing or improving those functions.

The FAR provides guidance on procuring advisory and assistance services. Before issuing a contract for advisory and assistance services, the CO must ensure that the Executive Director for Operations (EDO), or designee, makes a determination that sufficient personnel with the requisite training and capabilities are available within the agency to evaluate or analyze proposals. Program personnel should seek guidance whenever there is doubt about the

application of the FAR criteria defining advisory and assistance services. Additional information may be found in FAR Sections 37.201-37.203.

## **6.7 Oversight of Service Contracting and Advisory and Assistance Services**

Over the years, both real and perceived problems have been identified in the area of service contracting. Some of the major problem areas, associated primarily with the use of contracting for consulting services, include lack of competition, the potential for conflicts of interest on the part of service contractors, and the failure of the agency to exercise adequate control over the contractor's performance. The Office of Federal Procurement Policy, Policy Letter 93-1, specifies essential considerations in five areas that require close management scrutiny: inherently governmental functions, cost-effectiveness, Government control, conflicts of interest, and competition.

Policy Letter 93-1 sets out a series of questions as guidelines for agencies to use in improving controls in the five areas mentioned above. Both the PO and CS should review requirements for service contracts on an individual or class basis to determine if the guidelines provided in the policy letter are applicable. If the guidelines apply and there is an "affirmative" response to any of the questions, the CO will further analyze the requirement and determine some method or course that would eliminate or mitigate the potential for abuse. (See Exhibit 10 for the series of questions to assist in analyzing and reviewing requirements for service contracts.)

## **6.8 Selecting Proposal Evaluation Criteria on the Basis of Best Value Continuum and Oral Presentation Source Selection Processes: Lowest Price, Technically Acceptable Process, and Tradeoff Process (Formerly Best Value)**

An important factor in the development of the RFP package (the solicitation) is the identification of the evaluation criteria that will be used to assess the quality of proposals received. The evaluation criteria, which are placed in the solicitation, set forth factors that must be examined when evaluating each proposal to determine the offeror's ability to perform the work requirements of the SOW and to establish the acceptability of the proposal. The development of effective evaluation criteria requires a thorough understanding of the objectives of the proposed procurement, of problems or obstacles that might be encountered during the course of the project, and the significance of the various facets of the project.

In developing evaluation criteria, the SEP must decide whether award will be determined on the basis of the lowest price among all technically acceptable proposals or on tradeoffs for the best value for the Government. These choices make up the best value continuum, which is one or a combination of source selection approaches that are used to obtain best value. Two specific techniques are the lowest price technically acceptable process and the tradeoff process.

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The lowest price, technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price. Award is made to the offeror with the lowest price and a technically acceptable proposal. There is no extra consideration given for technical expertise. When using this process, the following apply:

- The evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation.
- The nonprice factors are all evaluated on an acceptable/unacceptable basis with no gradations or scores for higher levels of achievement.
- Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for noncost factors.
- Past performance need not be an evaluation factor when using this process if the CO documents the file by stating why it's not necessary. If the CO decides to consider past performance as an evaluation factor, it shall be evaluated in accordance with FAR 14.305.
- The comparative assessment in FAR 15.305(a)(2)(i) does not apply.
- Tradeoffs are not permitted.
- Proposals are evaluated for acceptability but not ranked using the noncost/price factors.
- Exchanges may occur (see Section 9.1 of this handbook).

A tradeoff process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror. It allows flexibility to balance technical and cost factors. The SEP compares strengths, weaknesses, risk, and cost and then determines which combination represents the greatest value. When using a tradeoff process, the following apply:

- All evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation.
- The solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

See Sections 5.10.1.1.1. and 9.1.11 of this handbook for more information on tradeoff source selection.

The evaluation criteria must be realistic and consistent with the work described in the SOW. The evaluation criteria identify the factors that will be used in evaluating a proposal. There should be a correlation between the SOW; the "Proposal Presentation and Format" section of the RFP, which instructs the offerors how to structure a proposal (see Part 7 of this handbook);

and the evaluation criteria. This correlation is critical because it ensures that the offeror prepares a proposal that relates to the evaluation criteria. In addition, the evaluation criteria should facilitate the identification of significant strengths, weaknesses, or deficiencies of the various offerors' proposals. The number of criteria should be limited to facilitate a focus on the significant aspects of the evaluation.

The solicitation shall clearly state the evaluation factors and subfactors that will be considered in making the source selection and their relative importance. Examples of evaluation factors and subfactors include cost- or price-related factors, past performance, and other factors not related to cost or price.

The solicitation (RFP) (see Part 7 of this handbook) should be structured to provide for the selection of the source whose proposal offers the greatest value to the agency in terms of performance, risk management, and cost or price factors.

The evaluation criteria developed and set forth in the RFP shall be used in the evaluation of proposals received in response to the RFP. If the criteria are changed during the evaluation, all offerors must be advised of the change and given the opportunity to modify their proposals accordingly.

### **6.8.1 Evaluation Criteria Guidelines—Price/Cost and Past Performance a Priority**

The SEP may use discretion in selecting the evaluation criteria that apply to an acquisition and the relative importance of those criteria except for—

- (1) Price or cost to the NRC shall be included as an evaluation factor in every source selection.
- (2) Past performance shall be evaluated in all competitively negotiated acquisitions expected to exceed \$100,000 unless the CO documents in the contract file the reasons why past performance should not be evaluated. Evaluation of past performance is discussed further in Section 6.8.3 of this part. The solicitation shall describe the approach for evaluating past performance, provide an opportunity for the offeror to identify past or current contracts for similar efforts, and authorize offerors to provide information on problems encountered and corrective action on such contracts. The source selection authority (SSA/CO) shall consider this information and shall determine the relevance of the information. The evaluation should consider past performance information regarding predecessor companies, key personnel, and subcontractors with major roles in the procurement.

The CO must indicate whether all the evaluation criteria not related to cost or price, when combined, are—

- significantly more important than the cost or price

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- approximately equal in importance to the cost or price
- significantly less important than the cost or price

As an incentive to encourage offerors to utilize small disadvantaged businesses (SDBs) as subcontractors, an evaluation factor or subfactor may be included [for procurements expected to exceed \$500,000 (\$1,000,000 for construction)], in accordance with FAR 19.1202-4. Under this factor or subfactor offerors are evaluated for providing targets for SDB participation. The score for this factor is included in the scored proposal evaluation and later incorporated into a resulting contract.

### **6.8.2 Specific Categories of Criteria**

Evaluation criteria should be set forth under basic categories. For NRC procurements, the categories normally will be past performance, and some combination of technical, managerial, and financial. The qualitative aspects of cost may be assessed in terms of a realistic relationship to the project rather than an exact analysis of the dollar amount. For example, an unusually low cost estimate by an offeror may reflect a lack of understanding of the personnel and resources required to do the job, or a lack of appreciation for the effort required to resolve technical problems. Within each category, specific criteria will focus on evaluating significant items, leading to a composite rating of the category.

For the application of specific criteria in the most complex procurements, it may be necessary to include a further breakdown of criteria into subcriteria, which also should be set forth in the solicitation. Nonetheless, the SEP should consider using one evaluation factor or using a limited number of evaluation factors, whenever possible, to streamline the evaluation process. For example, past performance can often successfully be the only evaluation criteria applied for technical evaluation. The CS has access to "A Guide to Best Practices for Past Performance" (the Office of Management and Budget) and other guidance to assist requesting offices or the SEP as evaluation criteria are designed.

When evaluating price, there are two unique criteria implemented in the FAR to benefit SDB and HubZone firms. For procurements greater than \$100,000, if applicable, a Price Evaluation Adjustment may be used for competing SDB concerns. This is done by adding 10 percent to non-SDB/not eligible offerors' prices (FAR 19.1102 and 19.1103) when comparing their prices to the SDB firm's price. Similarly, a Price Evaluation Preference for HUBZone small business concerns is accomplished by adding 10 percent to other offerors' prices that are not HUBZone firms (FAR 19.1307). If a small business is HUBZone and SDB certified, the firm must receive benefit of both HUBZone Price Evaluation Preference and SDB Price Evaluation Adjustment. Each preference or adjustment shall be added independently to other offerors' base prices when compared to the HUBZone/SDB firm (FAR 19.1307(d)).

For the most complex procurements, the set of evaluation criteria listed below may be used:

- organizational experience and past performance (consider if prior work was of comparable size and complexity and how well that prior work was performed)



- technical qualifications and availability of proposed personnel
- corporate and personnel resources and program management (ability to manage the work, provide quality deliverables, and monitor project status and costs)

Each proposed evaluation criterion or subcriterion should be stated clearly and concisely. Care in delineating proposed criteria may reveal redundancies, which, when not eliminated, can have an adverse effect on the selection if the same factor is evaluated more than once. In addition, the criteria should be carefully reviewed to ensure that they are consistent with the SOW.

### **6.8.3 Establishing Weights and Scoring for Technical Criteria/Evaluating Past Performance**

Numerical weights employed in the evaluation of proposals are disclosed in NRC solicitations. If a solicitation uses numerical weights, the RFP must clearly state those weights and the relative importance and minimum requirements of each technical evaluation criterion and subcriterion that NRC will use to evaluate offers by assigning a numerical weight to each criterion, when applicable. The relative importance of factors that are not numerically weighted will be stated in the solicitation. Examples of factors that may not be numerically weighted are conflict of interest, estimated costs, and "go/no go" evaluation factors. Past performance should have at least as much weight as any other criterion. Thus, on a scale of 100 points, when past performance is the only noncost criterion, it will be worth a maximum of 100 points. In a complex procurement, past performance may be worth 50 points; the technical approach may be worth a maximum of 25 points, the management plan may be worth a maximum of 15 points; and corporate experience may be worth a maximum of 10 points. This example is an illustration. Criteria and their weights will vary from one procurement to another.

Technical evaluation criteria must be designed so that firms lacking relevant past performance history receive a neutral evaluation for past performance. The neutral evaluation may be accomplished by assigning the average score of other competing offerors to such firms, or by assigning a score of zero to such firms and assigning negative points only for poor performance. Key personnel or subcontractors may be rated in place of company experience if there is no information available on the company's past performance.

### **6.8.4 Criteria Not Numerically Rated**

Not all proposal criteria lend themselves to numerical ratings. For example, a conflict-of-interest criterion is not considered on the basis of degree, but on whether or not it is present. In hardware and facility procurements, certain features may be mandatory and therefore not weighted. Estimated cost also is not usually numerically rated. In technical assistance and confirmatory research activities, costs are very closely related to the number and kind of personnel proposed, the type of equipment considered necessary, the facilities proposed, and the degree to which technical problems are foreseen and addressed. These factors will not be numerically weighted; only their relative importance will be stated in the solicitation.

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For example, the evaluation criteria may state that technical merit is more significant than cost.

Although not numerically rated, costs are evaluated to determine reasonableness and realism in terms of the proposed work. Labor rates, overhead rates, and equipment pricing are individually analyzed to make this determination. Questionable rates or prices and other significant cost concerns are discussed or negotiated with offerors.

At the CO's discretion, cost or business evaluation may be conducted simultaneously with or separately from technical and project management evaluations.

### **6.8.5 Oral Presentations**

When discussing the use of evaluation criteria, the SEP may consider receiving oral presentations as a means of evaluating an offeror. Oral presentations as discussed in Section 5.10.1.2 of this handbook and FAR 15.102 are an expedient method for conducting a procurement when used in place of a written proposal. Information pertaining to areas such as an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks may be suitable for oral presentations. In most cases, some handouts (usually copies of presentation slides and résumés of limited key personnel) are desirable. To maximize the benefits of using oral presentations, the written documentation that the CS maintains in the contract file is kept to a minimum; however, past performance references and cost information are submitted in writing. In deciding what information to obtain through oral presentation, consider the following:

- the Government's ability to adequately evaluate the information
- whether and what part, if any, of submitted information should be incorporated into any resultant contract
- the effect on the efficiency of the acquisition process
- the impact the process may have (including cost) on a small business's capability to respond to the solicitation

The solicitation shall provide offerors with sufficient information to prepare for the oral presentation. The CO shall maintain evaluations of the oral presentations in the contract file. Exhibit 11 provides a sample of an evaluation worksheet used for oral presentations. Oral presentations require the same evaluation report format used to document written proposals.

A record of the communications and materials used or provided during the oral presentations must be maintained and provided to the CO. Such a record may include a tape or video recording of the presentation and/or detailed notes of the presentations, along with the records of the oral presentations for review. In the event of a dispute regarding the oral discussions, the records would also allow absent evaluators and the source selection official to independently evaluate the oral presentations.

## **6.9 SEP Nominations/List of Procurement Officials**

A list of SEP nominations, designated by the DO, shall accompany the RFPA, when applicable. Also, a list of procurement officials should be attached (i.e., the SEP, the CO, the DO, and any managers connected with the project who have had/will have access to procurement information).

## **6.10 Transmittal of the RFPA Package to DC**

All requesting offices complete the RFPA, NRC Form 400, for all procurements valued at \$25,000 and above, along with appropriate documents and approvals discussed in Part 5 of this handbook and in this part. Headquarters requesting offices transmit the RFPA package to DC. Regional offices send the completed RFPAs for open market actions valued at above \$25,000 or schedule buys over \$100,000 to DC. RFPAs for schedule buys up to \$100,000 are processed by regional offices. If possible, the package should include a computer diskette that contains documents useful to the CS (e.g., the SOW, evaluation criteria, and the justification). When an incomplete RFPA package is received by DC, the CO will determine whether the package should be returned to the requesting office or if the CS has sufficient information to proceed with the procurement process subject to receipt of the missing component.

## **6.11 DC Receipt and Review of the RFPA Package**

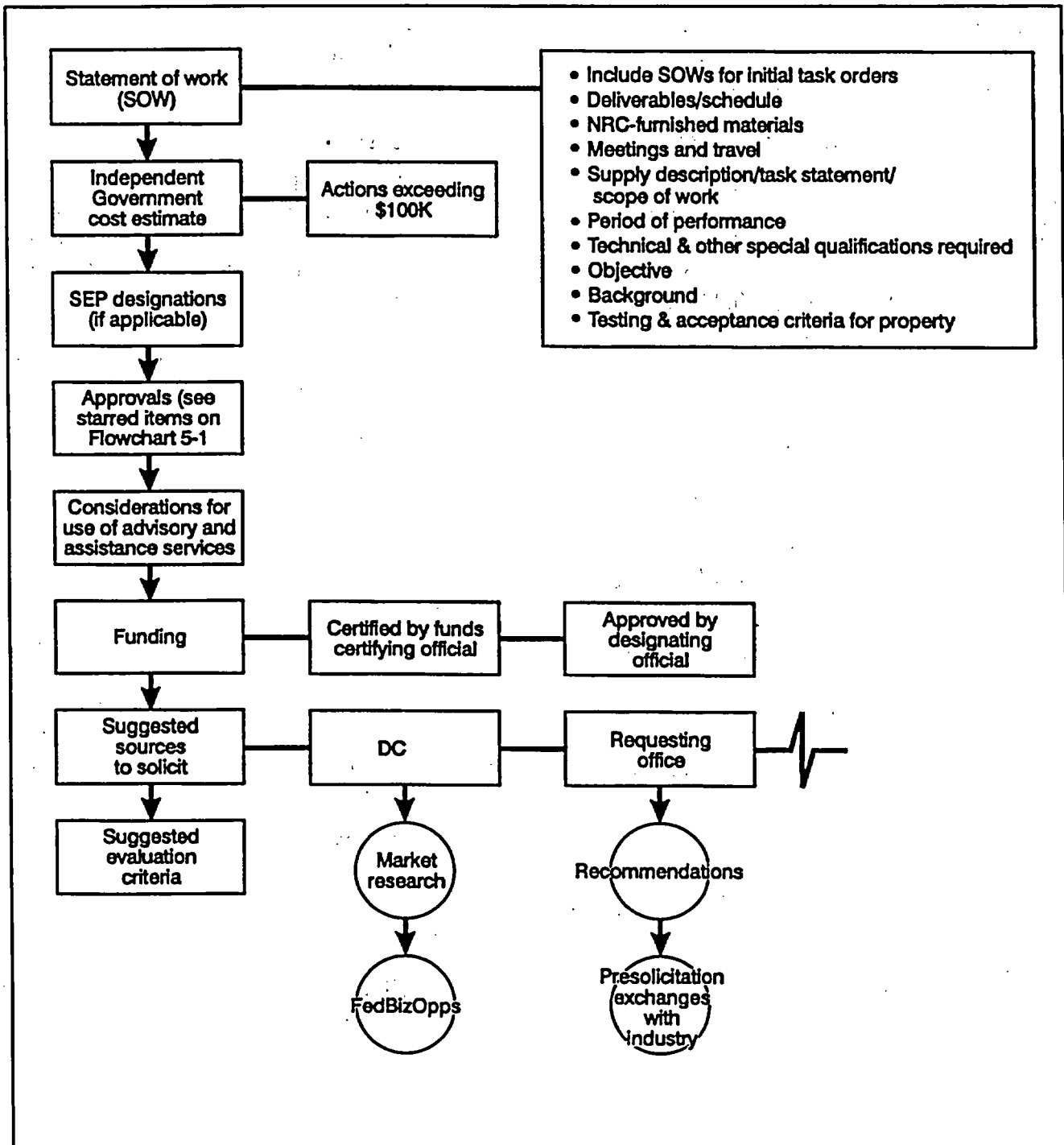
Upon receipt of the RFPA package, DC will transmit a copy of the RFPA and the SOW to the Office of Small Business and Civil Rights (SBCR). On the basis of its review, SBCR will make set-aside recommendations and identify qualified potential small business firms.

The CO and the CS examine the SOW for overall sufficiency, the extent to which the SOW is consistent with the procurement objectives, whether or not the SOW can support the recommended contract type, and whether or not the SOW will produce the expected results. The CS also analyzes the breakdown of the work items to be done and the associated preliminary cost estimates to accomplish this work (as outlined in the IGCE). The CS resolves any questions or problems with the PO or others responsible for the SOW.

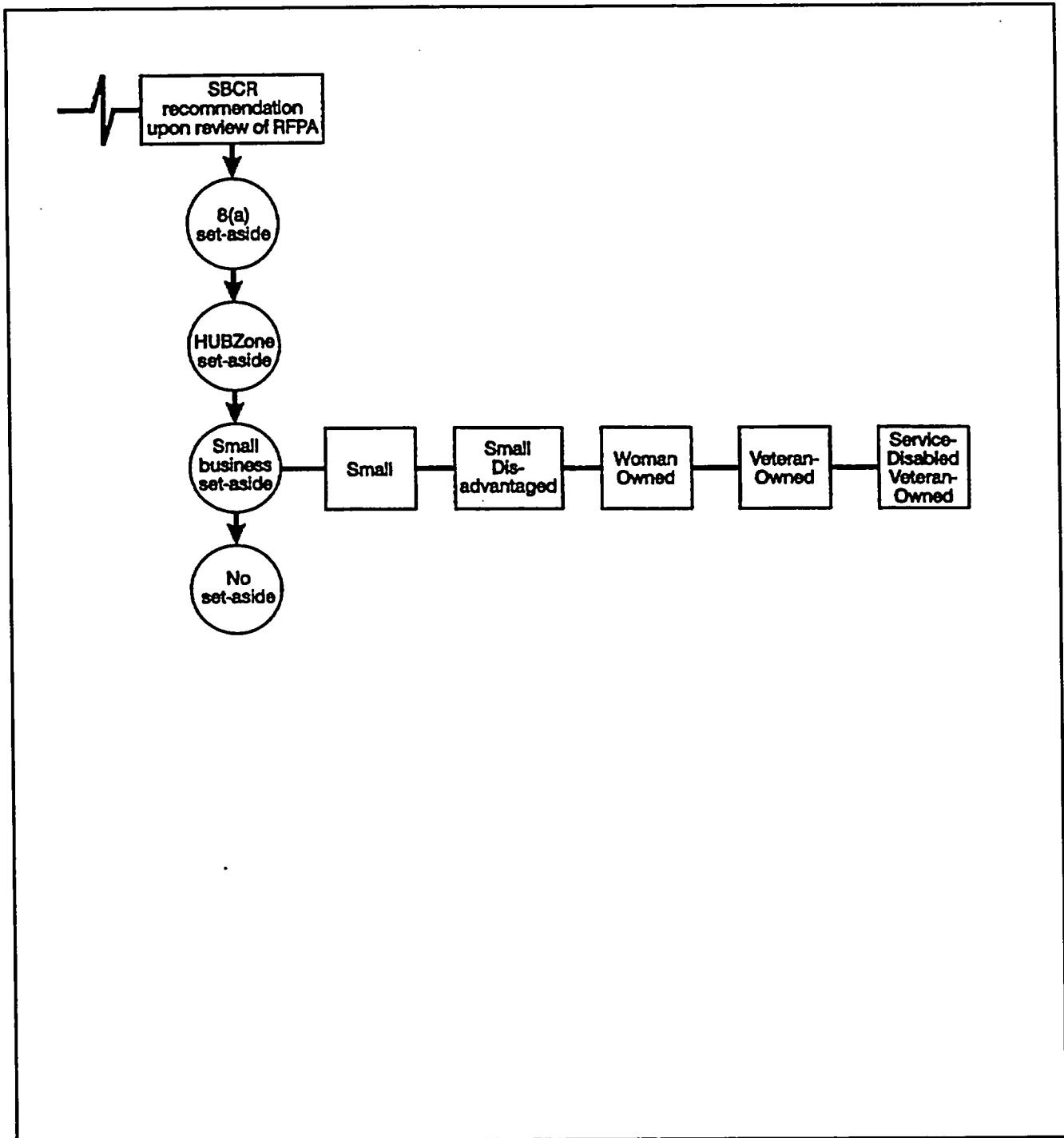
Within 2 weeks after DC receives the RFPA package, the CS meets with the PO, or in the case of negotiated procurements, the SEP, to discuss and reach final agreement on the components of the RFPA package. These components, which contribute to the development of the solicitation, are the sources list, the SOW, evaluation criteria, the independent cost estimate, and the proposal presentation and format. The CS, the PO, and the SEP also will discuss streamlining initiatives and will develop a milestone schedule to establish completion dates for each aspect of the procurement process.

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**Flowchart 6-1 Preparing Request for Procurement Action (RFPA)**



Flowchart 6-1 (Continued)



## **Part 7 Development of Solicitation**

The solicitation provides the offeror or bidder with the information needed to understand and respond to an NRC requirement. There are two types of solicitations for purchases surpassing the simplified acquisition threshold: the first is the request for proposals (RFP) for negotiated procurements and the second is the invitation for bids (IFB) for sealed bids. For an in-depth discussion of the negotiated and sealed bid methods of procurement and the differences between them, see Part 9 of this handbook.

### **7.1 Determinations Before Development of a Solicitation**

Before the development of the solicitation document, the contracting officer (CO) and the contract specialist (CS) will determine and finalize—

- the statement of work (SOW)
- contract type on the basis of the requirements (see Part 8 of this handbook)
- acquisition strategy (i.e., full and open competition, sole source, 8(a) set-aside, HUBZone set-aside, small business set-aside (see Sections 5.2.2 and 5.3))
- proposal information and evaluation criteria
- streamlining initiatives

### **7.2 Contents of a Solicitation**

Much of the solicitation is standard. It includes—

- Part I, Schedule (price and cost forms, SOW, inspection and acceptance, deliveries and period of performance, contract administration data, special contract requirements)
- Part II, Contract Clauses
- Part III, List of Documents and Attachments
- Part IV, Representations and Instructions (representations and certifications of the offeror, instructions, conditions and notices to offeror, evaluation factors for award)

The unique features that require substantial attention are the SOW, evaluation factors (both discussed in Part 6 of this handbook), and the proposal preparation information.

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In general, the solicitation should—

- (1) advise offerors of the time and place of any preproposal conference or site visits and the limitations that will be imposed on the number or qualifications of the attendees
- (2) state whether security clearances or other special administrative arrangements are necessary to secure admittance to a conference
- (3) determine and furnish details of conference procedures
- (4) inform offerors about procedures for submitting written questions to be answered at the conference
- (5) state other administrative details, if known, such as whether transcripts of the conference proceedings will be supplied
- (6) allow sufficient time for prospective proposers to review the solicitation before any preproposal conference
- (7) include all required and special contract clauses
- (8) include forms to be completed in connection with cost estimates for the proposed work

The solicitation must specify a closing date for submission of proposals. The amount of time allowed for the preparation of proposals will vary depending on the nature of the project. Closing dates can have a significant effect on the procurement process. An early closing date may not provide sufficient time for offerors to prepare and submit proposals that are well thought out and may even discourage capable sources from competing. Although no one period of time can be specified for all procurements, usually 30 days is allowed from the issuance date of the RFP. An early closing date may be determined for those procurements not advertised in FedBizOpps (e.g., research and technical assistance, in accordance with the NRC Procurement Reinvention Laboratory). The closing date will be determined by the staff of the requiring office in consultation with the staff of the Division of Contracts (DC), Office of Administration.

The solicitation must inform offerors of information that may be disclosed to competitors during debriefing (see Section 9.1.15 of this handbook).

### **7.3 Steps for Developing a Solicitation**

The steps for development of a solicitation vary depending on the method of procurement. Solicitations for competitive negotiated, noncompetitive negotiated, and sealed bid procurements are discussed below.

### 7.3.1 Competitive Negotiated Procurements

When using the competitive negotiated method of procurement, the source evaluation panel (SEP) convenes and develops the procurement milestone schedule, a planning tool. The schedule lists each step that must be accomplished in order to award a contract. The SEP and the requesting office work with the CS to establish realistic dates that will result in a timely award. The schedule is reviewed by the CO and approved by the SEP. A copy of the fully signed schedule will be provided to all members of the SEP and to the designating official (DO).

The Executive Director for Operations (EDO) has stressed the need for adherence to these milestone schedules to ensure that the contract is actually awarded when planned. The memorandum of August 17, 1993, from James Taylor, former EDO, to the office directors and regional administrators set forth criteria whereby office directors will be notified of late procurements.

The SEP meets to discuss contract type and develop components of the solicitation document, the RFP (i.e., evaluation factors, proposal preparation information, and the SOW).

The FedBizOpps notice is reviewed by the SEP or the requesting office and issued by the CS (see Section 6.5.2 of this handbook for additional information).

After the CS has released the FedBizOpps announcement for publication, all details regarding the solicitation are resolved and the CS finalizes the solicitation. The solicitation package should be limited to 100 pages or less, including attachments.

### 7.3.2 Noncompetitive Negotiated Procurement

Noncompetitive negotiated procurements include 8(a) set-asides, HUBZone sole-source, as well as other than full and open, procurements (see Section 5.2.1.2 of this handbook). The requesting office and the CS work together to develop the milestone schedule, contract type, and the solicitation document (RFP), including proposal preparation information and the SOW. The FedBizOpps notice is prepared by the CS and reviewed by the project officer (PO) and the CO and issued by the CS. The CS finalizes the solicitation.

### 7.3.3 Sealed Bid

The requesting office and the CS develop the milestone schedule, contract type, and the solicitation document (IFB), including the SOW and bid proposal information. The FedBizOpps notice is reviewed by the PO, the CS, and the CO and issued by the CS. The CS finalizes the solicitation.

## 7.4 Instructions to Offerors or Bidders

The solicitation package for each of the three procurement methods, discussed above, contains instructions to offerors describing how to compile the proposal, including separate cost and technical packages and the required number of proposal copies. The offeror may be advised of streamlining initiatives as well as other instructions, which may include—



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- limiting the number of pages in proposal to 100 or less, including attachments; prohibiting videos and foldouts, discouraging glossy or elaborate materials
- using the cost proposal format
- submitting a contractor spending plan for cost reimbursement contracts that have a performance period exceeding 6 months and are expected to be greater than \$100,000
- submitting the components of the technical and cost proposal (such as labor hours and categories, materials, subcontracts, and travel) that are needed to evaluate the offeror's understanding of the scope of work
- providing résumés for all professional personnel
- setting a deadline for submission of offerers' questions
- a provision that any or all proposals will be rejected if such action is in the Government's interest
- waiving informalities and minor irregularities in proposals received
- stating the intention to evaluate proposals and award a contract without discussions with offerors. (The Government can reserve the right to seek proposal clarifications [e.g., capability issues as described in FAR 15.306(a) or minor or clerical errors as described in FAR 14.407] and hold communications as described in FAR 15.306(b). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government can reserve the right to conduct discussions if the CO later determines them to be necessary.)
- limiting the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. (The CO may determine that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted.)
- reserving the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal
- reserving the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so
- noting that exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government
- noting that the Government reserves the right to determine a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. (Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of

one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the CO determines that the lack of balance poses an unacceptable risk to the Government.)

- noting that a written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party
- requiring graphs, charts, and tables when they will facilitate evaluation of proposals

The instructions usually inform all prospective contractors that NRC will solicit from available sources data concerning an offeror's past performance and will consider this information in its evaluation.

The solicitation package also may contain commercial product descriptions when necessary to satisfy the needs of the agency for research and technical assistance.

The solicitation may require oral presentations as discussed in Sections 5.10.1.2 and 6.8.5 of this handbook.

When using the tradeoff best value acquisition technique, all evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation.

The solicitation is issued to potential sources only, including sources identified by the requesting office, from the bidders list, and others requesting the solicitation.

## **7.5 Internet "Cookies"**

Personal information is often collected at Web sites in a file called a "cookie." A cookie is placed on a Web user's hard drive by the Web site being visited to monitor access to the site, usually without the user's knowledge. Web sites use cookies to recognize users who have previously visited them, often to return the user to information he or she entered and stored at the site (e.g., a "shopping cart"). A "persistent" cookie is retained on the Web user's hard drive after the user leaves a site and is reactivated when the user returns to the site that originally placed its cookie. Office of Management and Budget Memorandum M-00-13, dated June 22, 2000, provides guidance relating to the collection of information by Federal Web sites using cookies. In accordance with this guidance, the CS will include a clause in applicable contracts stating that neither NRC nor its third-party contractors that manage or develop the NRC Web site shall send persistent cookies, place persistent cookies on users' computers, or collect personally identifiable information from visitors to the NRC Web site unless in addition to clear and conspicuous notice, the following conditions are met: a compelling need to gather the data on the site; appropriate and publicly disclosed privacy safeguards for handling of information derived from "cookies"; and personal approval by the Executive Director for Operations (EDO).

## **7.6 Privacy Act**

The Privacy Act of 1974, as amended (5 U.S.C. 552a), establishes safeguards for the protection of records on individuals that the Federal Government collects, maintains, uses, and disseminates. The Privacy Act is applicable when information about individuals can be retrieved from agency records by a personal identifier (name, social security number, or case number assigned to the individual). The purpose of the Privacy Act is to balance the Government's need to maintain information about individuals with the rights of individuals to be protected against invasions of their privacy. In accordance with Management Directive 3.2, "Privacy Act," the provisions of the Privacy Act also apply to a duplicate system of records, which may be copies of agency records or similar to records contained in an NRC system of records. A duplicate system of records does not need to contain all of the records contained in the primary system. Project officers shall inform the CS when a contract requires NRC contractors and/or subcontractors and their employees to maintain or have access to a system of records or a duplicate system of records that contains personal information about individuals and from which personal information can be retrieved by reference to an individual identifier (e.g., name, social security number). The CS will then ensure that the Privacy Act clauses of the Federal Acquisition Regulation (FAR) are incorporated into the solicitation by reference. Examples of agency functions that may require the contractor to maintain a system of records on individuals are Time and Attendance Records (records include name and social security number), Travel Records (records include name and social security number), Parking Permit Records (records include the applicant's name, address, telephone number, and vehicle information), Drug Testing Program Records (records include results of initial, confirmatory, and followup testing), Facility Security Access Control Records (records include an individual's name, social security number, badge number, and digital image), and Employee Health/Fitness Center Records (records include an individual's name, date of birth, social security number, and medical history). Common duplicate systems of records include Time and Attendance Records and Travel Records.

## **7.7 Review and Approval of Solicitation**

After the solicitation package is complete, the SEP requesting office should review it for completeness and accuracy. The package should inform potential offerors what the agency desires to procure, how an offeror is to submit a proposal, and how these proposals will be evaluated. The solicitation also is reviewed by the CS, the CO, and by the Office of the General Counsel, if appropriate. Legal review ensures that the terms of the SOW clearly describe what the contractor and the agency are legally obligated to do.

## **7.8 Issuance of the Solicitation**

After the CO has approved the release of the unclassified solicitation, it can be accessed through FedBizOpps or it should be mailed or delivered to sources obtained from the Office of Small Business and Civil Rights (SBCR) or from the program office or to firms requesting copies of the solicitation.

DC will issue the solicitation in accordance with the FedBizOpps notice. A brief announcement of proposed purchases may be made in newspapers and trade journals in compliance with Federal Acquisition Regulation (FAR) 5.101(b). A copy of the solicitation also is sent to ADAMS.

### **7.8.1 Supplementary Distribution**

A reasonable number of copies of unclassified solicitations that are synopsized in FedBizOpps will be kept by DC for prospective offerors who may request them and for others with an interest in the procurement. These copies of solicitations also are used to respond to protests submitted to the agency or the General Accounting Office, and after award of the contract, to respond to requests submitted under the Freedom of Information Act.

### **7.8.2 Cancellation of the Solicitation**

All procurement actions initiated by NRC are expected to result in the eventual award of a contract. However, it is inevitable that circumstances will sometimes necessitate a cancellation of the procurement request. If it is necessary to cancel a request for procurement action (RFPA) for any reason during the procurement process, the DO cited on the RFPA shall submit a written request for cancellation to the Director of DC. The request shall cite the reasons for such action. The CS will prepare a cancellation notice to be published in FedBizOpps.

## **Part 8 Types of Contracts**

A contract is a binding agreement between two or more parties. In the Government, contracts are primarily structured according to the degree of risk and certainty of need, as a method by which the risks and rewards of a specific job are allocated. The most fundamental difference between contracts is whether they are a fixed-price type of contract or a cost-reimbursement type of contract.

Procurement requirements may make it necessary to define performance goals, training approvals, quality assurance measures, and schedule objectives. Because each additional requirement may increase the risks and costs of the work involved, the contractor must weigh these factors carefully in deciding whether to compete for a job. Within certain limits, the contractor may be willing to accept more risk for greater profit; however, the contractor may want NRC to share the cost risks. This balancing of financial risk and rewards underlies the contracting officer's selection of a contract type.

The following factors are considered in selecting the type of contract:

- nature and complexity of the item or services required
- urgency of the requirement
- contract performance period and the agency's quantitative requirements under the procurement
- degree of competition anticipated
- difficulty of accurately estimating the contractor's costs
- availability of comparative data with which to evaluate the successful contractor's offer
- the agency's prior experience with the contractor
- degree of the agency's risk
- extent and nature of the subcontracting contemplated by the contractor
- degree of risk involved for the contractor
- nature of the contractor's accounting system

- administrative costs to both parties generated by various contract types
- agency need for information on the contractor's actual cost of performance, which is necessary to estimate the price of follow-on procurements

## **8.1 Fixed-Price Contracts**

The fixed-price contract binds the contractor to complete the work for either a firm fixed price or a fixed price subject to predetermined adjustments. Acquisition of commercial items or services is accomplished using a fixed-price contract.

### **8.1.1 Basic Structure**

The agency must design and administer the contract in a way to avoid claims for unforeseen work and costs. If the statement of work and the contract are well written to eliminate ambiguities, and administered properly, the contractor bears the cost risk. The contractor also has greater opportunity for higher profits by efficiently performing the contract. If the contractor can complete the work at a cost below the negotiated cost, the contractor gains. If there is a cost overrun, the contractor must complete the work and absorb any overrun.

A firm fixed-price contract provides for a price that, absent change orders and certain other administrative actions, is not subject to any adjustment by reason of the actual cost incurred by the contractor in the performance of the contract, thus placing maximum risk on the contractor. This type contract imposes a minimal administrative burden on the contracting parties (i.e., cost reporting and audits are not required during the contract period of performance and closeout).

In addition to a firm fixed price for the work performed, the price may be fixed by using a contract with unit pricing. Unit prices are preset for units, such as equipment or supplies, or a definable segment of service. This type of contract may be used when the item or unit of service can be clearly defined, but the quantity is not as well defined. The firm, fixed-price contract shall be fully funded when the contract is awarded.

### **8.1.2 Adjustments**

The contract specialist (CS) may recommend one of a number of predetermined adjustment variations of the fixed-price contract for use when the work can be well defined, but it would be unwise to place the entire cost risk on the contractor. The primary reason for using an adjustment is to allow for economic uncertainty. If procurement costs are uncertain at first but experience may make a firm price possible later, a fixed-price redeterminable contract may be used. In another fixed-price situation, if market conditions make material prices and labor rates uncertain, escalation or deescalation may be used to adjust for price changes as they occur.

In order to ensure that the contractor has a fair and reasonable incentive and that the contractor assumes an appropriate share of the risk, the CS may recommend that a fixed-price

incentive contract be used. Firm or successive target costs, profits, a profit adjustment formula, and a ceiling price are negotiated in the contract and used to monitor performance under the contract. Although this contract structure permits a final fee to be determined on the basis of performance, the cost of administration of this type of contract usually outweighs the benefits in the fixed-price situation.

## **8.2 Cost Reimbursement Contracts**

The cost-reimbursement type of contract is used when the nature of the work makes it difficult for the agency to develop a reliable cost estimate. A cost-reimbursement type 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 is used often for procuring research and most technical assistance work. The cost risks generally are taken by the agency, especially under the basic cost-plus-fixed-fee contract (CPFF). To share the cost risks with the contractor, the CS may recommend one of several basic variations of a cost-reimbursement contract, as described below.

### **8.2.1 Cost Contract**

A cost contract is a cost-reimbursement type contract under which the contractor receives no fee but is reimbursed for all its allowable, allocable costs in the performance of a contract. If the procurement offers the contractor certain benefits beyond the immediate contract, the contractor may be willing to take on the work without fee or for a share of the costs. This type of contract is used most often for work performed by universities.

### **8.2.2 Cost-Sharing Contracts**

A cost-sharing contract is one under which the contractor receives no fee but is reimbursed only for an agreed portion of the contract's allowable costs. Cost-sharing contracts are used in situations in which both parties have an interest in the project, such as certain research projects.

### **8.2.3 Cost-Plus-Fixed-Fee (CPFF) Contracts**

A CPFF is a type of cost contract that 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. Two types of CPFF contracts are as follows:

- (1) A term contract is a form of CPFF contract in which the contractor's obligation is stated in terms of a specified level of effort for a stated period of time. The contractor earns the fixed fee when the level of effort has been completed, without regard to whether the contractor completed the work.
- (2) A completion contract is a form of CPFF contract in which the contractor's obligation is stated in terms of a definite goal or target with a specified end product. The fixed fee is earned by the contractor only after the end result is accomplished.

## **8.3 Other Types of Contracts**

There are other types of contracts that cannot be categorized as strictly fixed price or cost. A discussion of these contracts follows:

### **8.3.1 Labor Hour Contract**

Under a labor hour contract, a fixed price is paid for each hour of work performed by specified classes of labor. This type of contract may be used when the only costs are for labor and when it is not possible to accurately estimate the extent or duration of the work.

### **8.3.2 Time and Materials Contract**

Under a time and materials contract, direct labor hours are fixed at rates that include wages, overhead, general and administrative expenses, and profits for procurements of property or services. Materials are reimbursed at cost, including any appropriate handling charge. A ceiling is placed on total expenditures. This type of contract may be used when it is not possible to accurately estimate the extent or duration of the work.

### **8.3.3 Letter Contract**

Letter contracts serve as a preliminary agreement for getting work underway while a definitive contract is negotiated. The primary disadvantages of using letter contracts are the risk of errors as the process is accelerated to place the initial letter contract and the loss of some leverage for successfully completing final negotiations because the contractor has incurred project costs. For these reasons, the CS will employ the letter contract mechanism only in very limited circumstances when approved by procurement management.

### **8.3.4 Contracts for Uncertain Needs or Timing (Indefinite Delivery, Task Order/Multiple Award)**

These types of contracts are used when the agency is uncertain about the total needs or timing of the requirement.

#### **8.3.4.1 Indefinite Delivery Contract**

This type of contract is used when a recurring demand exists for supplies or services but the timing and/or the full extent of the demands are uncertain. The contract establishes all the known terms; however, orders for the item are not placed until the need arises. Because of the obligations of both parties, the requesting office must realistically estimate quantities and identify all items and offices to be served.

Within this type of contract there are three more specific types of contracts:

#### **(1) Indefinite Quantity Contract**

This type of contract provides for the procurement of an indefinite quantity of specific supplies or services within stated minimum and maximum limits. The agency must set



and fund the minimum at more than a nominal quantity, and the contractor is legally bound to meet all orders up to the maximum. The contractor, in exchange for this obligation, is entitled to the minimum funding, even if the agency does not order the minimum quantity.

**(2) Requirements Contract**

This type of contract provides for the procurement of all specific supplies or services for the stated offices within a stated period of time. The contractor is bound without a funded minimum in exchange for the agency's obligation to buy all specific supplies or services from that contractor. The requesting office and the CS must take care to ensure that there are no overlapping contracts because a contractor with a requirements contract is entitled to payment whenever the agency office places an order.

**(3) Definite Quantity Contract**

This type of contract is appropriate when the agency is certain of a definite quantity of specified supplies or services but needs to state a delivery at a later date within the contract period.

**8.3.4.2 Task Order Contract/Multiple Award Task Order Contract**

This type of contract is used when there is certainty that the agency will have the need for repetitively ordering work but the timing of the orders cannot be set and the work to be ordered cannot be stated in exact terms. A basic contract is negotiated incorporating as many terms and conditions as possible, including negotiated unit price or costs and indirect rates. A task order is placed when specific work is needed. Work must be within scope of the basic contract, and orders must normally be submitted to the Division of Contracts, Office of Administration.

The Federal Acquisition Streamlining Act of 1994 authorizes a uniform approach to competitively awarding indefinite delivery multiple task order contracts to two or more contractors as a result of a single solicitation. Multiple award task order contracts are used as a strategy for broadening the base of qualified contractors available to NRC for performance of technical assistance and research work, free of conflict of interest (COI) concerns. This type of contract allows—

- competition for task orders or delivery orders among these known qualified contractors (awardees) who have been determined to be free of COI situations
- the award of task orders using streamlined mini-competitions among the firms holding the underlying basic contracts
- competition to be held without delay and involving less documentation typical of ordinary competitions while using the advantage of competition to obtain optimum prices
- mini-competitions to be limited to a small number of easily evaluated criteria

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- NRC to maintain more than one source and helps to ensure that a reasonable price is paid for the completion of each task order, and
- offices have immediate access to alternate services should a COI problem arise for a proposed task under one or more of the multiple award contracts

FAR 16.504(c) states a preference for making multiple awards of indefinite quantity contracts under a single solicitation to two or more sources except for advisory and assistance services. The CS can provide further details on the use of this mechanism.

## **8.4 Fee Arrangements To Promote Performance**

The following fee arrangements may be used to promote performance in specific circumstances:

- Award fee contracts are used when it is desirable for the agency to determine a profit after periods of performance against a predetermined plan because the total extent of the work cannot be accurately projected.
- Incentive fee contracts are used to provide an incentive to encourage the contractor to make a special effort either by meeting predetermined performance factors or by the agency's appraisal of the contractor.
- Performance-based service contracts include procedures for reducing the fee under CPFF contracts or reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements (see FAR Part 46.407 and Section 5.4 of this handbook).

## **8.5 Grants and Cooperative Agreements**

Grants and cooperative agreements may be found in Management Directive 11.6, "Financial Assistance Program."

## Part 9 Procurement Methods

Once the solicitation has been developed and issued, the process for awarding a contract in response to the solicitation depends on the procurement method chosen. The various procurement methods and the process within those methods are discussed below.

### 9.1 Competitive Negotiated Procurements

Because of the nature of NRC's technical programs, the need to evaluate factors other than price and the ability to question and discuss specific proposals are of critical importance.

For acquisition of research and technical assistance, the Federal Acquisition Regulation (FAR) recognizes the need for flexibility during the process of evaluating potential offerors so that highly important factors in addition to price can be carefully evaluated by collective judgment and proposals can be improved through negotiation. Factors considered during the negotiation of a proposal may include technical aspects of the proposal, delivery dates, performance and reporting requirements, and contractor expertise.

Although negotiated procurements are accomplished under procedures that differ in many respects from those for sealed bidding, the same widespread publicity and competition are present. Therefore, steps used in the process of bids may be included in the discussion below. The sealed bid process is discussed further in Section 9.3 of this part.

To supplement the discussion below, an overview of the competitive negotiation acquisition process may be found in Flowchart 9-1 of this handbook.

#### 9.1.1 Preproposal or Prebid Conference, Conference Summary, and Amendment to Solicitation

A preproposal or prebid conference provides prospective offerors the opportunity to gain a better understanding of the objectives of the procurement. It also offers the source evaluation panel (SEP) an opportunity to stress the importance of evaluation criteria so that interested organizations may decide whether to incur the cost of proposal preparation.

The contract specialist (CS) shall make the necessary arrangements for and conduct the preproposal conference. Interested organizations will expect a general presentation, followed by the opportunity to ask specific questions. Questions regarding the procurement should be submitted in writing to the CS before the preproposal conference. SEP members will be available to read the questions aloud and answer them. It is essential that provisions of the request for proposal (RFP) not be changed during the preproposal conference. The terms of an RFP may be changed only by formal written amendments distributed by the contracting officer (CO) to all recipients of the RFP.

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The CS shall prepare a summary of important issues discussed at the preproposal conference and shall review it to ensure that all questions were answered carefully and clearly to avoid any misunderstanding. The Division of Contracts (DC), Office of Administration, in conjunction with the requesting office, will furnish the official agency positions on questions discussed at the preproposal conference to all recipients of the RFP through the issuance of an amendment to the solicitation (RFP), if necessary.

An amendment is an alteration to a solicitation and must be issued on the Standard Form 30, "Amendment of Solicitation/Modification of Contract." The amendment, sent to all offerors who have been solicited, may be used for such purposes as—

- forwarding minutes of the preproposal conference
- changing the specifications of the solicitation
- changing the quantity of supplies or services
- modifying the delivery schedule
- correcting, clarifying, or incorporating additional information

If the amendment significantly changes the solicitation and prospective offerors will not have enough time to revise their responses before the closing date, it may be necessary to notify prospective offerors in advance by electronic means or telephone of an extension to the closing date. However, the notification must be confirmed in a written amendment to the solicitation.

In accordance with NRC's public responsiveness policy, the DC shall provide a response to written questions from potential offerors or bidders regarding the solicitation within 10 calendar days after the cutoff date specified in the RFP. The response shall be in writing and may be in the form of an amendment to the solicitation. If an interim response is necessary, include a date by which the final response will be provided. Questions that are received by telephone shall be answered verbally at the time of the call or normally within 1 day, when the response is not so significant that all potential offerors or bidders should receive the response. If all parties need to receive the response, a written response shall be mailed within 10 calendar days of the date of inquiry.

### **9.1.2 Receipt of Proposals or Bids**

Proposals in response to an NRC solicitation must reach DC by the closing time and date stipulated in the solicitation document. Once DC receives all the proposals, the CS opens them but does not discuss the proposals with anyone other than procurement officials (e.g., the project officer [PO], the SEP, the CO, and the designating official [DO]) who have a need to know. Unlike bids, proposals are not opened publicly and may not be inspected by prospective contractors or NRC staff who are not directly responsible for the evaluation or the award of the contract.

A proposal received after the time stipulated in the RFP is a late proposal; however, it may be considered if it is received before the award is made if one of the following applies:

- (1) The proposal was sent by registered or certified mail no later than 5 calendar days before the date specified for receipt of offers.
- (2) The proposal was sent by mail, telegram, or facsimile (if authorized by the CO) and NRC determines that the late receipt was solely the result of agency mishandling after receipt.
- (3) The proposal was sent by U.S. Postal Service express mail next-day service from the post office to the addressee no later than 5:00 p.m. at the place of mailing 2 working days before the day specified for receipt of proposals.
- (4) The proposal is the only proposal received.

Oral presentations, which are discussed in Sections 5.10.1.2 and 6.8.5, may be required in lieu of written proposals. The evaluation process to determine the successful offeror is similar to that outlined below, except that proposals are presented orally to the entire SEP.

### **9.1.3 Proposal Distribution and Evaluation**

Proposal evaluation is an assessment of both the proposal and the offeror's ability to successfully accomplish the prospective contract. The proposals are evaluated solely on the evaluation factors specified in the solicitation. After the proposals are received, the SEP will be convened, at which time the CS will distribute the proposals and discuss proposal evaluation procedures and documentation. (Discussion of SEP duties also may be found in Section 5.10 of this handbook.)

#### **9.1.3.1 Technical Evaluation**

The proposals should be distributed with proposal review procedures. These procedures should explain how the SEP will complete evaluation worksheets and properly handle the proposals, especially any proprietary or procurement-sensitive information contained in them. The panel will establish a timeframe for completing the evaluation within the overall procurement milestone schedule. The timeframe for evaluation of technical proposals will depend on the number of proposals and their complexity. The SEP will confer and determine when proposal evaluations should be completed. SEP certifications should be signed and returned to the CS at this meeting (see Section 5.10.2 of this handbook and Exhibit 8).

Each technical member of the SEP will independently evaluate each proposal. By use of narrative and numerical (as appropriate) scoring techniques, the member will rate the proposal against the evaluation criteria established in the solicitation in their relative order of importance. Using the agreed-upon scoring system, the member will independently prepare a separate written evaluation for each proposal. These proposals should not be compared to one another or rated against each other. The evaluation, in both its initial and final stages, must include the following:

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- (1) individual evaluation worksheets showing scores and supporting detailed comments
- (2) a summary score sheet keyed to the basic criteria (see NRC Form 554, "Independent Government Cost Estimate (IGCE) for Contracts," which may be accessed through the online Informs icon)
- (3) a narrative statement keyed to the summary score sheet and the appropriate page of the offeror's proposal that covers—
  - any strengths affecting the scoring
  - any weaknesses affecting the scoring
  - any issues bearing on the rating that require further study
  - questions for negotiations with those technically acceptable offerors

With the approval of the selecting official, the offerors' cost proposals and supporting financial information may be provided to members of the SEP at the same time technical proposals are distributed for evaluation. The SEP shall use both the technical and cost information to perform the most accurate integrated assessment of each offeror's proposal. The SEP shall complete its evaluation based upon all facts (i.e., technical and cost) presented to it. The SEP will review the cost proposals, both the overall cost estimate and cost and price elements, for reasonableness and document its findings on the evaluation forms provided.

#### **9.1.3.2 Cost Proposal Analysis**

In analyzing cost proposals, the objective is to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required. When the CS analyzes cost, there are several approaches to consider.

"Price analysis" is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. This task may be accomplished by comparing proposed prices received in response to the solicitation, comparing previously proposed prices and contract prices with current proposed prices for the same or similar items if the previous prices were reasonable, comparing the proposed prices with competitive published prices and market research, or comparing the proposed prices with the independent Government cost estimate.

"Cost analysis" is the review and evaluation of the separate cost elements and profit in an offeror's proposal and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. Techniques include verification of cost or pricing data and evaluation of cost elements, including the necessity and reasonableness of proposed costs.

"Cost realism analysis" is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated

proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

Cost realism analyses shall be performed on cost-reimbursement contracts to be used as a basis for negotiating the final price or estimated cost of the contract.

In conjunction with audit findings (see Section 9.1.9(2) of this part), the CS also will evaluate all cost elements and fees separately.

The collective evaluation of technical and cost proposals forms the basis for the agency's negotiation position. When the cost proposal is not consistent with the proposed technical time and expertise, it will be noted on the evaluation sheets and addressed in the SEP's report on its competitive range recommendation.

During the evaluation period, the CS conducts reference checks and SEP technical members conduct technical reference checks.

#### **9.1.4 SEP Discussion of Technical and Cost Proposals**

All members of the SEP will meet to fully discuss individual evaluations and their observations regarding technical merit. The SEP score sheets should be provided to the CS before the SEP meeting. This meeting involves a thorough discussion of each proposal evaluation against the evaluation factors identified in the RFP. It is normal practice for the SEP to have a round table discussion in which members discuss the results of their individual evaluations. An attempt is made to reach consensus on evaluations; however, it is not mandatory that all members agree on all factors. SEP members may adjust their scores up or down on the basis of the round table discussion or if there is a wide variance between members. After discussion, initial technical scores and ranking will be assigned for each proposal.

The SEP will review the cost proposals. If the cost proposals were provided to the SEP with the technical proposals, the SEP will review them before the meeting. If not, the SEP will review them at the meeting by looking at both overall cost estimate and cost and price elements for reasonableness and will document its findings on the evaluation forms provided. The CS will provide cost proposal analysis information for the SEP's consideration.

If award is to be made without discussion, the SEP submits a recommendation for award report to the source selection authority (SSA/CO), using the process in Section 9.1.11 of this part. If discussions are to be conducted, the SEP will establish the competitive range in accordance with Section 9.1.7 of this part.

#### **9.1.5 Clarifications and Award Without Discussions**

If award will be made without conducting discussions (negotiations), offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information (capabilities) and adverse past performance information to which the offeror has not previously had an opportunity to respond or to resolve minor or clerical

matters). Clarifications are limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated. Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions.

#### **9.1.6 Communications With Offerors After Receipt of Proposals**

Communications may be held before establishment of the competitive range. "Communications" are exchanges between the Government (SEP and/or CS) and offerors, after receipt of proposals, leading to establishment of the competitive range. All communications are documented in writing by the SEP/CS and placed in the contract file. Communications shall be held with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. These communications shall address adverse past performance information to which an offeror has not had a prior opportunity to respond and may only be held with those offerors whose exclusions from or inclusion in the competitive range is uncertain.

Communications also may be conducted to enhance Government understanding of a proposal, allow reasonable interpretation of the proposal, or facilitate the Government's evaluation process. These communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal. Communications shall not provide an opportunity for the offeror to revise its proposal, but may address ambiguities in the proposals or concerns such as a perceived deficiency, weakness, error, omission, or mistake.

A "deficiency" is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. A "weakness" is a flaw in the proposal that increases the risk of unsuccessful contract performance. A "significant weakness" in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance and information relating to relevant past performance.

#### **9.1.7 Establishment of Competitive Range and Preparation of SEP Competitive Range Recommendation Report**

In coordination with the CS, the members of the SEP prepare their competitive range recommendation on the basis of the technical analysis, merit, and cost and pricing review for each proposal. On the basis of the ratings of each proposal against all evaluation criteria, the SEP shall establish a competitive range composed of all of the most highly rated proposals. The competitive range recommendation report, written by the SEP Chairman in coordination with the CS, documents the offerors that are both within and outside the competitive range in accordance with the format contained in Exhibit 9.

The competitive range must involve consideration of both technical and cost factors. An offeror will be included within the competitive range if it is among the highly rated on the basis of results of the scoring, the evaluation narrative, and the cost. Scoring by itself should not be



the sole basis for this determination; the SEP also shall thoroughly examine the evaluation narrative and determine a proposal's weaknesses through discussion. Obviously, this determination must be conducted carefully and the evaluation worksheets heavily scrutinized.

After evaluating all proposals, the CO may determine that the number of proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency, the CO may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly ranked proposals.

The competitive range report is prepared by the SEP and may undergo preliminary review by the CS. After all members of the SEP concur on the report, it is submitted to the DO for review and concurrence. Unless managers and supervisors are officially designated members of or advisors to the SEP, they do not read or concur on the report. The report is then forwarded from the DO to the CO through the CS. The CS forwards the report to the CO with a recommendation to approve. The CO reviews the competitive range report and will either approve the report or will ascertain issues that must be clarified by the SEP before approval.

#### **9.1.8 Notification to All Offerors of Competitive Range Results/Preaward Debriefings**

After CO approval of the competitive range report, the CS promptly notifies in writing all offerors whose proposals are excluded from the competitive range or otherwise eliminated from competition. The notice shall state the basis for the determination and that a proposal revision will not be considered. The notice may be sent by fax or other means that will enable NRC to independently verify the date when the excluded offeror received the notice of exclusion.

The excluded offeror may request a debriefing before award in accordance with FAR 15.505. The request must be made in writing within 3 days after the date on which the excluded offeror receives a competitive range exclusion notice. The CS will maintain a record of when DC received the written request for a debriefing from the offeror.

Preaward debriefings include the following:

- the agency's evaluation of significant elements in the offeror's proposal
- a summary of the rationale for eliminating the offeror from competition
- reasonable responses to questions as to whether source selection procedures were followed in the process of eliminating the offeror from competition

Preaward debriefings shall not disclose the number of offerors, the identity of other offerors, the content of other offerors' proposals, the ranking of other offerors, the evaluation of other offerors, or any postaward debriefing prohibitions.

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The CO and some members of the SEP will make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time. At the offeror's request, this debriefing may be delayed until after award. If the debriefing is delayed, it shall include all information normally provided in a postaward briefing.

The CS shall provide written notification to offerors in the competitive range. The letter should indicate, through questions or comments, any weaknesses, deficiencies, and other aspects of their proposals that could be clarified or revised to enhance the proposal's potential for award. The letter will include a proposed date and time for a subsequent meeting or teleconference with the offeror. The CS may transmit the written notification by certified mail, return receipt requested, or by other means that will enable NRC to independently verify the date the offeror received the written notification.

The SEP chairperson should concur on the notice to unsuccessful offerors. The Office of the General Counsel (OGC) may be required to concur or comment on letters to unsuccessful offerors for complex procurements or procurements that the CS believes may be protested.

**9.1.9 Written or Oral Discussions/Negotiations/Exchanges After Establishment of Competitive Range**

Negotiations are exchanges, in either a competitive or a sole-source environment, between the Government and offerors, that are undertaken with the intent of allowing the offerors to revise their proposals. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal. The primary objective of discussions is to maximize the Government's ability to obtain best value.

When preparing for written or oral discussions, the SEP must develop questions for offerors in the competitive range and, if appropriate, request a preaward audit before conducting the discussions. Discussions regarding technical matters may be conducted before receipt of audit.

**(1) Questions for Offerors**

The CS and SEP technical members prepare for negotiations with the goal of attaining a meeting of the minds through response to questions and ensuing discussions. The offeror's proposal is reviewed along with the competitive range recommendation report, focusing on offeror's strengths and weaknesses so that clear questions relating to technical issues and cost are assembled for use during the negotiations.

**(2) Precaward Audit Report**

The CS may request audit information from the Defense Contract Audit Agency (DCAA) or other cognizant audit agency (CAA) as soon as there is a good indication of which offerors will be included in the competitive range. This step may be taken so that all cost information may be received by the time the competitive range report is approved and discussions are to begin.

At the CO's discretion, formal audits from DCAA/CAA may be requested for proposals over \$500,000. DCAA requires that a copy of the offeror's cost proposal and a copy of the RFP be sent with the audit request. Formal audits are generally received approximately 30 to 45 days from the date of request.

For proposals of less than \$500,000, a rate verification request may be made to DCAA/CAA. This request may be a simple direct labor and/or indirect rate check if the offeror has a formal rate agreement already in existence with DCAA/CAA. A rate check is generally received approximately 3 weeks from the date of request. Rate information also may be obtained from other Government agencies.

The CS will analyze an audit report or rate-check information to develop cost questions for discussions and negotiations, if necessary.

**(3) Conduct of Discussions and Negotiations**

Written or oral discussions with firms in the competitive range are usually conducted. During discussions, the CS must point out to each offeror within the competitive range all significant deficiencies, including ambiguities or uncertainties in the proposal. In these discussions, the CS must take care not to divulge the content of any competitor's proposal or information obtained from or about another competitor to avoid giving one competitor an unfair advantage. The CS shall not favor one offeror over another or reveal names of individuals providing references about an offeror's past performance. The discussions are intended to assist both the agency and the offeror in fully understanding the strengths and weaknesses of the proposal.

When past performance is an evaluation factor and adverse problems are uncovered when references are contacted, the CS will inform the offeror and allow the offeror an opportunity to respond.

If the DCAA/CAA audit report has not been received, cost discussions may be held at a later time. As with all discussions, these cost discussions must be conducted in a uniform manner with all offerors.

The time available, the expense and administrative limitations, and the size and significance of the procurement should be considered when deciding on the type, duration, and depth of discussions. It is important to adequately convey the agency's requirements to the offerors so that all offerors are on an equal footing. The CS, with the

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assistance of SEP technical members, shall point out instances in which the meaning of some aspect of the proposal fails to include substantiation for a proposed approach, solution, or estimated cost. These guidelines are not all-inclusive; careful judgment must be exercised for each procurement to promote meaningful discussions.

**9.1.10 Proposal Revisions**

If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

The CO may request or allow proposal revisions to clarify and document understandings reached during negotiations. At the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final revision of the proposal. The CO is required to establish a common cutoff date only for receipt of final proposal revisions. Requests for final revisions of the proposals shall advise offerors that the final revisions shall be in writing and that the NRC intends to make award without obtaining further revisions.

**(1) SEP Evaluation of the Revised Proposals**

The CS will forward the revised proposals to SEP technical members, providing each individual evaluator's worksheets previously used for the initial evaluation.

The CS will perform an in-depth cost analysis after receiving evaluation information from other SEP members.

The SEP will prepare a narrative summary describing changes in the proposal as a result of the final revisions and a technical assessment of those changes. The SEP will rescore the worksheets independently in accordance with previous evaluation procedures usually within 1 to 2 weeks after receipt and consistent with the milestone schedule. If no changes have been made, the SEP should so state.

**(2) Meeting To Discuss Revised Proposals**

The SEP will meet to review revised worksheets and discuss the recommendation for award. The SEP score sheets should be provided, as requested, to the CS before the SEP meeting. The SEP technical members reach consensus on an award recommendation at this time. The CS should provide appropriate guidance if the SEP deviates from the evaluation criteria or otherwise fails to follow appropriate procurement procedures. The SEP members should go over their evaluation jointly to ensure that they fully understand each others' reasoning and that they may make changes in their scoring to reflect what they learn through these exchanges of viewpoints.

**9.1.11 SEP Final Evaluation Report**

The SEP will document its findings and consensus on the apparent successful offeror in the final evaluation report (Exhibit 3) shortly after the date the SEP technical members and CS

meet to form a consensus on the award recommendation. The CS and the SEP prepare the final evaluation report. After all members of the SEP concur on the report, the report will be forwarded through the DO to the CO (who is the SSA) through the CS. Unless managers and supervisors also are officially designated members or advisors of the SEP, they do not read or concur in the report. Supporting documentation, such as the SEP member's individual evaluation worksheets, summary score sheets, and a list of procurement officials having access to the panel's source evaluation material, must accompany the final evaluation report and will become part of the official DC contract file. All backup material relevant to the group report and its findings will be available to the DO.

For tradeoff source selections, when selecting the technically superior, higher cost proposal, the SEP will include, in the section for "Recommendation for Award," a comparison of the proposals and a cost and technical tradeoff analysis. The comparison will list the strengths and weaknesses of the proposals. The tradeoff source selection process is used for procurements in which the agency's requirements and evaluation factors are broadly stated and technical considerations and past performance may be given substantially more weight than cost. The balancing or tradeoff of cost considerations against technical and other considerations is accomplished by the application of sound business judgment rather than by means of a predefined weighing formula. When conducting a cost and technical tradeoff in a procurement for which award is to be made on the basis of a technically superior, higher priced proposal, the SEP should document reasoned analysis showing that the agency expects to receive benefits commensurate with the price premium it will have to pay. This benefit should be clearly defined and, if possible, stated in terms of mission needs.

#### **9.1.12 Source Selection Decision**

The CS will forward the final evaluation report to the CO (SSA) with a recommendation to approve the report. The SSA's decision shall be made on the basis of a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use the SEP final evaluation report, the source selection decision shall represent the SSA's independent judgment. The source selection decision shall be documented, and the documentation shall include the SSA's rationale for any business judgments and tradeoffs made or relied upon, including benefits associated with additional costs. Although the rationale for the source selection must be documented, that documentation need not quantify the tradeoffs that led to the decision.

The CS will prepare a summary of negotiations addressing the major agreements of the parties.

#### **9.1.13 Preaward Approvals**

Before award, the CO ensures that all required documents are included in the official contract file.

An equal employment opportunity clearance is required if the procurement value is \$10 million or greater. If the award is to a large business and the procurement value is \$500,000 or greater, the CS sends the subcontracting plan of the apparent successful offeror to the NRC Office of Small Business and Civil Rights (SBCR) so that SBCR can review the plan for compliance with FAR 19.7.

#### **9.1.14 Contract Award and Notification to Unsuccessful Offerors**

DC mails the contract to the successful offeror for signature and sends the notice of award to *Federal Business Opportunities* (FedBizOpps) Web site 1 day after contract award.

DC sends the notification to unsuccessful offerors within 3 days of contract award, in accordance with FAR 15.503(b). This written notification shall be transmitted by certified mail, return receipt requested, electronically, or by other means that will enable NRC to independently verify the date the unsuccessful offeror received the written notification.

#### **9.1.15 Postaward Debriefings**

Unsuccessful offerors are entitled to a comprehensive postaward debriefing when a request is made to the CO within 3 days of receiving notification of contract award. A debriefing provides an opportunity for an offeror to learn the reasons why the proposal was unsuccessful. Through the debriefing, which is required by FAR 15.506, the offeror learns of specific weaknesses and deficiencies, or strengths, in the proposal that are supported by the evaluation information from the SEP's competitive range report and final evaluation report. At the election of the CO, a timely written debriefing may be used in lieu of a face-to-face debriefing. The debriefing conference is chaired by the CS and is attended by members of the SEP and a representative from OGC, if appropriate. A debriefing should be conducted with only one offeror at a time. The CS must then make every effort to provide the debriefing within 5 days of receipt of the request. In all other cases, the SEP will provide a debriefing after award within 10 calendar days of receipt of request. Debriefings may be given orally, in writing, or by electronic means in accordance with FAR 15.506. A written summary of each debriefing should be included in the contract file.

The debriefing session is sensitive because the offeror must be able to conclude that his or her offer was judged unsuccessful on an objective basis and that the agency's decision was fair and impartial. The debriefing should not disclose confidential information or trade secrets associated with other offers and should not include discussions of either the content of other proposals or the relative positions of the unsuccessful offerors. A well-conducted debriefing conference affords the opportunity for an offeror to learn from his or her weaknesses so that the firm can be more competitive in future NRC procurements. While the debriefing shall not be a point-by-point comparison of the offers, it must include at least the following:

- strengths of the offeror
- significant weaknesses or deficiencies of the offeror
- total score and price of both the winning proposal and the offeror being debriefed
- overall ranking of all offerors
- summary of the rationale for the award decision

- reasonable responses to relevant questions as to whether the source selection procedures and regulations applicable to the process were followed
- identity of the specific make and model offered by the successful offeror, if a commercial item is proposed as an end item deliverable
- poor performance ratings issued on past performance reviews

#### **9.1.16 Protests**

A “protest” is an objection submitted by an interested party in writing disagreeing with an agency solicitation for offers, the cancellation of a solicitation or the award, or proposed award of a contract. Offerors may find cause to protest some aspect of the procurement. For example, a contractor may allege that restrictive specifications were used or may disagree with being excluded from the competitive range.

A protest must be in writing and may be filed with the agency, in accordance with FAR 33.103, or it may be filed in accordance with FAR 33.102 and 33.104. Protests to the agency shall first be handled by the CO. The protestor may appeal the CO’s decision by determining or providing a written request to the Director, DC, or designee, to conduct an independent review of the CO’s decision. The procedures the NRC uses to handle protests are set forth in FAR 33.1 and supplemented by NRCAR 2033.1.

Before submission of an agency protest, all parties with concerns should use their best efforts to resolve these concerns at the CO level through open and frank discussions. When possible, parties should strive for inexpensive, informal, procedurally simple, and speedy resolution of protests. When appropriate, the use of alternative dispute resolution techniques (see Section 11.10.3 of this handbook), neutral third parties, and other agency personnel are acceptable resolution methods.

## **9.2 Other Than Full and Open Negotiated Procurements**

Other than full and open negotiated procurements are actions that limit competition. Except when a requirement is of unusual and compelling urgency, these procurements require a justification for other than full and open competition (JOFOC) before the acquisition process may proceed (see Section 5.2.1.2 of this handbook). Once the appropriate approval has been obtained, the procurement process is similar to other negotiated procurements except for the use of an SEP and its associated activities and reports (see Sections 5.10 and 9.1 of this handbook). While an SEP may be used for a small business set-aside, the PO and the CS usually evaluate the technical and cost and price proposals in lieu of an SEP for other limited competitive procurements.

### **9.2.1 Processing a Procurement Under Other Than Full and Open Competition**

If the CO agrees that the proposed procurement should be awarded without full and open competition after reviewing a draft JOFOC, the CS places a notice of intent to contract on a

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sole-source basis in FedBizOpps. A FedBizOpps notice need not be placed for those procurements for which the sole source is justified on the basis of maintaining a research capability (FAR 6.302-2) or an international agreement (FAR 6.302-4).

To expedite the evaluation process, responses to the FedBizOpps notice should be reviewed upon receipt, when possible, rather than at the end of the 45-day period. The CO may employ members of an SEP or employ one or more requesting office personnel or other technical experts to aid the CO in evaluating the qualifications submitted by an organization in response to the FedBizOpps notice of a sole-source requirement. If any responses lack sufficient information for evaluation, they will not be considered. The CO is not obligated to request additional information from the respondent. In a memorandum for the file, the CO will document the evaluation of all responses and the decision to proceed with either a competitive or noncompetitive action. The CO is not required to notify respondents of the results of NRC's evaluation of their submittals, but may do so, if appropriate.

The CS may release the solicitation to the proposed sole-source contractor after the requirement has been posted in FedBizOpps for 15 days. The offeror will be provided with a minimum of 30 days to submit its proposal. If the proposal is received before the end of the 45-day limitation, it will be forwarded to the requesting office for review and evaluation. DC may concurrently review and evaluate the proposal and request a cost proposal audit. The CS may proceed in the procurement process up through the negotiation and discussion stage. However, award may not take place until 45 days after publication of the FedBizOpps notice of intent and not before the JOFOC has been approved in accordance with Section 5.2.1.2 of this handbook.

Generally, the CS then processes the procurement using the steps for a competitive negotiated procurement found in Section 9.1 of this part, except for SEP functions.

### **9.2.2 Response From FedBizOpps Results in Competitive Action**

In the event responses to the FedBizOpps notice indicate that there are two or more qualified parties, the proposed procurement will be processed as a competitive action and the CO will proceed in accordance with FAR 5.203 for publicizing and response times.

The CS also will assist the requesting office in preparing a complete request for procurement action (RFP, see Part 6 and Flowchart 6-1 of this handbook), if one has not already been submitted. The package should include a definitive statement of work, technical evaluation criteria, and an independent cost estimate (see NRC Form 554, which may be accessed through the online forms icon) if the project is estimated to exceed \$100,000. If not previously designated, the CS should ensure that a complete SEP is assigned to the project. DC does not issue another FedBizOpps notice.

The CS should issue the request for proposal (RFP, solicitation) to all qualified sources and proceed with the project on a competitive basis, allowing at least 30 days from the RFP issue date for submission of proposals (see Part 7 of this handbook).



### 9.2.3 Sole-Source Acquisition Because of Unusual and Compelling Circumstances

If a sole-source requirement is of unusual and compelling urgency, the CO may forego the requirement to place a notice in FedBizOpps describing the procurement and may waive approval of the JOFOC until after award subsequent to obtaining approvals (see Section 5.2.1.2 of this handbook). The CS may then issue the RFP to the contractor. Negotiations are held upon receipt of the proposal.

## 9.3 Sealed Bidding

Sealed bidding gains for the agency the benefits of full and open competition and gives all qualified sources the same opportunity to bid competitively.

The procedures of sealed bidding are established largely by law and regulation and generally do not permit deviation. NRC personnel must be completely familiar with the rules and procedures that apply to sealed bidding to understand what may and may not be done to facilitate the effective use of this acquisition method (see FAR Part 14).

Although sealed bidding is a procurement method at the agency's disposal, the law makes it clear that the circumstances pertinent to each acquisition determine if the sealed bid method may be used. The following factors should be considered in making this decision:

- (1) Sealed bidding can be used only when there is adequate time to carry out the necessary procedures. However, the NRC may be able to relieve an apparent time shortage by taking steps to adjust a delivery schedule so that sealed bidding may be used for some part of an "urgent" procurement.
- (2) Sealed bidding depends on adequate competition. At least two responsible sources must be available, willing, and able to compete effectively for the requirement. No factors should be present that might destroy the effects of competitive bidding, such as the inability to provide goods, collusion, and restrictive pricing practices.
- (3) Well-defined specifications are required in sealed bidding so that all bidders will be able to bid on the same basis. If the description is not clear, bidders may include unwarranted contingencies in their bids, or they may bid too low. Unless the requirement description is complete, the agency cannot evaluate bids fairly. For example, sealed bidding may not be used in procurement of research and development efforts because those requirements cannot be described adequately in specifications.

Normally, award of a sealed bid contract is made on a firm fixed-price basis to the responding responsible bidder with the lowest price. Generally, the bid selected shall be that which is most advantageous to the agency, considering options. Fixed-price contracts with economic price adjustment clauses may be used in some instances when flexibility is necessary and reasonable. Since statement of work (SOWs) under cost-type contracts are not based on firm

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specifications, these types of contracts are not used in sealed bidding. For example, this type of SOW might be for transportation services where fuel prices may fluctuate.

Once the FedBizOpps notice has been issued and the invitation for bids prepared and issued, the main procedural steps in sealed bidding are as follows (also see Flowchart 9-2):

- (1) Prebid conference may be held (see Section 9.1.1 of this part).
- (2) Bids are received in response to an invitation for bid (IFB). In sealed bidding, the FAR requires that all submitted bids be held unopened (except for identification purposes) in a locked bid box or safe until they are opened publicly at the time specified in the solicitation and recorded on a bid abstract form.
- (3) Bids are evaluated without discussion.
- (4) A contract is awarded to the responsible (FAR 9.104-1), responsive (FAR 14.301 and 14.404-2) bidder whose bid will be most advantageous to the agency, considering only price and the price-related factors.
- (5) The award notification letter is then sent to the successful offeror.
- (6) An equal employment opportunity clearance is required if the procurement value is \$1 million or greater.
- (7) If the award is to a large business and the procurement value is \$500,000 or more, the CS sends the subcontracting plan of the apparent successful offeror to SBCR for review.
- (8) DC will process award notification (see Section 9.1.14 of this part).

## **9.4 Two-Step Sealed Bidding**

Two-step sealed bidding provides additional flexibility in awarding contracts by combining features of both sealed bidding and negotiation. The freedom to weigh factors other than price and the discussion of technical proposals are desirable procedures drawn from negotiation, while prompt award to the lowest priced bidder without further discussions with prospective contractors preserves the outstanding characteristic of sealed bidding.

### **9.4.1 Conditions of Two-Step Sealed Bidding**

Unless other factors, described above in this part, require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:

- The available specifications or purchase descriptions are not definite or complete enough to permit full and open competition without an evaluation and discussion of the technical aspects of the requirement.

- The evaluation criteria are definite enough for judging technical proposals properly. The criteria may include performance and special requirements, ease of maintenance, necessary experience in the performance areas involved, and the need for special skills or facilities.
- More than one technically qualified source will be available both before and after technical evaluation.
- Sufficient time will be available for use of the two-step method.
- A firm fixed-price contract (with or without escalation) will be used.

#### **9.4.2 The Two Steps of Sealed Bidding**

##### **9.4.2.1 Step One, Obtaining and Evaluating Proposals**

The CO completes the necessary planning with the assistance of staff from the requiring office, sends a request for technical proposals to qualified sources, and places a notice about the request in the FedBizOpps. The request for procurement may be by letter, but the letter must contain at least the information required by FAR 14.503-1.

Only authorized persons, such as SEP members, the DO, the CO, and the CS, or other procurement officials should have access to technical proposals that are received. Before proposals go to the requiring office staff for evaluation, any references to price or cost should be removed. The written technical evaluation should classify a proposal as acceptable or unacceptable on the basis of the evaluation criteria contained in the request for technical proposals.

If a reasonable effort on the part of the contractor could bring a proposal to an acceptable status and result in increased competition, then the proposal should be characterized as competitive. However, proposals without a reasonable chance for award should not be included in the competitive category because their inclusion may affect an increased burden on both the agency and the contractor. If the contractor incurs substantial costs to revise a proposal, it may result in payment to the contractor if the bidder can prove that the company did not have a reasonable chance of award. The CO shall notify an offeror when his or her proposal is determined to be unacceptable. If requested, the CO may tell the offeror the reason(s) the proposal was determined to be unacceptable and indicate whether rejection was based on a lack of information in the proposal or on an unacceptable proposed approach. If evaluation of the technical proposals shows that the two-step method should be discontinued, the CO shall refer the matter to the office that requested the two-step method. All bidders who submitted proposals will be notified and given reasons for the discontinuance of any two-step procurement.

##### **9.4.2.2 Step Two, Invitation for Bids**

After successful completion of Step 1, the CO invites bids and makes the award on the basis of sealed-bidding procedures, except that—

- Sealed bids are solicited only from sources whose technical proposals have been technically evaluated and found acceptable under Step 1. (The invitation will contain a provision to this effect as set forth in FAR 14.503-2(a)(2).)
- The invitation contains a statement (see FAR 14.503-2(a)(3)) that the award will be made in accordance with the specifications and the bidder's technical proposal, as finally accepted under Step 1.
- The invitation to bid in Step 2 is not placed in FedBizOpps or posted publicly as an acquisition opportunity. However, when determined to be in the agency's best interest and when significant subcontracting opportunities exist, the names of firms that submitted acceptable proposals in Step 1 are listed in FedBizOpps for the benefit of prospective subcontractors (see FAR 14.503-2(b)).

## **9.5 Other Methods**

The following are unique methods of procurement that deviate from standard-competitive and limited-competitive acquisitions. None of these methods require a justification for other than full and open competition.

### **9.5.1 Broad Agency Announcement (BAA)**

A BAA is an announcement by a requesting office of areas of research interest, including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the agency's needs. The solicitation of a BAA is one of the competitive procedures meeting the statutory requirement for full and open competition and is advertised in FedBizOpps. However, BAAs may be used only when meaningful proposals with varying scientific or technical approaches can reasonably be expected.

The benefit of the BAA is the ability to make multiple awards on the basis of one announcement, reducing procurement lead time and the staff effort involved in initiating several competitive projects. The BAA also provides flexibility in source selection, on the basis of the merits of the individual proposal(s).

The BAA is an efficient means of soliciting competitive basic or applied research ideas. A BAA may be used for scientific study and experimentation or for increasing knowledge and understanding, rather than focusing on a specific system or hardware solution.

The CS, on the basis of discussions and written background information provided by the requiring office, writes FedBizOpps BAA notice. The FedBizOpps BAA notice specifies the period in which proposals may be submitted, during which awards or selections may be made at any time. It will further state, if all proposals are not to be reviewed at a common time, that no further review of proposals will be made after designated funding is no longer available.

The BAA should—

- describe the agency's research interest, either for an individual program requirement or for broadly defined areas of interest covering the full range of the agency's requirements
- describe the criteria for selecting the proposals, their relative importance, and the method of evaluation
- specify the period of time during which proposals that have been submitted in response to the BAA will be accepted
- contain instructions for the preparation and submission of proposals

Proposals received in response to a BAA must be evaluated in accordance with criteria specified in the announcement by a peer or scientific review group established by the DO. The BAA evaluation criteria should include scientific merit and describe the method to be used for evaluating proposals. Written evaluation reports on individual proposals are necessary.

Criteria for selecting contractors may include—

- unique and innovative methods, approaches, or concepts demonstrated by the proposal
- overall scientific, technical, or socioeconomic merits of the proposal
- offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives
- qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical to achieving the proposal objectives
- potential contribution of the effort to NRC's mission
- overall standing among similar proposals available and/or evaluation against the known state of the art

Once a proposal is received, communication between the requesting office and the offeror must be coordinated through DC and is permitted for clarification purposes only.

After evaluation of the proposals, the DO will submit a comprehensive evaluation report to the CO recommending the source for contract award. The report must reflect the basis for the selection or nonselection of each proposal received as it relates to the criteria specified in the BAA. The primary bases for award are technical excellence, importance to agency programs, and the availability of funding. Contracts are awarded until the agency has utilized its research funds in the particular area of interest.

### **9.5.2 Unsolicited Proposals**

Unsolicited proposals are written proposals that are submitted to the agency on the initiative of the submitter for the purpose of obtaining a contract with the agency. They can be a useful source in support of NRC accomplishing its mission. These proposals are not in response to a formal or informal request, other than an agency request constituting a publicized general statement of needs (see FAR 15.6 and NRCAR 2015.6).

#### **(1) Processing Unsolicited Proposals**

The Director of DC is the receiving point of contact for unsolicited proposals. If received in an NRC office other than DC, all unsolicited proposals should be sent to the Director of DC immediately. The appropriate legends will be attached to the proposal for its protection, and an acknowledgment will be sent to the proposer notifying him or her of receipt. Staff of the Procurement Policy Team (PPT), DC, will evaluate the proposal to ensure that it contains the minimum information required to qualify as an unsolicited proposal and that it has been approved by an official of the organization authorized to negotiate and commit the proposing organization to a contract.

The following do not constitute unsolicited proposals:

- advertising material designed to acquaint the agency with a potential proposer's off-the-shelf products or capabilities or designed to determine the agency's interest in buying such products (This material is sometimes accepted for reference.)
- commercial product offerings of standard commercial products usually sold in substantial quantities to the general public (These are materials that the vendor wishes to see introduced into the agency's supply system as an alternate or replacement for an existing supply item and are treated as advertising material.)
- contributions of concepts, suggestions, or merely ideas presented to the agency for its use, with no indication on the part of the offeror that he or she will devote any further effort, on behalf of the agency, in relation to such concepts, suggestions, or ideas
- technical correspondence related to written requests for information regarding agency interest in research areas, preproposal explorations, technical inquiries, and submission of research descriptions (However, the NRC encourages such inquiries before submission of unsolicited proposals.)
- capability statements informing the NRC of an individual's or an organization's technical, business, manufacturing experience, capability, and background (These statements are sometimes accepted for reference.)

After the evaluation is completed, the copies of the proposal will be sent to the directors (or designees) of all offices that might have an interest in the contents of the proposal, identifying any deficiencies in format. PPT will retain one copy of the proposal for its records.

If an unsolicited proposal is missing some information but otherwise conforms to the FAR criteria, DC will ask the proposer to provide that information. When the information is supplied, DC will send the additional information to the offices reviewing the proposal.

PPT will assume responsibility for tracking the proposal after receipt. This tracking includes keeping a record of the offices receiving the proposal, the number of copies forwarded, the dates they were received and forwarded to the appropriate offices, notifications to the proposer of actions being taken with regard to the proposal, and correspondence from the technical evaluators to DC concerning the merits of the proposal. In addition, PPT will maintain a file for each unsolicited proposal processed. This file shall be made a part of the contract file if the proposal is eventually accepted. Any contract that is awarded as a direct result of an unsolicited proposal must be awarded on a noncompetitive basis. In the event an unsolicited proposal is not accepted, offices shall return all copies of the proposal to DC for disposition.

**(2) Evaluation of Unsolicited Proposals**

The evaluators in each office should consider the following criteria in their evaluations of unsolicited proposals:

- unique and innovative methods, approaches, or concepts demonstrated by the proposal
- overall scientific, technical, or socioeconomic merits of the proposal
- potential contribution of the effort to the agency's specific mission
- the offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives
- qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives

If it is determined that the proposal cannot be supported, the evaluator shall prepare a written evaluation report explaining the reasons for its rejection. Rejection letters to offerors in response to their unsolicited proposal submissions should be informative to the maximum practical extent. Therefore, comprehensive technical reasons are to be given by the evaluator for the rejection of an unsolicited proposal.

Reasons for rejection may include the following:

- technical flaws in approach or assumptions made
- inadequate qualifications, capabilities, or expertise of the proposed principal investigator, team leader, or key personnel who are considered to be critical to achieving the objectives of the proposal

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- a technical approach that could yield biased results
- failure to meet the agency's needs
- duplication of current efforts or similar work that is intended to be procured by competitive solicitation in the future

The evaluator of this proposal should keep in mind that the proposal should meet the following criteria (FAR 15.506-2):

- Does the research proposal demonstrate unique and innovative methods, approaches, or concepts?
- Does the proposal have overall scientific, technical, or socioeconomic merits?
- Will the proposed effort make a potential contribution to the agency's specific mission at this time? (This criterion is especially important in this case, as the proposal should be considered as a grant application if this criterion is not met. Your confirmation of this criterion will help ensure proper handling of the proposal.)
- Does the proposer have capabilities, related experience, facilities, or techniques, or unique combinations thereof, that are considered to be integral factors necessary to achieve the proposed objectives?
- Are the qualifications, capabilities, and the experience of the proposed principal investigator, team leader, or key personnel considered to be critical in achieving the objectives of the proposal?

If the proposal is for ongoing research, pay particular attention to the period of performance proposed, its reasonableness, and the extent of the NRC's commitment to that period of performance. (An example of a letter of recommendation and an evaluation of an unsolicited proposal may be found in Exhibit 12.) The written report will be returned through the office director or designee not below the level of division director (or equivalent if the office has no division director) to the Head of Contracting Activity (Director, DC) with all copies of the unsolicited proposal. DC will prepare an appropriate rejection letter to the proposer.

If the proposal is to be supported and it is recommended that a contract be awarded for the work, a justification for a noncompetitive procurement, including consideration of the evaluation criteria discussed above, shall be prepared and forwarded to DC with a RFPA form (NRC Form 400, which may be accessed through the online forms icon). The justification should clearly state why the work proposed under the unsolicited proposal cannot be procured on a competitive basis. DC will review the sufficiency of justification documents and determine the type of contract. If more than one office is interested in supporting the effort, representatives of the directors of those offices shall meet with a DC representative to reach an agreement for funding.



If at any time an evaluator believes that other NRC offices or Government agencies would find the proposal of value, PPT should be notified. PPT will forward the proposal to the other NRC offices or Government agencies and recommend that the proposer contact them. PPT staff also should be notified when evaluators from outside the agency or Government are required so that PPT may forward the proposal and ensure proper tracking and protection. Additionally, it is important to caution NRC staff regarding the propriety of their contacts with firms and individuals seeking contracts with the NRC. While it is necessary and appropriate to have discussions with proposers, care must be taken to ensure that premature disclosures, such as revealing the contents of a proposal to the proposer's competitors, are avoided and that general discussions can in no way be interpreted as an NRC commitment to fund the unsolicited proposal. The CO is the only individual authorized to bind the agency contractually or to otherwise obligate funds.

**(3) Restrictions on Information Contained in Unsolicited Proposals**

In order to ensure that the integrity of the NRC is maintained with respect to receiving unsolicited proposals, certain prohibitions and protections have been devised to cover the information contained in the unsolicited proposal. The proposal cannot be used, either in its entirety or in part, as the basis for future solicitations or negotiations unless the proposer agrees in advance to permit the proposal's use in this manner (see FAR 15.508). However, this prohibition does not apply to any information contained in the proposal that may have been available to the NRC from another source without restriction. This prohibition is applicable only to information, techniques, processes, or data revealed for the first time in the subject proposal.

Further protection is provided by the use of "limited use of data" legend. The PPT will ensure that the legend in FAR 15.509 is applied to all proposals and that legends applied by the offeror comply with FAR 15.509 when the offeror chooses to apply a restrictive legend.

**9.5.3 An 8(a) Set-Aside**

Once the requesting office and the CO have determined to set aside a procurement under the 8(a) program (see Section 5.2.2 of this handbook), the procurement process for noncompetitive 8(a) procurements is as follows:

**(1) Selection of the Contractor**

The requesting office is encouraged to suggest candidate firms or to call SBCR for a list of 8(a) sources. Also, use the Small Business Administration's (SBAs) PRO-Net Web site ([www.pronet/sba/gov](http://www.pronet/sba/gov)) to identify potential sources.

The requesting office, in consultation with DC, may decide to discuss the requirement with one or several candidate firms. This freedom of discussion between the PO and the candidate firms is an important advantage of the 8(a) procurement method. Although

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there is no requirement within the FAR to interview multiple firms, acquisition management practices favor this approach if time and resources permit and the dollar magnitude of the award warrants it. The requesting office can request that SBCR assist in identifying a potential 8(a) firm and may have a representative from SBCR present during discussions with a firm. The PO may discuss any pertinent technical issue with a candidate firm, but may not discuss the specific terms of the SOW. Contract price may not be discussed and no specific promise of contract award may be made.

**(2) Receipt of Authorization To Negotiate From the Small Business Administration (SBA)**

The CS currently sends an offering letter to SBA that identifies the requirement, submits the name of the potential contractor, and requests authority to negotiate the contract. The CS may request that SBA identify a qualified 8(a) firm for a requirement. In accordance with NRC's Partnership Agreement (PA) with SBA to streamline 8(a) contracting procedures, if a notification of acceptance is not received by DC within 5 working days of receipt of the offer by SBA, DC may presume acceptance and proceed with the procurement.

**(3) Contract Award**

Procurements issued under the 8(a) program and expected to exceed \$5 million for acquisitions assigned manufacturing standard industrial classification codes and \$3 million for all other acquisitions are generally competed among eligible contractors. The CS can provide more information on this process.

After negotiations between the NRC and the firm have been completed, the CS prepares a memorandum of negotiations and the contract document. Both are reviewed by the CO who awards the contract directly to the 8(a) contractor. An SBA cosignature is not required in accordance with the PA.

Depending on the complexity of the requirement, the 8(a) method of contracting is generally less complex than any other contracting alternative. Except when competed, there is no requirement to advertise in FedBizOpps; there is no requirement for approval by the Competition Advocate (Deputy Director of ADM); and there is only one proposal to evaluate. In addition, the 8(a) contracting process has been reduced by 25 days, and up to 55 days under certain circumstances, as a result of the PA. Once a contract is awarded to a 8(a) firm, each succeeding requirement essentially identical to the one awarded will be processed by the 8(a) method, absent a reasonable justification for switching to another method of procurement.

**9.5.4 Small Business Set-Aside**

A competitive small business set-aside (see Section 5.2.3 of this handbook) is awarded using the competitive negotiated or sealed bid processes discussed in Sections 9.1 and 9.3, respectively, of this handbook.

### **9.5.5 Interagency Agreements**

The NRC may obtain supplies or services from or through another Government agency, using interagency agreements (IAs). IAs are generated either under the authority of the Economy Act, or under the Energy Reorganization Act of 1974, as amended, or through the General Services Administration (GSA), under Section 5112(g) of the Information Technology Management Reform Act (ITMRA, also known as the Clinger-Cohen Act), or through other relevant statutes authorizing an agency to perform work for other agencies, when the other agency is better able to provide services or supplies or has obtained services or supplies by contract. In accordance with MD 9.17, the EDO has delegated to certain office directors and regional administrators the authority to enter into, modify, or terminate interagency agreements. The Inspector General has been delegated this authority as well under the Inspector General Act (5 U.S.C., Appendix 3, Section 6(a)(9)). Therefore, IAs are handled either by those delegated the authority or by DC.

For information regarding award of IAs to the Department of Energy (DOE) and other agencies, refer to Management Directive (MD) 11.7, "NRC Procedures for Placement and Monitoring of Work With the U.S. Department of Energy (DOE)," and MD 11.8, "NRC Procedures for Placement and Monitoring Work With Other Federal Agencies Other Than DOE." These directives provide policies, procedures, and examples for negotiating and managing agreements with DOE and other Federal agencies.

### **9.5.6 Commercial Item Acquisitions**

Title VIII of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) implements the Federal Government's preference for the acquisition of commercial items by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components. This method is discussed in detail in Sections 4.2.6 and 10.4.6 of this handbook.

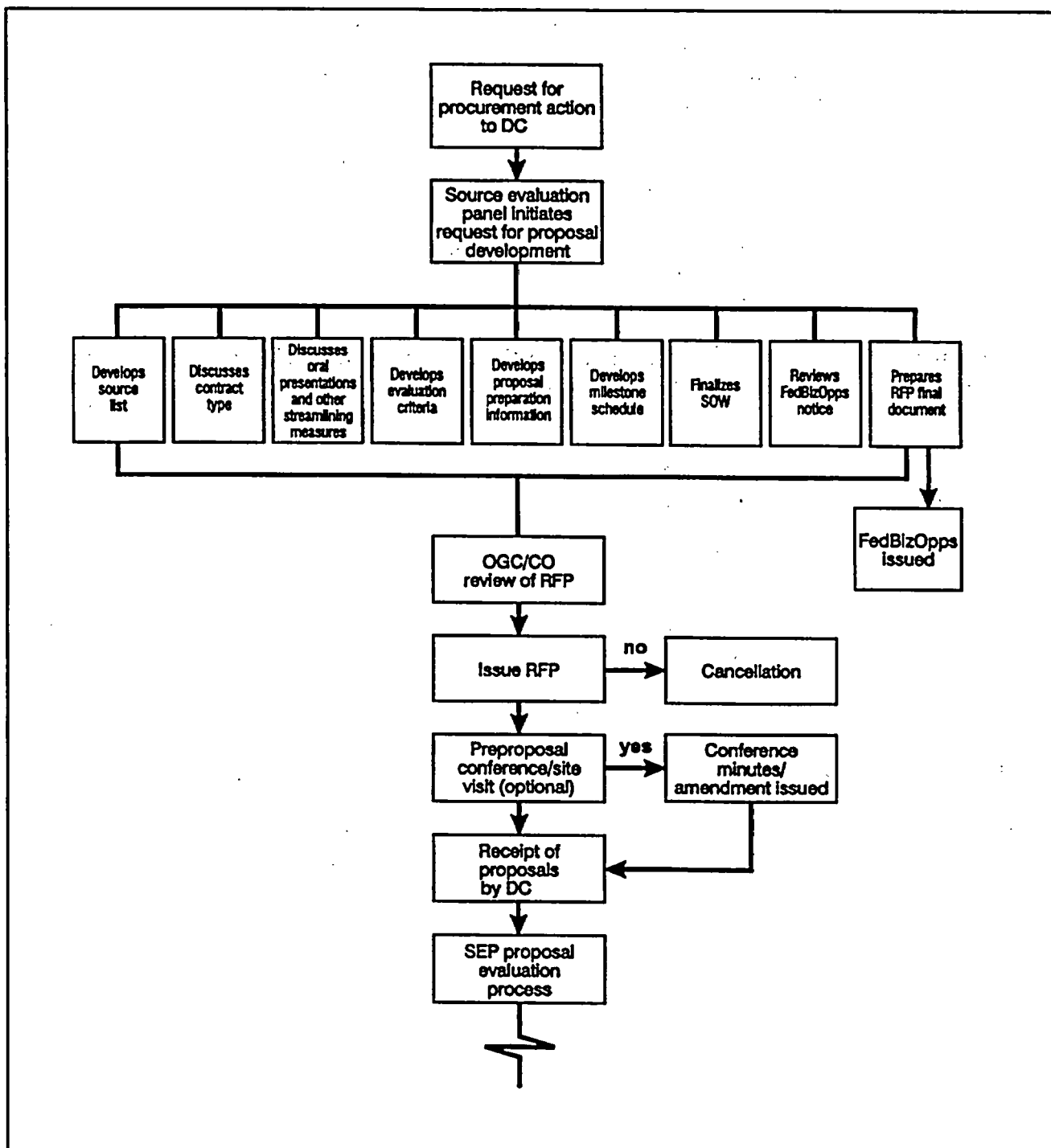
## **9.6 Delivery Orders**

For delivery order contracts, the contract terms and conditions will specify which agency official(s) may place orders. Normally, orders will be placed through the CO. If there is any question about ordering authority, the CS should be consulted. Unauthorized ordering can be costly to the project, in terms of time spent to ratify such orders, and in terms of costs that must be negotiated at the agency's disadvantage after the agency has accepted a supply or service.

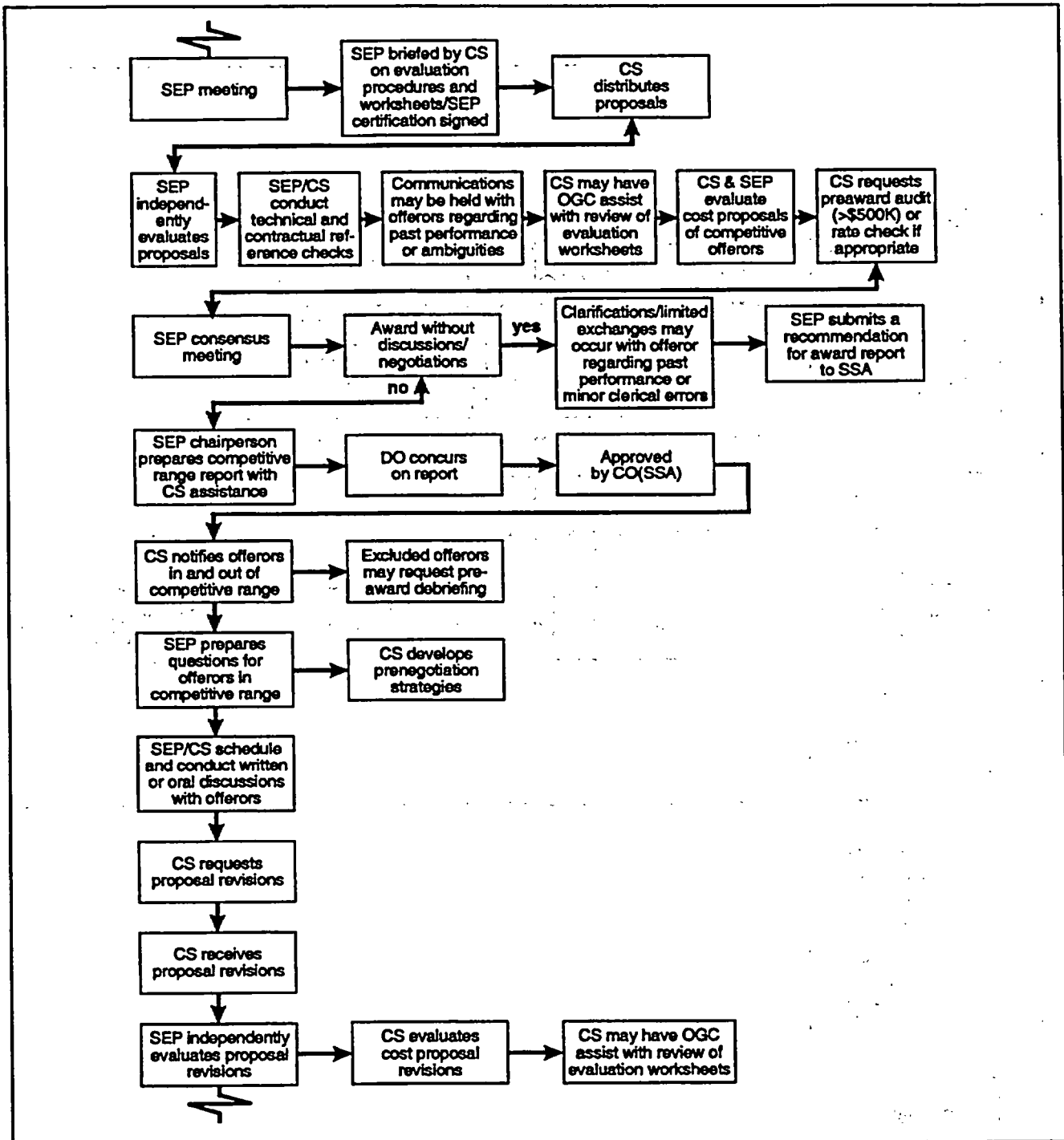
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**Flowchart 9-1 Competitive Negotiated Procurements**



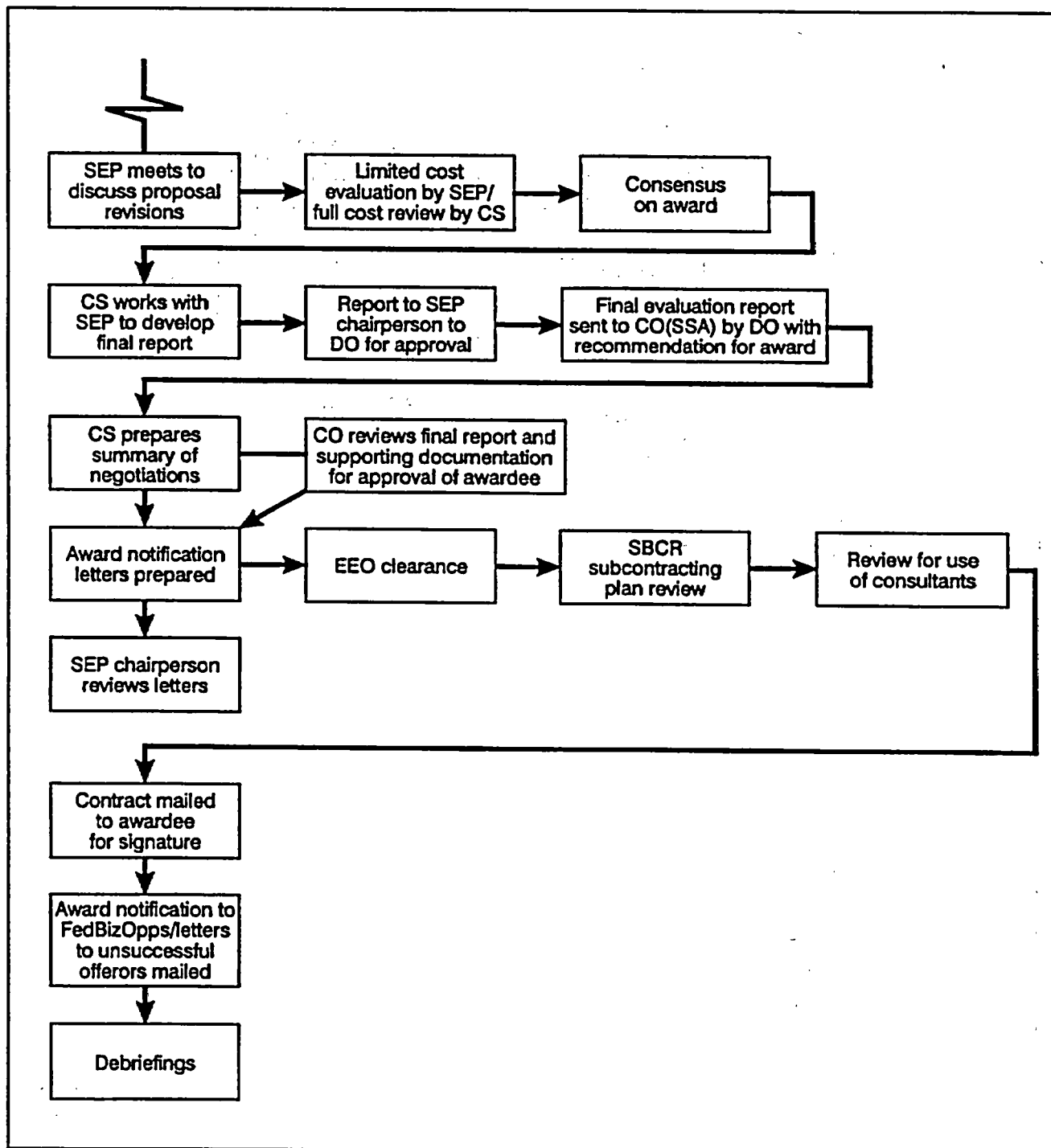
Flowchart 9-1 (Continued)



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**Flowchart 9-2 Sealed Bid**



## Part 10 Simplified Acquisitions

### 10.1 Simplified Acquisition

The term "simplified acquisitions" is defined by the Federal Acquisition Streamlining Act of 1994 as purchases not exceeding the maximum threshold of \$100,000, using procedures prescribed in Federal Acquisition Regulation (FAR) Part 13. These procedures are intended to reduce administrative costs, improve opportunities for small businesses, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. Although the Government has had mechanisms in place for small purchases, the act changes the way Government can acquire low-dollar purchases.

Simplified acquisition procedures are used to make purchases of supplies or services using imprest funds, purchase orders, blanket purchase agreements, Governmentwide commercial purchase cards, or any other appropriate authorized method, each having specific thresholds and procedures. Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the applicable simplified acquisition threshold, even though resulting awards do not exceed that threshold.

Requirements aggregating more than the applicable simplified acquisition threshold shall not be broken down into several purchases that are less than the threshold merely to permit negotiation under simplified acquisition procedures. Contracting officers (COs) are encouraged to use innovative approaches to the maximum extent practicable in awarding contracts using the simplified acquisition methods discussed below.

Two methods for making simplified acquisitions, third-party drafts, and Standard Form 44, "Purchase Order-Invoice-Voucher," are not discussed in detail in this handbook because they have limited use for procurements, and other methods are normally recommended for the same purposes. If appropriate, the CO will recommend these methods.

For an overview of procurement procedures for purchases not exceeding \$100,000, see the decision tree (Flowchart 10-1) at the end of this part.

### 10.2 Micropurchases

A micropurchase is an acquisition of supplies or services for which the aggregate amount does not exceed \$2500. Micropurchases for construction are limited to \$2000. These purchases may be made from any eligible large or small business. The Federal Acquisition Streamlining Act of 1994 coins the term and establishes the micropurchase maximum threshold at \$2500 and exempts these purchases from the Buy American Act and certain small business requirements

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in addition to other exemptions applicable to all simplified acquisitions (see Section 10.5.1 of this part). The definition of micropurchase under FAR 13.101 limits construction requirements to \$2000 to accommodate the Davis-Bacon Act requirements. Requirements aggregating more than the micropurchase threshold shall not be broken down into several purchases that are less than the threshold merely to permit purchase under micropurchase procedures.

Micropurchases shall be distributed equitably among qualified suppliers. If prices are reasonable, micropurchases may be awarded without soliciting competitive quotations. Action, such as limited competition to verify price reasonableness, needs to be taken if information indicates that the price may not be reasonable or if purchasing a supply or service for which no comparable pricing information is readily available. Prompt payment discounts should be solicited.

### **10.3 Purchase Cards**

The NRC fully participates in the Governmentwide Smart Pay Purchase Card Program and, as a matter of policy, this is the preferred method for making micropurchases. This program streamlines payment procedures and, where appropriate, replaces existing blanket purchase agreements and reduces administrative costs for micropurchases of supplies and services under \$2500. A certification of funds (commitment), which must be obtained before making purchases, may be made in advance for estimated purchases over a period of time. Purchase Card purchases of \$2500 or less are considered micropurchases and may be made from any eligible large or small business.

The program is designed to—

- increase the range of vendors available for any one purchase
- provide NRC personnel working at remote locations (e.g., inspectors) with a method of purchase acceptable to local vendors
- facilitate ease of purchase during emergency situations (e.g., nuclear plant incidents)
- improve NRC cash management practices (e.g., consolidating payments and replacing imprest funds)

At NRC, the Purchase Card can be used for a wide variety of supplies and services. NRC offices shall comply with the "Nuclear Regulatory Commission's Procedures for the Use of the U.S. Government Purchase Card," which is incorporated by reference into this handbook. Employees shall comply with restrictions as to prohibited purchases and required purchasing procedures. Offices are encouraged to nominate those permanent employees who can use the Purchase Card to increase office efficiency. The Division of Contracts (DC) provides training to employees before they receive the Purchase Card. In instances in which the Purchase Card is not accepted, Purchase Card convenience checks may be used.



## 10.4 Procedures for Open Market Simplified Acquisitions

Purchases from the open market are awards made to commercial sources that are not delivery orders under existing contracts. For an open-market procurement action in an amount estimated to be greater than \$2500 but not greater than the current simplified acquisition threshold of \$100,000, the supplies or services may be acquired through the simplified acquisition procedures using purchase orders (formerly limited to small purchases under \$25,000), or through the more complex solicitation process.

### 10.4.1 Small Business Set-Aside

Each acquisition of supplies or services that has an anticipated dollar value exceeding the micropurchase threshold (\$2500) and not exceeding \$100,000 is reserved exclusively for small business concerns and shall be set aside.

This requirement applies only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. Foreign concerns shall not be solicited or awarded acquisitions reserved for small business concerns.

The requirement for small business set-aside does not affect the responsibility of the agency to make purchases from required sources of supply and services (those not procured on the open market), such as Federal Prison Industries, Committee for Purchase From the Blind and Other Severely Handicapped, Federal Supply Schedule contracts, and others as listed in FAR 8.001.

If the CO determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery, the CO need not proceed with the small business set-aside and may purchase on an unrestricted basis. The CO shall document in the file the reason for the unrestricted purchase. If an appeal is made to the Small Business Administration (SBA) procurement center representative and the representative disagrees with a CO's decision not to proceed with the small business set-aside, the SBA procurement center representative may appeal the decision.

The small business set-aside also requires that for purchases exceeding \$25,000 up to \$100,000, a small business dealer provide a product that also was manufactured by a small business unless the SBA has already issued a class waiver for that type of requirement, or the SBA grants a waiver for the specific purchase.

This set-aside requirement does not preclude award, using simplified acquisition procedures, of an acquisition exceeding the micropurchase threshold and not exceeding \$100,000 under the 8(a) program, emerging small business set-asides, or a small disadvantaged business set-aside.

### 10.4.2 Market Research

The procurement specialist/contract specialist (PS/CS) and the requesting office jointly perform market research in accordance with Section 6.5.5 of this handbook.

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### **10.4.3 Determination of Requirements**

The requesting office must develop an accurate statement of need and determination of requirements, including justification of need, estimated cost, quantity, and delivery. As a minimum, the requester shall provide the following information to DC:

- **Description of Need.** Describe technical specifications in terms of functions to be performed, supplemented, as necessary, by chemical properties and physical characteristics, including dimensions and tolerances.
- **Brand Names or Equivalents.** In addition, for all brand name products known to be acceptable and of current manufacture, identify by manufacturer's name and catalogue description of the main or required characteristics of the product. When a brand or trade name item is not absolutely essential, indicate through the oral or written request for prices that other brands or types of products offering comparable utility are acceptable.

### **10.4.4 Certification of Available Funds**

NRC Form 400, "Request for Procurement Action (RFPA)," is required for actions valued at \$25,000 and above. NRC Form 30 is used to request procurement of all property, supplies, or nonpersonal services valued below \$25,000.

For headquarters and regional offices, the funds certifying official for the requesting office normally assigns a requisition number to NRC Form 30 or a RFPA number to the RFPA and certifies funds on the basis of the estimated cost of the item to be procured. One copy of the requisition or RFPA is returned to the requester, and the original or a reasonable facsimile is forwarded to DC for procurement action or processed by the region, if appropriate (see Section 6.10 of this handbook). Requests for furniture and office equipment (Federal Supply Groups 71 and 74) should be submitted to the NRC Property Management Officer, Administrative Services Center (ASC), Office of Administration (ADM), for concurrence. After concurrence, the NRC Property Management Officer will submit the requisition to the ADM funds certifying official for funds certification. For some information technology (IT) purchases, the Chief Information Officer (CIO) will certify funds availability.

For headquarters offices, some requisitions for administrative supplies and services, or for IT resources, may require certification of funds by ADM or the Office of the CIO. The requesting office's funds certification official will advise the requester in these cases.

The CO is authorized to exceed the certified amount up to a maximum of 10 percent or \$100, whichever is greater, above the amount of funds certified as available without recertification by the appropriate funds certification official. However, the additional amount obligated without funds certification may not exceed \$2500. This authorization applies to headquarters and regional offices. The funds certifying official shall be notified immediately when the CO authorizes an amount in excess of the amount or less than the amount previously certified by receipt of the award document.

### **10.4.5 Justifications**

A determination in the form of a brief note must be furnished with the requesting documents (i.e., NRC Form 30 and any other required documents) if the requesting office requires that a

purchase exceeding \$2500 be made from a single source or has other restrictive specifications. The determination must show that other sources or items were considered and give the reason why only one source or item is able to meet the requirement. By signing the requisition, the Designating Official concurs on the purchase. The CO signs the determinations, indicating approval of the purchase.

#### **10.4.6 Commercial and Noncommercial Open Market Procurements: Waiver of Advertising Requirement, Soliciting Competition, Evaluation of Quotes, Award, Acceptance, and Termination or Cancellation**

##### **10.4.6.1 Waiver of Advertising Requirement**

On November 5, 1998, the Office of Federal Procurement Policy and SBA issued a concurrence to the NRC's request to waive notice in FedBizOpps when acquiring services from competitive small businesses exceeding \$25,000 up to the simplified acquisition threshold (\$100,000). This waiver may be used in connection with acquisition of any goods or services required by the agency. The following conditions must be met in order to waive FedBizOpps notice for acquisitions in the above dollar range:

- The acquisition is for services of which supply items are expected to constitute less than 20 percent of the total value of the contract.
- The covered acquisitions will be set aside for small businesses.
- Quotes or offers for covered acquisitions will be solicited and obtained from known sources (up to a minimum of five small business concerns.)
- The PRO-Net link on SBA's homepage ([www.sba.com](http://www.sba.com)) will be used to identify and solicit bids from up to five small businesses, which will include, if available, at least one small disadvantaged and one women-owned firm.
- Two sources not included in the previous solicitation for the same services will be solicited, if practicable.

As a result of the waiver, a time savings of up to 20 days can be realized when using small businesses for actions in this dollar range. During procurement planning, requesting offices may consider keeping smaller requirements small instead of bundling them together in a larger contract in order to save procurement lead time.

In addition to using PRO-Net to obtain small business sources, the Office of Small Business and Civil Rights can assist requesting offices by recommending small business firms for simplified acquisitions.

A FedBizOpps notice is required for open market acquisitions valued at over \$25,000 if the FedBizOpps waiver does not apply to the acquisition. The CO may establish, for inclusion in FedBizOpps for a simplified acquisition, any reasonable response time for the receipt of quotes or proposals. For open market commercial item acquisitions that require synopsis, the

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CO may establish a reasonable release date for the pending solicitation, as well as a reasonable response time for receipt of quotes or proposals, in the FedBizOpps notice. For both commercial and noncommercial open market procurements, a combined FedBizOpps solicitation/synopsis should be used whenever public notice is required to streamline the procurement process, unless there is compelling reason not to do so.

**10.4.6.2 Soliciting Competition**

Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable if the contract action does not exceed \$25,000. Two sources not included in the previous solicitation should be requested to furnish quotations. The following factors influence the number of quotations required in connection with any particular purchase:

- nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive
- information obtained in making recent purchases of the same or similar item
- urgency of the proposed purchase
- dollar value of the proposed purchase
- past experience concerning specific dealers' prices

The CO may solicit from one source if he or she determines that the circumstances of the contract action deem only one source as being reasonably available.

The CS must develop a brief note to the file to explain the determination. The determination must state that other sources or items were considered and the reason why only one source or item is available to meet the requirement. A formal justification for other than full and open competition, as required by FAR Part 6, is not mandated for a sole-source simplified acquisition.

When developing a solicitation, the CO should determine if the purchase is advantageous to the agency on the basis of either price alone or price and other factors (e.g., past performance and quality considered, including the administrative cost of the purchase). Requests for quotations or solicitations shall notify suppliers that award is to be made on the basis of price alone or the basis of price and other factors.

Solicitations for open market acquisitions may take several forms. For acquisitions valued up to \$25,000, oral solicitations should be used unless doing so is not practical. A written request for quotation may be used as appropriate, using Standard Form (SF) 18. A commercial item or service solicitation may be accomplished using SF 1449, "Solicitation/Contract/Order for Commercial Items," which may be accessed through the online forms icon. This form is optional for procurements valued at \$100,000 or less and is mandatory for procurement of

commercial items or services in excess of \$100,000. If a means other than the SF 1449 is used for acquisition of a commercial item, the provisions required by FAR Part 12 must be cited. The CO shall not limit solicitations to suppliers of well-known and widely distributed makes or brands or on a personal preference basis. The CO shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

#### **10.4.6.3 Evaluation of Quotes**

The CO may evaluate quotations or offers on the basis of price alone or on the basis of price and other factors (e.g., past performance or quality). Evaluations, other than a responsibility check, should not be necessary for most simplified acquisitions. When evaluating quotations or offers on price and other factors, contractors' quotations or offers shall be evaluated solely on the basis of criteria established in the solicitation. Evaluations, where necessary, should be restricted to an appropriate combination of past performance, commercial literature, oral presentations, and key personnel.

The solicitation should state the relative importance of the evaluation criteria and the relationship of technical criteria to cost. Formal evaluation criteria and weights should be avoided. Numerical scoring should be used only if there is a compelling reason to do so. For instance, when procuring training services, past performance and key personnel may be stated to have greater weight than cost, but assignment of numerical weights to the criteria is not necessary. Formal evaluation plans, conduct of discussions, and scoring of quotes or offers are not required. The processing time may be reduced by using simplified solicitations, streamlined evaluation methods, and award with simplified documentation.

The requesting office should summarize its evaluation of the proposal or quotes in one page or less on the basis of criteria contained in the solicitation, noting both the strengths and weaknesses of each offeror.

The CO shall evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination. The CO also shall make economic purchase of quantities, when practicable.

Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances, the CO should inform the requiring activity of all facts regarding the quotation and request it to confirm or alter its requirement. The file shall be documented to support the final action taken.

For procurement flexibility, the FAR requires simplified acquisitions to be negotiated unless special circumstances necessitate more formal procurement methods in the best interest of the agency. The use of negotiation is essential to achieve the intended procurement flexibility because the streamlined methods set up for simplified acquisitions are not possible under the more rigid requirements of sealed bidding. For instance, proposers seeking purchase orders are permitted to propose variations of the work that appears in the solicitation.

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**10.4.6.4 Award**

A written award document is required when a purchase is made by means other than the Purchase Card. A purchase order is an offer by the agency to buy certain supplies or nonpersonal services or construction from commercial sources, upon specified terms and conditions, the aggregate amount of which generally is greater than \$2500, and does not exceed the simplified acquisition threshold of \$100,000. A binding purchase order may be formed by written acceptance of the purchase order by the contractor or by the contractor's undertaking of the work.

A representative from the DC and a technical contact designated by the requesting office constitute an informal team to accomplish the requested procurement. Other NRC personnel, such as legal and financial staff, will provide support as required.

Notification to unsuccessful suppliers shall be given only if requested. When a supplier requests information on an award that was determined on other than price alone, the notification shall include a brief explanation of the basis for the contract award decision.

All items of supply, furniture, and equipment for headquarters will be ordered for delivery, receipt, tagging, and inspection at the NRC warehouse, except when prior arrangements have been coordinated between the requester and the CO or his or her designee and approved by the NRC Property Management Officer, ASC, ADM.

The purchase order may be issued using Optional Form (OF) 347, "Order for Supplies or Services Schedule" (which may be accessed through the online forms icon), for noncommercial items. It may be used for commercial items valued at \$100,000 or less. Use of SF 1449, "Solicitation/Contract/Order for Commercial Items," is optional for commercial items or services applied at \$100,000 or less.

**10.4.6.5 Consignee (Requestor) Acceptance**

The requesting office shall accept all goods and/or services delivered directly to them. If items are damaged, an overage or shortage exists, or services are not in accordance with the purchase order, the requesting office must immediately notify the NRC Property Management Officer, ASC, ADM, or DC. The consignee (requester) will record the manufacturer, model, and serial numbers of directly delivered equipment on the receiving reports, before the receiving reports are distributed. The consignee shall sign the three receiving reports indicating acceptance or rejection of the goods and/or services, and forward one copy to the Division of Accounting and Finance, Office of the Chief Financial Officer, and the other two copies to the NRC Property Management Officer, ASC, ADM, DC, or the appropriate regional Division of Resource Management and Administration. The requesting office shall reproduce and annotate the receiving report for partial receipt and distribute it as specified above.

**10.4.6.6 Termination or Cancellation of Simplified Acquisitions**

If a simplified acquisition that has been accepted in writing by the contractor is to be terminated, the CO shall process the termination action as prescribed by FAR Part 49.

If a simplified acquisition that has not been accepted in writing by the contractor is to be cancelled, the CO shall notify the contractor in writing that the purchase order has been cancelled, request the contractor's written acceptance of the cancellation, and proceed as follows:

- If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required. That is, the purchase order shall be considered cancelled.
- If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the CO shall process the termination action as prescribed by FAR Part 49.

## **10.5 Use of Indefinite Delivery Contracts or Governmentwide Agency Contracts**

Costs and processing time for acquisitions at or below the simplified acquisition threshold may be reduced through the use of indefinite delivery contracts (see FAR 16.5) that permit delivery orders to be placed by several contracting or ordering offices in one or more executive agencies. Therefore, contracting offices are encouraged to seek opportunities to cooperate with each other to achieve efficiency and economy through the use of indefinite delivery contracts.

Governmentwide agency contracts (GWACs) are multi-agency contracts typically used by Federal agencies for various information technology resources. This type of contract is subject to an administrative fee determined by the host agency.

## **10.6 Other Simplified Acquisition Methods**

### **10.6.1 Blanket Purchase Agreements (BPAs)**

#### **(1) Applicability**

A BPA is a simplified method of filling anticipated repetitive needs for supplies or services when exact items, quantities, and delivery requirements are not known in advance or may vary considerably. The agreement authorizes individuals to acquire items within simplified acquisition limitations by telephone rather than by written purchase order. At NRC, this method is used for micropurchases only when use of the Purchase Card is impracticable (see Section 10.3 of this part).

The BPA method of buying was established before the Purchase Card program and was designed to meet all legal requirements in effect at that time. Because the Purchase Card may now offer a better alternative, the requesting office should consult early with the CS to determine if the use of the Purchase Card would be more appropriate for the anticipated purchase.

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Although the award of a BPA does not create a legally binding contract, the BPA contains terms and conditions for the placing of calls and ordering procedures that, when requested by authorized ordering offices and executed by the contractor, create legally binding contracts. The "Blanket Purchase Agreement (BPA) Ordering/Receiving Report" (NRC Form 104, which may be accessed through the online forms icon), shall be used by the ordering official to record orders. Further procedures may be obtained from DC when a BPA is contemplated.

■ OCIO approval is required when IT work is placed using BPAs.

In appropriate circumstances, all headquarters and regional offices may fulfill small-dollar purchase requirements for anticipated repetitive needs for supplies or services through placement of orders under BPAs.

**(2) Blanket Purchase Agreement Ceilings**

The orders issued under the BPA shall not exceed the delegated authority of the ordering official unless approved by Director of DC.

■ BPAs established with General Services Administration (GSA) Federal Supply Schedule contractors must not exceed the maximum ordering threshold at the offered price and must be consistent with the terms of the applicable schedule contract. If an order exceeds the contract ordering threshold, the CO will negotiate a price discount.

Orders may not be placed before the effective award date or after the expiration of the BPA, which normally occurs at the end of the fiscal year.

Upon determining its basic requirements, the requesting office will prepare an NRC Form 30 or an NRC Form 400 and obtain the certification of funds from the appropriate certifying official. Funds shall be certified available (committed) in accordance with Section 4.3 of this handbook. The amount certified may not exceed the simplified acquisition threshold per vendor for open market acquisitions. One requisition or a request for procurement action may be used to request BPAs with several vendors for the same type commodity (e.g., office supplies). The dollar amount applicable to each vendor should be clearly indicated. The certifying official shall forward the requisition to DC or the appropriate regional procurement personnel. Since BPA funding may not be carried over fiscal years, BPAs are normally written to expire at the end of the fiscal year.

**(3) Amendment to a BPA**

The BPA project officer must initiate an amendment to a BPA by using the "Request for Administrative Services," NRC Form 30, which is submitted to the procurement office to request a decommitment of funds or commitment of additional funds or to request other administrative changes.

Further information regarding BPAs may be found in FAR 13.303.



### 10.6.2 GSA Federal Schedule Contracts

GSA compiles a series of schedules, the Federal schedule contracts, of commonly used supplies and services available to Government agencies (and some cost-reimbursement contractors) at specified prices. The GSA MOBIS schedule, for example, offers Government contracts that assist agencies in improving management and organizational effectiveness through the use of specialized consulting, facilitation, survey, and training services. Agencies may order from the schedules at their option.

GSA, using competitive procedures, awards indefinite delivery contracts to commercial firms, requiring those firms to provide, under "schedule," specified supplies and services at stated prices for given periods of time. This process permits COs outside GSA to acquire items covered by these schedules without engaging in the time-consuming process of issuing invitations for bids or requests for proposals.

The schedules, often referred to as "GSA schedules," allow ordering offices to issue delivery orders directly to listed contractors, receive direct shipments, make payment directly to contractors, and administer the orders. Both single-award schedules and multiple-award schedules are established (see FAR 8.4 and Part 38 and Federal Property Management Regulation 41 CFR 101-26). The procedures to be followed in ordering from these schedules are set forth in FAR 8.4 and in guidance provided by GSA.

Orders may be placed via the Internet using GSA Advantage. GSA Advantage is a Federal online shopping service, which provides an Internet acquisition solution for the Federal Government. Staff may purchase thousands of products and services offered by GSA schedule contractors directly from their personal computer. Orders of less than \$2500 may be purchased by using the Purchase Card. The Web site may be found at [www.fss.gsa.gov](http://www.fss.gsa.gov).

The Federal Supply Schedule system contains prices for comparable supplies or services being offered by more than one supplier. Further price reductions may be negotiated for large-volume open market purchases.

The contractor must sell to any authorized user of the multiple-award schedule at the prices and in accordance with the terms and conditions provided in the contract. The Government, however, incurs no obligation to buy anything.

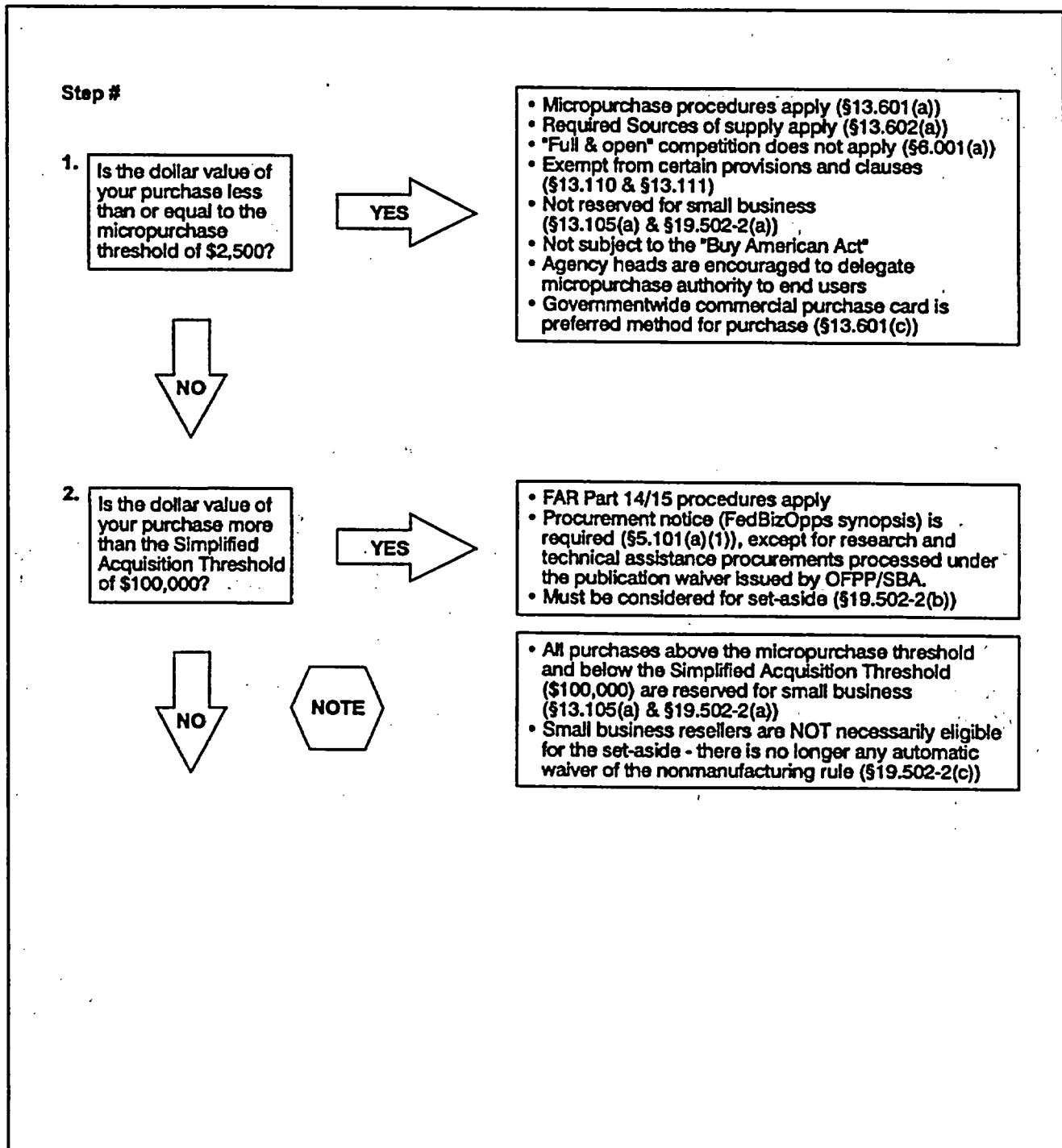
### 10.6.3 Required Sources of Supply

Required sources of supply are sources from which or through which the Government must buy specific products or services. These mandatory sources are listed in FAR 8.001 and cover a wide range of supplies and services available from sources such as the Committee for Purchase From the Blind and Other Severely Handicapped and the Federal Prison Industries.

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**Flowchart 10-1 Procurement Procedures Decision Tree (for purchases not exceeding \$100,000)**

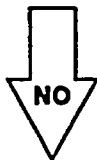


Flowchart 10-1 (Continued)

3. Is the dollar value of your purchase more than \$2,500 but less than or equal to \$25,000?



• Follow box below, except that no procurement notice (public posting) is required.



4. Is the dollar value of your purchase more than \$25,000 but less than or equal to \$100,000?



• Follow box below. Procurement notice (FedBizOpps notice) is required unless waiver applies.

- Simplified Acquisition Procedures apply (§13.103(a))
- Required Sources of Supply apply (§13.103(a))
- "Full & open" competition does not apply (§ 6.001(a))
- Reserved for small business (§13.105(a) & §19.502-2(a))
- Exempt from certain provisions and clauses (§13.110 & 13.111)
- FedBizOpps notice is not required (§5.202(a)(13))
- Must establish a response time that will afford potential offerors a reasonable opportunity to respond to each contract action (§5.203)
- Oral solicitations may not be used (§13.106-1(a)(2))
- Use of oral presentations is encouraged, where appropriate (statement of work is clear and complete, and written proposal would not significantly add to the parties' understanding of how the work will be accomplished)
- Governmentwide commercial purchase card may be used for payment

## Part 11 Contract Administration

Contract administration is the management of the contract from the time of award through closeout to ensure that the contractor's total performance is in accordance with the terms of the contract and that the agency's contract objectives are fulfilled. The contracting officer (CO) has the responsibility and authority for administering NRC contracts. However, the project officer (PO), a technically qualified individual, is generally appointed as the CO's authorized representative to carry out specified functions. The PO's authority is limited to that delegated in the contract by the CO.

The contractor interacts with the agency and designates personnel who will inform the agency of progress on the contract. The business relationship may become intensive and complex and is characterized by change. The administrative process must be adaptive and permit the contract to be updated to reflect current demand and relationships.

A number of clauses contained in the general provisions of the standard agency contract are designed to accommodate the need for adjustment of the contract to reflect ongoing activities. These terms and conditions are extremely important and agency staff, as well as contractor personnel, must understand and be guided by them. These clauses define, for example, the change order process, agency property, agency delay of work, inspection and acceptance, payments, terminations, and numerous other activities. Many of these clauses incorporate the right of the agency to take unilateral action with regard to the contractual agreement, an extremely important right in terms of the contract adjustment process. For example, the CO, under the changes clause of the contract, has the right to unilaterally direct that the design or specifications of the contract be changed as long as the changes are within the general scope of the contract. A followup mechanism permits adjustment of the contract terms, pricing, and/or schedule, as they may have been affected by the unilateral order.

The PO's evaluation of the contractor's work should be conducted at a level of detail and frequency commensurate with the nature of the work. The evaluation should center on determining actual progress toward the project objective, the general quality of the work to date, and the financial status of the contract. The PO considers whether the dollars expended thus far by the contractor are commensurate with the percentage of work completed. The basis from which some conclusions can be drawn about the performance of the contract as a whole is established by information gathered from—

- day-to-day surveillance of the work, technical reviews by the contractor
- conferences held by NRC project and procurement staff
- contractor spending plans

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- quality and timeliness of deliverables
- monthly (unless a shorter or longer reporting cycle is necessary) progress reports from the contractor to the project and procurement staff

While the PO is expected to maintain a working file, the CO keeps the official file. The CO relies heavily on information submitted by the assigned technical and support staff. This information includes copies of all PO/contractor correspondence, PO/contractor conference summaries, trip reports, progress reports, and so forth. The official files for a contract are maintained by the contract specialist (CS). The PO should maintain a well-organized file of all materials related to his or her contract administration duties, including a copy of the contract, task orders, and modifications; each report submitted by the contractor; records of telephone calls and meetings; and copies of correspondence, including confirmation of all technical direction. It is not necessary for the PO to send copies of reports to the CS if it is clear that a copy was provided to him or her by the contractor. However, original copies of incoming correspondence from the contractor should be provided to the CS for the official files. Copies of all written technical direction also should be provided to the CS.

Contracting staff should be included in meetings with contractors. Regular routine meetings can be scheduled in advance, and the CS should be given notice ahead of time for other meetings to be held with the contractor. Timely notification provides useful information on potential contract problems that might be easily resolved if technical personnel contemplate discussions with contractors that could involve changes to the contract.

The PO and other contract administration staff must evaluate the technical status of the work with the intent of recommending appropriate action necessary to keep the work on course, even to the point of recommending that the contract be terminated in part or in whole.

## **11.1 Postaward Kickoff Meeting**

An extremely important first step in the administration of most contracts is the postaward kickoff meeting that is held with the winning contractor within 5 working days after the effective date of the contract. This meeting not only helps ensure that the contract process gets off to a smooth start, but also serves to establish working relationships that will help prevent any future minor disagreements from becoming disputes during the performance of the contract.

At a minimum the contractor, the CS, the PO, and any other technical representatives of the CO must participate to review the terms and conditions of the contract and to discuss the performance expected during the first few weeks of the contract. Subcontractors and NRC staff who are in support of end-user functions also may be asked to participate.

The CS will arrange this meeting at the time of contract award, allowing all participants to arrange their schedules accordingly.

During the kickoff meeting, the CS will discuss the terms and conditions of the contract to ensure that all participants understand the mechanisms available and other specific

requirements, such as limitation of funds, key personnel, or use of overtime, to successfully fulfill the contract.

In situations in which a formal kickoff meeting is of minimal benefit, such as a purchase of equipment with no special delivery terms, or the contractor is unable to meet within 5 working days, a telephone conference may be substituted for a face-to-face meeting.

## **11.2 Monitoring Contractor Performance**

Both the PO and the CS must monitor the contractor's performance closely to ensure that the work is satisfactorily performed in a timely manner. Communication with the contractor is paramount to this success. To control the contractor's cost expenditures and to ensure that NRC's objectives are met, contract provisions may require the contractor to obtain the CO's prior authorization and approval before taking specific actions or incurring certain costs.

For example, prior approval is required for—

- certain subcontracting under cost reimbursement types of contracts and certain other contracts
- reimbursement of costs incurred in excess of cost limitations under cost reimbursement types of contracts
- reimbursement for overtime and premium wage payments

Because the circumstances requiring approval may directly relate to the technical performance of the work, the CO will consult with the PO before formally granting or withholding approval.

Federal Acquisition Regulation (FAR) 42.15 requires that an evaluation of contractor performance be prepared for active contracts (except those awarded to the Federal Prison Industries and nonprofit agencies employing people who are blind or severely handicapped) in excess of \$100,000. Such evaluations, normally, must be prepared annually for multiyear contracts and at the time the work under the contract is completed. The CS will initiate the process by requesting the PO to make an evaluation of a specified period of contractor performance. After reviewing the evaluation and making any additions to it, the CS will send the evaluation to the contractor for review and comment. The evaluation and any contractor comments are used to discuss contractor performance and customer satisfaction. These documents may also be provided to other Federal agencies seeking past performance information on contractors doing business with NRC.

### **11.2.1 Technical Direction**

The PO may give the contractor technical direction and clarification, consistent with the delegated authority outlined in the contract. The PO cannot provide any direction to the contractor that increases or decreases the work or cost or delivery requirements under the contract.

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Frequent communication with the contractor may help to avert potential problems.

Contractor personnel issues must be referred to the contractor employee's management, including issues related to compensation when agency buildings have unscheduled closings.

The law of agency assumes that three parties are involved: the principal, the agent, and a third party. The PO or CO performs as a representative (agent) of the United States Government (the principal) and deals with contractors (third parties). The acts of the agent may bind the principal to third parties and also may give the principal rights against third parties. A Government CO cannot enter into a contract without the statutory or regulatory authority to do so. If a CO enters into a contract without express authority or if the action is prohibited by law or regulation, the contract becomes void and does not bind the Government.

The courts have consistently held that persons dealing with a Government agent are presumed to have notice of limitations on that individual's authority even though the Government representative may have been unaware of them. However, NRC POs who deal with a contractor should remember that their actions, although not so intended, may result in a constructive change (an informal alteration of the work being performed under the contract) for which the contractor may be entitled to compensation. For instance, if a PO asks a contractor to provide a service, a product, or other deliverables not clearly called for in the statement of work, as incorporated into the contract, the contractor may be able to receive additional funding as a result of a claim against the agency. Specifically, the PO may not authorize work outside the scope of the contract of work that would result in an increase in the cost of the contract.

### **11.2.2 Changes in Contract Work**

Contract work may be modified through a contract modification to clarify the requirement or subdivide the requirement to ensure that the contractor will provide an acceptable deliverable.

### **11.2.3 Subcontract Approvals**

A subcontract is a contract between a contractor and another supplier to furnish a part of the goods or services required under the prime contract (between the NRC and contractor). Under cost reimbursement contracts, the contractor must obtain the CO's consent for placing the following types of subcontracts:

- all cost reimbursement, time and materials, and labor hour subcontracts
- fixed-price subcontracts that exceed \$25,000 or 5 percent of the contract price
- subcontracts that provide for the fabrication, purchase, rental, installation, or other acquisition of special test equipment having a value in excess of \$10,000 or of any facilities
- subcontracts that have experimental, developmental, or research work purposes
- subcontracts that involve access to classified information, unescorted access to NRC site or buildings; access to automatic data processing sensitive systems or information; unescorted access to nuclear power plants; or access to Unclassified Safeguards Information

As requested by the CO, the PO must comment on the technical need for subcontracting, the technical capabilities of the proposed subcontractor, the adequacy of the subcontract work statement, and any aspect of the proposed subcontract the PO believes is not in the best interest of NRC. If the proposed subcontract is unacceptable, the CO informs the prime contractor and other arrangements must be made for the proposed work. These arrangements may involve altering some of the terms of the subcontract or selecting another subcontract source, depending on the reasons the subcontract was not approved. If the proposed subcontract is considered to be satisfactory, the CO gives written consent to its award.

#### **11.2.4 Termination of Contractor Employee Access During Contract Performance**

When contractor employees leave during the contract performance period and unescorted access to NRC facilities, to the local area network (LAN), and/or to information systems is no longer required, the PO immediately advises the Division of Facilities and Security via e-mail as discussed in Section 11.15 of this handbook and in accordance with Management Directive (MD) 12.3, "NRC Personnel Security Program," Part I.

### **11.3 Task Orders**

#### **11.3.1 Request for Procurement Action (RFPA)**

When a requirement within the scope of work for a task order contract (see Section 8.3.4.2) is identified, a task order is issued as follows:

A RFPA is sent to the Division of Contracts (DC), Office of Administration (ADM), which includes a statement of work (SOW) for the proposed task order (or modification thereof). In addition, the RFPA should be signed by the designating official (DO), (the office director or a designee) and include an independent Government cost estimate (see NRC Form 554, which may be accessed through the online forms icon, and Section 6.2 of this handbook), if the proposed action exceeds \$100,000, and it also should include an appropriate certification of funds.

When the requesting office prepares the RFPA (NRC Form 400, which may be accessed through the online forms icon InForms), for issuance of a task order, the signature of the DO or a designee serves as a certification that the original justification for use of a task order contract prepared for the basic contract has been reviewed and that acquiring contractor support for this task is consistent with the justification (see Section 5.8.3 of this handbook).

The SOW should include a complete description of the work required, the estimated level of effort, the reporting requirements, the period of performance or delivery schedule, and any special requirements that may pertain to the task order. Any discussion of urgency associated with placement of the task order must be included.



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### **11.3.2 Task Order Proposal**

The CO transmits a task order request for proposal that may include the following information, as appropriate:

- scope of work, meetings, travel, and deliverables
- reporting requirements
- period of performance — place of performance
- applicable special provisions
- technical skills required
- estimated level of effort

By the date specified in the request for proposal, the contractor shall deliver to the CO a written technical proposal that provides the required technical information. The technical proposal may include a discussion of the scope of work, meetings, travel, and deliverables to substantiate the contractor's understanding of the task order requirements and the contractor's proposed method of approach to meet the task order objective and identification of key personnel proposed equipment and facilities.

The contractor's cost proposal for each task order must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts. When the contractor's estimated cost for the proposed task order exceeds \$100,000 and the period of performance exceeds 6 months, the contractor is required to submit a contractor spending plan (CSP) as part of its cost proposal for other than fixed-price contracts. The request for proposal indicates if a CSP is required.

### **11.3.3 Issuance of Task Order**

The PO shall review the contractor's proposal and submit the written evaluation within the timeframe jointly established by the PO and the CS (usually 3 days).

A definitized task order is issued by the CO. Definitized task orders include the statement of work, meetings, travel, deliverables, reporting requirements, period of performance, key personnel, applicable special provisions, and total task order amount, including any fixed fee and obligated amount.

Task orders and modifications to task orders are issued using a format approved by DC. Requesting offices should ensure that funds for the estimated task order amount have been certified on the RFPA (NRC Form 400) for each proposed task order or task order modification. Because obligations are being made at the task order level, the transfer of funds between task orders would require a deobligation and a new obligation. The Deputy Chief Financial Officer/Controller must approve any transfer of funds between task orders if this

transfer will be made in a fiscal year subsequent to the one in which the task order was obligated. For contracts that provide for a guaranteed minimum quantity or level of effort (minimum ordering limitation), funds will be committed and obligated on the basic contract, up to the stated minimum amount. The minimum amount obligated is then applied against each task order until it is exhausted, and then funding is obligated under the individual task order. Funds will not be added to the basic contract, once exhausted.

In cases of urgency, the NRC may require the contractor to immediately begin work before a formal task order can be negotiated. Accordingly, the CO may verbally authorize the contractor to begin work on the task, subject to the monetary limitation (a ceiling) the CO has established for the task order. When the NRC employs this accelerated procedure, the contractor agrees to begin promptly negotiating the terms of the task order. Once agreement is reached, a definitive task order is issued.

## **11.4 Administration of Government Property**

Government property must be furnished to contractors only through the CO to ensure that personal liability for such property is not inadvertently created. COs will ensure that the contractor, who is furnished with Government property or acquires it as a direct cost item under a cost reimbursement-type contract, complies with the provisions of the clause on Government-furnished property.

COs will determine whether title to NRC property should be retained by NRC at the time approval is given for an equipment/property purchase or whether the title shall be vested with the contractor at the time approval is given for an equipment/property purchase. Title to equipment and other tangible personal property valued at less than \$5000 is automatically vested in contractors that are nonprofit institutions of higher education or nonprofit organizations whose primary purpose is scientific research when the purpose of the contract is basic or applied research. For these same contractors, the CO may, at his or her discretion, vest title at higher dollar values without requiring consideration. The CO shall take into consideration such aspects as the useful life of the property and the likelihood of reuse of the property by the NRC or a future contractor in reaching a determination. For all other contracts, if the CO determines that it is in the Government's best interest to vest title, the contractor must give consideration to the NRC equivalent to the estimated fair market value of the property. The CO's determination shall be documented in the negotiation summary and, if title will be vested, so stated in the contract document. Except in the case of a firm fixed-price contract, the contractor shall obtain approval from the CO before making any purchase of equipment or property valued at \$500 or more with NRC funds.

When NRC agrees to deliver certain materials to the contractor, the contractor's performance schedule is based on the assumption that the contractor will receive this property at the time stated in the schedule, or if the time is not so stated, soon enough for the contractor to meet required delivery dates. A time extension is normally allowed if NRC causes a delay or if the property differs from specifications. The contractor also is entitled to a fair adjustment in the

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price of the procurement for additional costs that are caused by late delivery. Control of the property after delivery rests with the contractor, who must set up and administer a program to maintain, repair, protect, and preserve the property.

The CO approves the type and frequency of physical inventories of Government property that a contractor must make during the life of the contract. Inventories of movable equipment are made at least every 2 years; more frequent inventories should be made of equipment easily appropriated for personal use. Upon termination or completion of a contract, the contractor is required to submit an inventory for the disposal of Government property furnished for work under the contract.

Contractors shall be required to submit annually to the CO a detailed report of all NRC property held on September 30 of each year. The threshold for detailed reporting of capitalized equipment by contractors is \$50,000 for items received by the contractor after October 1, 1995. The threshold remains at \$5000 for capitalized equipment purchased before October 1, 1995.

The contractor provides a monthly financial status report (FSR) to the PO and the CO. The FSR includes the acquisition of, or changes in the status of, property valued at the time of purchase of \$50,000 or more and send a copy of the report to the NRC Property Management Officer, Administrative Services Center, ADM.

Procedures covering the loss, theft, damage, or destruction of NRC property are set forth in MD 13.1, "Property Management." Items removed from the contractor's custody during the year and their subsequent disposition also will be reported. NRC may audit property records maintained by the contractor as often as conditions warrant. Records must always be reviewed when a contract is terminated or completed, before final payment and contract closeout.

## **11.5 Review of Contractor Invoice or Voucher**

Invoices for NRC contracts, task orders, cooperative agreements, grants, interagency agreements (hereinafter referred to as NRC contracts), and purchase orders shall be approved for payment in accordance with policies and procedures applicable to the apportionment, allotment, commitment, and obligation of funds. Procedures related to the Department of Energy/NRC interagency agreements are discussed in MD 11.7, "NRC Procedures for Placement and Monitoring of Work With the U.S. Department of Energy (DOE)."

The PO will review each of the invoices or vouchers submitted by the contractor to determine whether payment should be made, suspended (temporary disallowance), or disallowed (final decision). The CS also reviews the invoice to ascertain whether the contractor has expended a greater percentage of the contract's funds than can be justified by the contractor's technical progress or if the contractor's billing exceeds money obligated under the contract. Reviewers of invoices for performance-based contracts should be aware of procedures for reducing the fee under cost-plus-fixed-fee contracts or reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements. An overview of review of contractor invoices may be found in Flowchart 11-1.

### 11.5.1 Contract Requirements

The Antideficiency Act prohibits Government officials or employees from authorizing or making obligations in excess of the amount available in an appropriation, an apportionment, a reappropriation, or an allotment. Any appropriation that is apportioned or reappropriated may only be divided and subdivided administratively within the limits of such apportionments or reappropriations. To enforce this prohibition, the act prescribes administrative disciplinary action for those who inadvertently exceed their authority, prescribing criminal penalties for those who do so knowingly and willfully. In addition, NRC's policies for administrative control of funds prohibit authorizing or making obligations in excess of allowances or financial plans. POs are responsible for monitoring contract funding under NRC contracts. No officer or employee of the Government may create or authorize an obligation in excess of funds available. This policy applies to issuance of orders in excess of funds obligated under a contract.

The Office of Management and Budget (OMB) Circular A-125 (revised December 12, 1989) prescribes basic policies and procedures to be followed by executive departments and agencies in paying for property and services acquired under Federal contracts pursuant to the Prompt Payment Act of 1982, as amended.

Congress appropriates funds for NRC programs but does not directly control their expenditure. This control is provided by the laws and procedures that apply to the apportionment, allotment, commitment, and obligation of funds.

Fixed-price contracts, containing the standard payments clause (FAR 52.232-1), provide that the contractor shall be paid, upon submission of properly certified invoices or vouchers, the prices contained in the contract schedule for supplies or services delivered and accepted.

Payment in cost reimbursement type contracts is made in accordance with the allowable cost and payment clause (FAR 52.216-7) and fixed-fee clause (FAR 52.216-8), if applicable. These clauses provide that upon performance of the contract, the agency will pay the contractor the cost as determined by the CO in accordance with the cost principles (FAR Part 31), the terms of the contract, and the fixed fee, if any, as may be provided in the contract schedule. These clauses also provide for monthly or more frequent payments, if approved by the CO, of costs plus a proportionate part of the fixed fee, with part of the fee withheld until completion of the contract.

The amount withheld may vary with agency procedures. The NRC fee policy is that the fixed fee billed by the contractor will be paid up to 85 percent of the negotiated fee. Upon satisfactory completion of the contract, the remaining 15 percent will be released to the contractor. The CO may determine if a portion of these funds may be released earlier, such as for expired task orders, when annual audits have been completed and there is no indication that the funds may be needed for adjustment in later years of the contract. Nonetheless, final payment is made upon completion and acceptance of all work required under the contract when the contractor presents a properly executed and duly certified final voucher or invoice showing the amount agreed upon, less amounts previously paid.

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The payment method on termination of contracts generally is set out in the contract schedule, and the amount of fee due is determined by the CO on the basis of the percentage of work completed under the contract (FAR Part 49).

Under cost-plus-fixed-fee (CPFF) contracts, no agreement can be reached as to the correctness of an amount charged to and paid by the agency until the final audit is conducted. Only then can the agency notify the contractor with respect to any overpayment. A CPFF contractor must reimburse the agency for any reductions in cost for which it has already been compensated. The agency retains the right to sue for recovery of overpayments on contracts despite long continuance of illegal overpayments before the error is discovered and regardless of how long it takes to recover over payment. COs can and must seek recovery of any payments that have been made by mistake, even after final payment has been made, since no officer has the authority to give away rights vested in the Government.

### **11.5.2 Payment Procedures for Contract Invoices**

#### **(1) Division of Contracts**

DC receives, as the agency-designated billing office, an original and three copies of the contractor's request for payment (invoice) for work performed under NRC contract. One copy of the invoice also is sent to the Division of Accounting and Finance (DAF), Office of the Chief Financial Officer (CFO) (OCFO by DC).

The data entry clerk, upon receipt of the contractor invoice, date stamps the invoice and prepares a voucher transmittal for review and approval before payment (NRC Form 292, which may be accessed through the online forms icon) and forwards the original form with two copies of the unpaid invoice to the PO for return within 7 calendar days (4 calendar days for construction contracts). The data entry clerk also provides a copy of the invoice and NRC Form 292 to the CS for review. The CS provides the contractor timely notification of any deficiency precluding payment.

The CS maintains necessary followup with the PO to ensure that timely input is received.

#### **(2) Project Officer**

The PO, upon receipt of an NRC Form 292 and the unpaid invoice, performs a technical analysis to ensure that billed costs are commensurate with the effort expended. The PO obtains input from other NRC staff familiar with contractor performance as necessary to make this determination. If material or services invoiced by the contractor have not been received or are not fully acceptable, the PO should contact the CS immediately upon receipt of the NRC Form 292.

The PO annotates any specific problem on NRC Form 292 and returns the package to the CS (normally within 2 days of receipt) if a deficiency is identified that may preclude payment in full.

The PO completes NRC Form 292, indicating concurrences or recommendations for suspension or disallowance.

The PO sends the signed NRC Form 292 package to the CS (within 7 calendar days or 4 calendar days for construction contracts) for final determination of the amount to be paid. The PO retains the suspense copy of the NRC Form 292 and a copy of the unpaid invoice as a record.

**(3) Contract Specialist**

If there is a suspension or a disallowance, the CS prepares a letter to the contractor advising the contractor of the amount withheld and the reasons therefor within 7 calendar days of the agency's receipt and attaches a copy of the suspension or disallowance letter to the NRC Form 292. The CO must sign disallowance letters.

The CS, upon receipt of the complete copy of the NRC Form 292 package from the PO—

- determines allowability of the amount to be paid
- recommends the amount to be retained (for expiration invoice only), pending final audit
- completes the NRC Form 292, signs, and sends the package to DAF, OCFO, with the original and one copy of the invoice, through internal mailing procedures. (From receipt of invoice to payment, no more than 30 calendar days may elapse [14 calendar days for construction contracts]. This means that the CS shall forward a completed NRC Form 292 package [original invoice and one copy] to DAF by the 17th calendar day from the date of receipt of the invoice [11th calendar day for construction contracts].)

On all invoices received that involve prompt payment of discounts, the CS ensures that approval documentation is returned to DAF in a timely manner so that discount can be taken. The CS will ensure that invoices are received in DAF at least 4 working days before the discount period expires.

**(4) Division of Accounting and Finance**

The authorized voucher examiner, DAF, upon receipt of the NRC Form 292 package (the original and one copy of the invoice), with approval signatures from the PO and the CO, reviews and processes the invoice for payment.

DAF certifies that invoices received from contractors are correct for payment through the U.S. Treasury. Certification includes reviewing for—

- legal sufficiency under the Prompt Payment Act

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- mathematical or clerical errors
- fixed-fee retention
- compliance of invoices with the terms and conditions of the contract
- submission to DAF of all the documents necessary to support the payment
- contractor discounts

If changes from the DC authorization are identified as a result of this review, they are to be cleared through the CS before payment.

DAF, as the designated payment office, ensures that payment is made to the contractor promptly upon receipt of a properly approved invoice and within 30 calendar days of official agency receipt date. DAF also ensures that the agency is in compliance with the requirements of the Prompt Payment Act, as amended, and OMB Circular A-125, as amended. DAF computes any interest penalty due and makes payment of the interest penalty when required in accordance with the Prompt Payment Act, as amended.

DAF, after the invoice has been scheduled for payment, retains the original invoice along with the original NRC Form 292 and forwards copies of the signed NRC Form to the CO. The CO keeps one copy and distributes one copy to the PO, indicating that payment has been made.

DAF maintains records of each contractor's outstanding unpaid obligations and provides reports to NRC program offices and DC.

DAF prepares an annual prompt payment report documenting the number of payments, interest paid, and other information to OMB, as required.

### **11.5.3 Payment Procedures for Purchase Orders**

DC prepares the purchase order (NRC Form 103, which may be accessed through the online forms icon) and transmits the three copies designated as receiving reports.

The receiving office, upon completion of services or receipt of supplies, completes its copy of NRC Form 103 and sends one copy to DAF and one copy to DC.

If supplies or services invoiced by the contractor have not been received and/or are not fully acceptable, the receiving office should immediately contact DC.

If any problems are encountered that should prevent payment, DC notifies DAF within 5 days from receipt of the completed receiving report.

DAF, upon receipt of the original invoice and two copies from the vendor, should date stamp the receipt and review the invoice to ensure compliance with the terms of the purchase order.

In those cases in which DAF has received a signed receiving report for supplies or services and has verified files, DAF (as the designated billing and payment office) makes payment in accordance with the terms of the Prompt Payment Act, as amended, provided no objection to payment is received from DC within 7 days.

DAF, in cases for which no receiving report is on hand at the time of receipt of the invoice, sends a copy of the invoice to the requestor for approval on NRC Form 370.

DAF maintains necessary followup and ensures that prompt payment discounts are noted in a timely manner.

DAF computes any interest penalty due and makes payment of interest penalties when required.

NRC regional offices with delegated small purchase authority must comply with requirements of the Prompt Payment Act, as amended. This task includes the regions' responsibility to serve as agency-designated billing offices for receipt of invoices on purchase orders issued by the regional offices, as appropriate.

## **11.6 Modifying the Contract**

FAR 43.101 defines "contract modification" as any written change in the terms of a contract. These changes include any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other provisions of an existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual bilateral action of the parties to the contract.

### **(1) Unilateral Action**

When modifications are necessary to reflect changes in requirements or to handle contingencies that develop after placement of the contract, provisions may be made in the contract to accommodate adjustments. In this way, the agency protects its right to effect necessary changes unilaterally and without delay because the contractor, in signing the original contract, agrees that the agency has this right.

### **(2) Bilateral Action**

When a contract must be modified for reasons not expressly covered by its provisions, the change cannot be effected without the consent of the contractor and must be accomplished by agreement of both parties. The extent to which contracts may be modified by mutual consent is restricted. For example, provisions of the contract that are required by law may not be waived. Furthermore, no action may be taken that would be prejudicial to the interests of those who submitted bids on the original solicitation.

Modification actions by mutual consent may not be taken unless there is a new consideration. A consideration is something of value that a party must give. For example,



the contractor needs an extension of the contract delivery schedule because of a contractor delay; the CO grants a time extension and the contractor must give "something of value" (e.g., a reduction in cost, additional copies of a report, additional software or supplies, or training time if the deliverable is equipment). When a modification is necessary because of an agency delay, the contractor normally is not expected to give a consideration.

The distinction between new procurement and other-than-new procurement is important in contract modifications. Generally, purchase of an additional quantity of supplies, hardware, or services is a new procurement and must be resolicited. In other instances, increasing the work to be performed within the scope of the contract and the existing period of performance is an other-than-new procurement and need not be resolicited because it comes within the scope of the original contract and is accomplished by a modification to the contract under the authority of the changes clause. The distinction depends on whether the modification changes the nature of the supplies or the overall work scope, or changes the contract.

Close coordination and planning is required among all personnel, including technical, business, fiscal, contractual, and legal personnel involved in the proposed modification. Requests for contract modifications will primarily involve the PO and the CS. A source evaluation panel (SEP) need not be convened unless, in extraordinary circumstances, the DO and the CO believe that use of the SEP would materially benefit the procurement action. Requests for modifications must be submitted as a request for procurement action (NRC Form 400), must be signed by the DO or a designee, and must include certification of funds by a funds certifying official.

## **11.7 Need for Performance Period To Be Extended Resulting in Contract Exceeding Five Years**

The CO may approve noncompetitive contract extensions to 5-year contracts within the limits of his or her delegation for up to a total of an additional 6 months for the purpose of completing the competitive process of a follow-on contract, provided that the RFPA for a follow-on or replacement contract was received in DC not less than 6 months before the end of the fifth year. Other extensions must be approved by the Competition Advocate (Deputy Director of ADM). Extension of task orders beyond contract expiration varies with the terms of each contract.

## **11.8 Spending Controls**

### **11.8.1 Indirect Cost Rate Adjustments**

Most contractors establish indirect rates to cover expenses that are not directly attributable to contract projects. These expenses, such as rent, utilities, and administration salaries, are pooled and charged proportionately to all parties with whom they contract (customers). These costs are projected as provisional rates and finalized after the contractor's fiscal year ends. The

final rates will be affected by such factors as the number of customers the contractor has that will share the expenses. The NRC will normally fund negotiated final rates as long as a cost overrun does not occur and the contractor has complied with all contract terms concerning proper notice.

FAR 42.704(c) states that billing rates (provisional rates) may be retroactively revised by mutual agreement of the CO and the contractor, at either party's request. Nuclear Regulatory Commission Acquisition Regulation (NRCAR) 2052.216-71(b) states that the CO may adjust the rates (provisional), as appropriate, during the term of the contract if he or she accepts the revisions proposed by the contractor. To avoid complicated retroactive adjustments that delay the closeout process, the NRC provides authority for cognizant audit agencies to perform annual audits of provisional rates after submission of proposals by the contractors. Recommendations contained in audit reports must be acted on within 6 months.

Negotiation of final indirect rates may periodically create a need for the PO to reevaluate the use of remaining funding under the contract. The CS will work closely with the PO to plan for remaining expenditures.

### **11.8.2 Annual Audits**

For cost reimbursement contracts in excess of \$500,000, the CS will usually require an annual audit to finalize all charges to the contract. This audit helps to project funding, avoid overpayment, and expedite closeout.

### **11.8.3 Cost Overruns**

A cost overrun is an amount representing the actual cost of performing the original work that is greater than the amount estimated by the parties when the contract was executed. With effective contract monitoring, a cost overrun is a rare occurrence. (Cost growth occurs when unforeseen changes to the SOW require an equitable adjustment.)

Under fully funded cost reimbursement type contracts, the estimated total cost is a cost limitation and is stated in the contract in the form of a limitation-of-cost clause. If incrementally funded, the limitation-of-funds clause sets the amount of obligated funds as the limitation. The contractor does not have to continue performance once the limitation is reached unless the CO modifies the contract. If the contractor does exceed the limitation, the contractor does so at his or her own risk.

The PO may determine, in consultation with the CS, that costs may exceed the limitation on the basis of his or her review of the contractor's monthly spending plan report, the technical progress report, the financial status report, or invoices and by projecting costs to complete the effort. The PO must decide to either accept the contract product "as is" without a further increase in funds, to increase the contract amount (overrun funding) and allow for total completion of the contract product or service, or reduce the scope of work to stay within the current level of funding. Such funding will cover costs only; no additional fee is provided for an overrun. If the contract amount will be increased, the PO is responsible for initiating the request for the increase in funds, including supporting documentation.

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If an increase of the contract amount is determined to be appropriate, additional funds must be certified by the funds certifying official. Early investigation of a potential cost overrun preserves NRC's contractual rights.

The limitation-of-cost and the limitation-of-funds clauses require the contractor to give the CO advance notice of a possible cost overrun when the contractor projects that 75 percent of the total estimated costs will be reached within 60 days. If the contractor believes that the total cost of performance will be substantially above or below the estimated cost, a revised cost estimate must accompany the notice. NRC personnel should avoid any informal action or implication that would lead a contractor to exceed the contract cost limitation or to assume that he or she may incur costs beyond the existing limitation. Any communications that may affect the incurrence of cost must be coordinated with DC.

Failure to provide this notice may not only jeopardize the contractor's ability to receive funding for any cost overrun, but also may cause a delay in the completion of the project.

The PO should closely monitor the contractor's financial reports and the contractor's spending plan to ensure that any funding problem is caught early. The PO should discuss any possible problems with the CS. In many cases, early attention can result in a revision to planned expenditures and eliminate the need to provide additional funds.

#### **11.8.4 Deobligation of Excess Funds**

Whenever it becomes apparent that funding obligated to a contract document will not be needed to perform under the SOW, excess funds should be deobligated. In most situations, the CS will modify the contract with the agreement of the contractor (bilateral). A unilateral deobligation normally can be accomplished if a dispute cannot be resolved; however, in such a case, the contractor normally will have appeal rights.

Although the CS monitors contracts to ensure that funding is provided for current needs and deobligated when appropriate, the PO should notify the CS whenever it becomes apparent that funds should be considered for deobligation on an active contract.

### **11.9 Fee-Recoverable Costs**

If applicable to the contract terms, the contractor is required to state in each monthly reporting of cost (e.g., invoice or monthly report) whether license fee recoverable costs were incurred. The PO and CS should review monthly cost reporting for fee-recoverable costs incurred.

### **11.10 Performance Problems and Remedies**

#### **11.10.1 Failure To Progress Satisfactorily**

If the PO is not satisfied with the contractor's performance, he or she is responsible for notifying the contractor and CO as soon as a problem is identified, considering the timeframe prescribed within the contract.

If the contractor is having difficulty in performing the work or if the work is not progressing satisfactorily, several alternative solutions are available. Technical direction from the appropriate NRC staff may be the answer. Additional technical data could be furnished if this action would help solve the problem. When better results could be achieved if the contractor's efforts were redirected, revision of the SOW may be appropriate. In some cases, termination of the contract may be the only reasonable course of action. In any case, before any action may be taken, the CO must be consulted.

When NRC is responsible for any aspect of contract performance, such as providing material or information, approving plans, or prosecuting a subsequent phase of the work, every effort should be made to fulfill these responsibilities promptly so that the project can proceed and no contract delays can be attributed to NRC.

In many cases, the contractor can resume satisfactory performance after a series of meetings to identify the sources of problems and after action has been taken by all parties to correct any misdirection. A bilateral contract modification may be appropriate, especially if needed to provide clarification of contract terms. To avoid unauthorized commitments, the CS must be involved in all such activity.

### **11.10.2 Unsatisfactory Subcontractor Performance**

When a subcontractor is performing unsatisfactorily, it is the contractor's responsibility to correct the situation. NRC employees, through the CS and the CO, should deal with the prime contractor and should not deal directly with the subcontractor. Direct contact with a subcontractor can result in unauthorized commitments.

### **11.10.3 Disputes**

A "dispute" is a disagreement between the contractor and the CO regarding the rights of the parties under a contract. Under the Contract Disputes Act of 1978, contractors are permitted to submit claims (demands for a certain sum) against the Government; conversely, the Government may make claims against contractors.

A dispute arises between a contractor and the Government during or after the performance of a contract. A dispute originates when a claim is denied by the party against which it is made.

The NRC stands by the Government's policy to try to resolve all contractual issues in controversy by mutual agreement at the CO level. Reasonable efforts should be made to resolve controversies before the submission of a claim. The use of alternative dispute resolution (ADR) procedures is encouraged to the maximum extent practicable. "ADR" means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These methods include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, factfinding, mini-trials, and arbitration.

When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the CO shall review the facts pertinent to the claim, secure

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assistance from the Office of the General Counsel, the Office of Small Business and Civil Rights, if appropriate, and other advisors, coordinate with the CS and prepare a written decision that shall include a description of the claim or dispute, reference to the pertinent contract terms, statement of the factual areas of agreement and disagreement, and statement of the CO's decision with supporting rationale. If resolution cannot be reached, final decisions of the CO on contract disputes will be heard by the Department of Energy (DOE) Board of Contract Appeals pursuant to an interagency agreement between NRC and DOE. More information regarding disputes may be found in FAR Part 33.

#### **11.10.4 Remedies**

There are a number of remedies at the agency's disposal that may be used when contractor performance is not meeting the requirements of the contract, the agency no longer needs a requirement or part of the requirement, or the agency needs time to make a decision regarding advancements in the state of the art, productions, or realignment of programs.

##### **11.10.4.1 Stop-Work Order**

A stop-work order is a unilateral order in which the CO requires the contractor to stop all or any part of the work called for under the contract. Stop-work orders may be issued if the contract contains a suspension of work clause (see FAR 52.242-14) or a stop-work-order clause (see FAR 52.242-15, optional in contracts for supplies, services, or research and development). These clauses give the contractor an adjustment in the price to compensate for costs incurred because of the order.

The CO must notify the Director of DC before issuance of a stop-work order. Section 5.6.2 of this handbook describes security considerations when work has been stopped. A stop-work order may not be used in place of a termination notice after a decision to proceed with a termination for default has been made (see FAR Part 42.13 for additional information).

##### **11.10.4.2 Termination**

"Termination for convenience" is the right of the agency to terminate or cancel performance of work under a contract, in whole or in part, if the CO determines that termination is in the agency's best interest. Such action is normally taken only if the agency no longer needs the product or services. Under a termination for convenience, the agency and contractor normally will negotiate a settlement in which the Government pays for any expenses the contractor incurs in carrying out the termination. Once a contract is terminated for convenience, the Government normally may not immediately initiate a contract for the same work.

"Termination for default" is the right of the agency to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations. To terminate a contract for default, it is imperative that the PO accurately and in a timely manner assess the contractor's progress and document any problems. The PO must notify the CS in a timely manner and he or she provide information to the CO who must determine, normally with the contractor's input, whether the contractor can make satisfactory corrections. This is best accomplished by addressing every incidence of unsatisfactory

performance as soon as it occurs. The contractor has fewer settlement rights, and the work may be placed with another contractor.

The PO will immediately advise the Division of Facilities and Security (DFS), ADM, and OCIO, Administration and Resource Management Staff, via e-mail of pending contract terminations when contractor access to the LAN, information systems, or NRC building access is involved. The contractor employee's badge should be returned to DFS immediately (no later than 3 days) after termination. Terminating contractor access authorizations will be handled as discussed in Section 11.15 of this handbook and in accordance with Management Directive (MD) 12.3, Part I.

More information may be found on termination of contract in FAR Part 49.

### **11.11 Unauthorized Commitments**

The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated or by those individuals who have acted outside of their authority (e.g., changes to the SOW, delivery schedule, or an increase or decrease of the costs under the contract). Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, the FAR, the NRCAR, and other Federal laws. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment. Examples of these requirements are the certification of the availability of funds, justification for other than full and open competition, competition of sources, determination of contractor responsibility, certification of current pricing data, price and cost analysis, administrative approvals, and negotiations of appropriate contract clauses.

The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may later be ratified. To be effective, the ratification must be in the form of a written procurement document clearly stating that ratification of a previously unauthorized commitment is intended.

All ratifications of procurement actions valued at \$2500 or less may be approved by the appropriate regional administrator or headquarters CO at the branch chief level. For any such action, all other terms of NRCAR 2001.6 are applicable. All ratification actions exceeding \$2500 shall be reviewed for approval by the Competition Advocate (Deputy Director of ADM).

Requests for ratification of a commitment made by an employee lacking contracting authority must be processed as follows:

- (1) The DO, responsible for the office request, shall furnish the CO all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to—

- a written statement consistent with the complexity and size of the action as to why the contracting office was not used, including the name of the employee who made the

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commitment and a statement that funds were available at the time of the unauthorized commitment.

- a statement as to why the proposed contractor was selected
- a list of other sources considered
- a description of work performed or to be performed or products to be furnished
- the estimated or agreed-upon contract price
- a certification of the appropriated funds available, signed by an authorized funds certifying official. (The Director of the Division of Budget and Analysis should be immediately notified if there are insufficient funds available to cover an unauthorized commitment that should otherwise be ratified.)
- a description of how unauthorized commitments in similar circumstances will be avoided in the future

(2) The headquarters CO at the branch chief level shall review the written statement of facts for a determination of approval of all actions valued at \$2500 or less. For actions greater than \$2500, the CO shall forward the written statement of facts for a determination of approval to the Competition Advocate (Deputy Director of ADM) through the Head of the Contracting Activity (Director of DC) with any comments or information that should be considered in evaluating the request for ratification.

(3) The NRC legal advisor may be asked for an opinion, advice, or concurrence if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when some other legal issue is involved.

An example of a ratification of an unauthorized procurement action may be found in Exhibit 13.

## **11.12 Contractor Differing Professional View (DPV)**

It is NRC's policy to maintain a working environment that encourages its staff to express their best professional judgments, even though they may differ from a prevailing staff view, disagree with a management decision or policy position, or take issue with proposed or established agency practices. MD 10.159, "Differing Professional Views or Opinions," establishes procedures for NRC staff to express differing professional views or opinions. A similar procedure provides NRC contractor personnel with a comparable DPV process. This process supports the contractor's expression of professional concerns related to health and safety associated with the contractor's work for the NRC. These concerns—

- may differ from a prevailing NRC staff view

- may disagree with an NRC decision or policy position
- may take issue with proposed or established agency practices

An occasion may arise when an NRC contractor, or the contractor's or subcontractor's personnel, believes that a conscientious expression of a competent judgment is required to document such concerns on matters directly associated with its performance of the contract. The contractor DPV procedure to provide for the expression and resolution of DPVs described above, is included in the solicitation. The contractor shall provide a copy of the NRC DPV procedure to all of its employees performing under its contract and to all subcontractors, who shall, in turn, provide a copy of the procedure to its employees.

The NRC may authorize up to 8 reimbursable hours for the contractor, or the contractor's or subcontractor's personnel, to document a DPV in writing. In the event sufficient funds are not available under the contract, the contractor shall first obtain authorization from the CO providing sufficient funds to cover the cost of preparing the DPV. With the exception of the above-specified payment for 8 hours' work on a DPV, the contractor shall not be entitled to any additional compensation or additional work under its contract by virtue of the DPV submission. A subcontractor's DPV shall be submitted through the prime contractor. The prime contractor or subcontractor shall submit all DPVs received, but need not endorse them.

Contract funds shall not be authorized to document an allegation in the following instances, for which the use of the NRC contractor DPV process is inappropriate:

- allegations of wrongdoing, which should be addressed directly to the NRC Office of the Inspector General (OIG)
- issues submitted anonymously
- issues that NRC deems to be frivolous or otherwise not in accordance with the policy underlying these procedures
- issues raised that have already been considered, addressed, or rejected, absent significant new information

Note that this procedure does not provide anonymity. Individuals desiring anonymity should contact the NRC OIG or submit the information under NRC's Allegation Program, as appropriate.

Each DPV shall be submitted in writing and will be evaluated on its own merits.

When required, the contractor shall initiate the DPV process by submitting a written statement directly to the NRC office director or regional administrator responsible for the contract, with a copy to the CO.

The DPV, while being brief, shall contain the following as it relates to the subject matter of the contract:



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- a summary of the prevailing NRC view, existing NRC decision or stated position, or the proposed or established NRC practice
- a description of the submitter's views and how they differ from any of the above items
- the rationale for the submitter's views, including an assessment based on risk, safety, and cost-benefit considerations of the consequences should the submitter's position not be adopted by NRC

The office director or regional administrator will immediately forward the submittal to the NRC DPV ad hoc review panel (see MD 10.159) and acknowledge receipt of the DPV, ordinarily within 5 calendar days of receipt.

The panel will normally review the DPV within 7 calendar days of receipt to determine whether enough information has been supplied to undertake a detailed review of the issue. Typically, within 30 calendar days of receipt of the necessary information to begin a review, the panel will provide a written report of its findings, including a recommended course of action, to the office director or the regional administrator and to the CO.

The office director or the regional administrator will consider the DPV review panel's report, make a decision on the DPV, and provide a written decision to the contractor and the CO, normally within 7 calendar days of receipt of the panel's recommendation.

Subsequent to the decision made regarding the DPV review panel's report, a summary of the issue and its disposition will be included in the NRC Weekly Information Report submitted by the office director or the regional administrator. The DPV file will be retained in the office or region for a minimum of 1 year. For purposes of the contract, the DPV shall be considered a deliverable under the contract. On the basis of the office director's or the regional administrator's report, the matter will be closed.

### **11.13 Final Past Performance Evaluation**

FAR 42.15 requires that final evaluations be prepared for all expiring contracts (except those awarded to the Federal Prison Industries and nonprofit agencies employing people who are blind or severely handicapped) in excess of \$100,000. Such information will be used to provide current information to NRC SEPs and to other Federal agencies that request it for source selection purposes.

Careful evaluation of the contractor's performance after completion of the contract is very important as it serves as a valuable guide in determining the contractor's suitability for future work. The PO should prepare a concise, written report of the evaluation in consultation with the CS. The evaluation report should be kept on file in DC for future reference to provide useful data for future source selection activities. The report should cover—

- contractor's compliance with terms and conditions governing the quality of the end item or service

- contractor's success in meeting schedules
- contractor's success in performing within costs
- capability of contractor personnel to perform the contract
- contractor's ability to perform without direction or assistance from NRC
- recommendations to those staff members who are considering the contractor for further solicitations

### **11.14 Contract Closeout**

Although physical completion fulfills the agency's objective in awarding the contract, a contract is not closed until it has been administratively completed, that is, all activities leading to completion and final payment have been completed.

Before a contract may be formally closed, the CO must ascertain that the contractor has met the obligations under the contract. The activities leading to final payment include—

- resolution of all outstanding claims
- acceptance of all end items and data, including deliverables and services and interim and final technical reports
- verification of the disposition of Government property
- receipt of all required contractor reports, releases, and assignments
- return of all contractor badges and return, or other authorized disposition, of classified and sensitive unclassified information
- completion of a final audit, in the case of cost contracts

Review by audit personnel normally is accomplished by the Defense Contract Audit Agency and, in some cases, the legal staff and other NRC offices also may be required to review the contract before the Division of Accounting and Finance, Office of the CFO, can make final payment. (See Part VII of Handbook 4.2 for additional information on funds control policy for contract closeout.)

The CS performs all required actions to administratively close out contracts, including deobligation of any excess funds within 90 days of contract expiration. The PO responds to DC closeout requests under the assigned project.

## **11.15 Terminating Contractor Access Authorizations During Closeout**

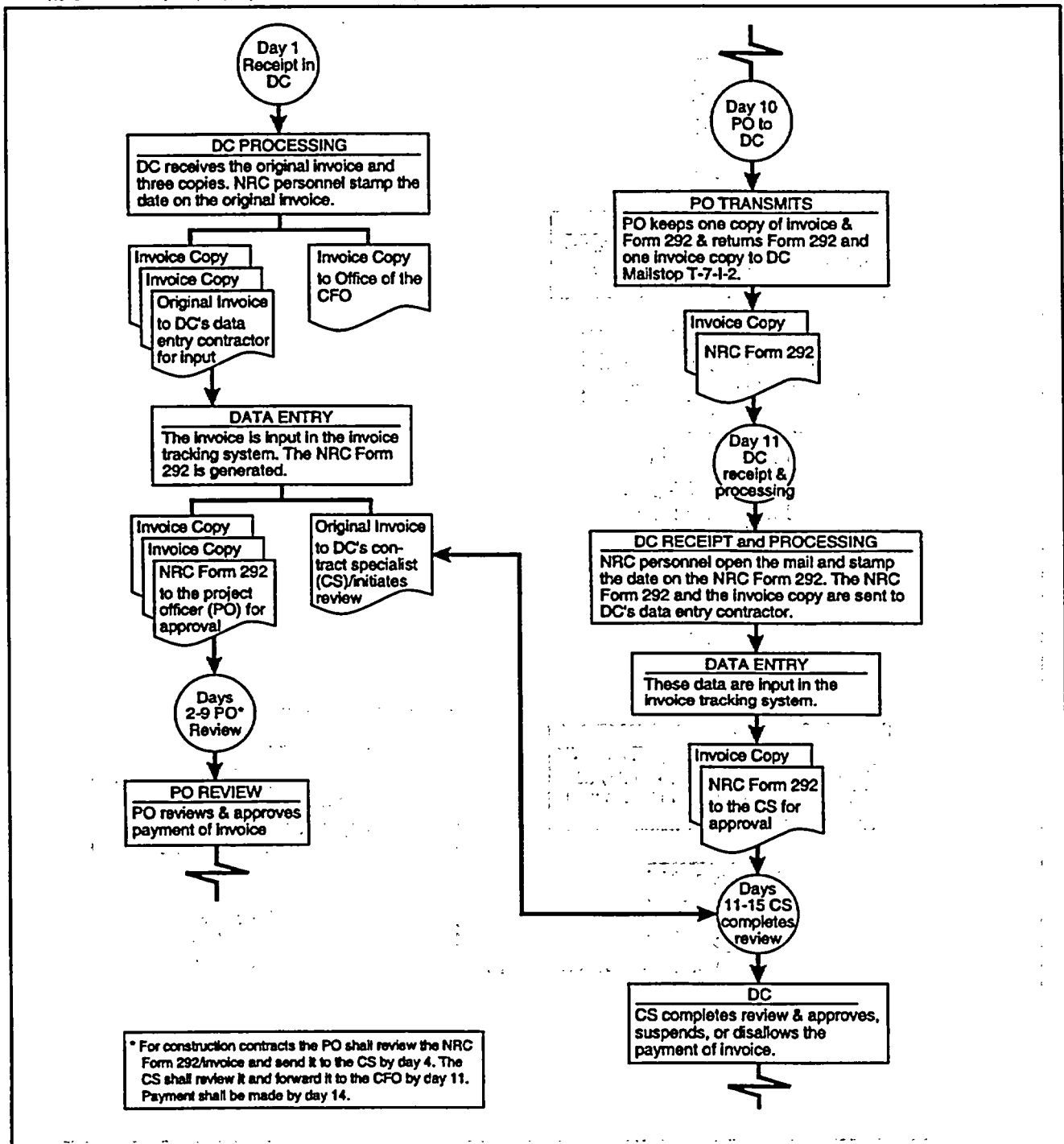
When all work and services have been completed (or if a contractor has been terminated or a contractor employee leaves during contract performance), the PO immediately advises DFS and OCIO, Administration and Resource Management Staff, via e-mail if the access to the LAN, and/or to information systems, is no longer required so that access authorizations may be terminated as appropriate. In those situations in which contractor personnel no longer require access to NRC facilities, the PO will retrieve NRC security identification badges and forward them to DFS immediately (no later than 3 days) after the contractor employee leaves or is terminated. DFS will then terminate the contractor employee's access clearance and any applicable key-card access.

Clearance of subcontractors requires completion of all the above-noted procedures, including initiation of a new NRC Form 187, an SOW, and copies of the proposed subcontracts.

All security matters regarding contracts are handled in accordance with MDs 12.1 and 12.3. MD 12.3, Part I, discusses access terminations specifically. All contractually related security questions must be coordinated with both DFS and DC.

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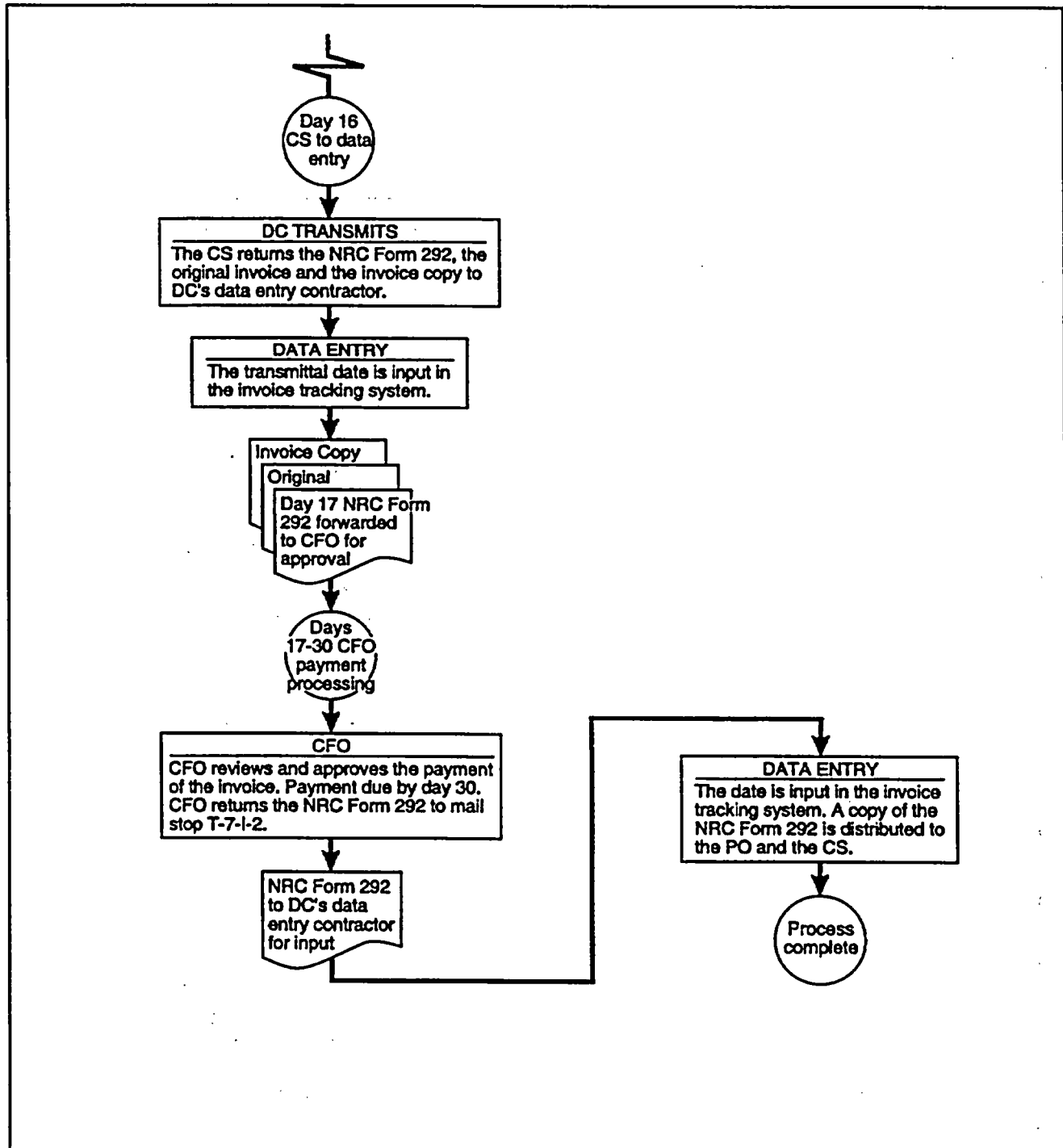
Flowchart 11-1 Invoice Workflow



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**Flowchart 11-1 (Continued)**



## Abbreviations

■ ADAMS	Agencywide Documents Access and Management System
ADM	Administration, Office of
ADP	automatic data processing
ADR	alternative dispute resolution
APP	advance procurement plan
APR	Advocate for Procurement Reform
ASC	Administrative Services Center
BAA	broad agency announcement
BML	bidders mailing list
BPA	blanket purchase agreement
CAA	cognizant audit agency
■ CFO	Chief Financial Officer
CICA	Competition in Contracting Act
CIO	Chief Information Officer
CO	contracting officer
■ COI	conflict of interest
CPFF	cost plus fixed fee
■ CPIC	Capital Planning and Investment Control
■ CPG	Comprehensive Procurement Guideline
CS	contract specialist
CSP	contractor spending plan
D&F	determination and finding
DAF	Division of Accounting and Finance
DC	Division of Contracts
DCAA	Defense Contract Audit Agency
DEDM	Deputy Executive Director for Management Services
DFS	Division of Facilities and Security
DO	designating official
DOE	Department of Energy
DPA	delegation of procurement authority

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DPV	differing professional view
DSO	Designated Senior Official
EDO	Executive Director for Operations
EEO	equal employee opportunity
■ EPA	Environmental Protection Agency
FAR	Federal Acquisition Regulation — <a href="http://www.gsa.gov/far">www.gsa.gov/far</a>
FASA	Federal Acquisition Streamlining Act
FCO	funds certifying official
■ FedBizOpps	<i>Federal Business Opportunities</i>
FEDSIM	Federal Systems Integration and Management Center
FIP	Federal information processing
FSR	financial status report
■ FSS	Federal Supply Schedule
■ FTE	full-time equivalent
■ GCCF	Generic A-76 Cost Comparison Form
GFE	Government—furnished equipment
GSA	General Services Administration
■ GWAC	Governmentwide area contract
HR	Human Resources, Office of
■ HUBZone	Historically Underutilized Business Zone
IA	interagency agreement
IFB	invitation for bid
IGCE	independent Government cost estimate
IT	information technology
ITMRA	Information Technology Management Reform Act
JOFOC	justification for other than full and open competition
■ LAN	local area network
LWOP	lease with option to purchase

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■ MAC	multiple award contract
■ MAS	multiple award schedule
MD	management directive
■ MOU	memorandum of understanding
NRC	Nuclear Regulatory Commission
NRCAR	Nuclear Regulatory Commission Acquisition Regulation
OCFO	Office of the Chief Financial Officer
OCIO	Office of the Chief Information Officer
■ OF	optional form
OFPP	Office of Federal Procurement Policy
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OMB	Office of Management and Budget
PALT	procurement administrative lead time
■ PBC	performance-based contracting
PDR	Public Document Room
PO	project officer
■ PPT	Procurement Policy Team
PS	procurement specialist
RES	Nuclear Regulatory Research, Office of
RFP	request for proposal
RFPA	request for procurement action
SBA	Small Business Administration
SBCR	Small Business and Civil Rights, Office of
■ SDB	small disadvantaged business
SEP	source evaluation panel
SF	standard form
SOW	statement of work
SSA	source selection authority
WP	WordPerfect



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**Exhibit 1**  
**Advance Procurement Plan (APP)**

FORM A

ADVANCE PROCUREMENT PLAN FOR FY 2003

NEW PROCUREMENTS OVER \$25,000

RFPA Number: \_\_\_\_\_

Office/Division/Branch: \_\_\_\_\_

Project Officer: \_\_\_\_\_ Phone: \_\_\_\_\_

Contractor (if known): \_\_\_\_\_

For Follow-on Contracts

Existing Contract Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Title and Brief Description of Work:

Funding	FY03	FY04	FY05	FY06	TOTAL
Dollars					
Job Code					

Type of Procurement (check one box only):

- ☐ Simplified Acquisition (does not exceed \$100,000)  
(automatic set-aside for Small Business unless unreasonable to expect offers from two or more Small Businesses)
- ☐ Competitive Contract - Full and Open
- ☐ Competitive Contract - Small Business Set Aside
- ☐ Competitive Contract - 8(a) Set-Aside (\$3M or more)
- ☐ Noncompetitive Contract - Sole Source
- ☐ Noncompetitive Contract - 8(a) Award
- ☐ Grant      ☐ Cooperative Agreement      ☐ Interagency Agreement

Period of Performance: \_\_\_\_\_

Date the RFPA will be submitted to ADM/DC: \_\_\_\_\_

Desired Date for Award of Contract: \_\_\_\_\_

Has Project Officer completed Acquisition for Project Officers Course?

☐ Yes      ☐ No

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**Exhibit 1 (continued)**

FORM B

**Advance Procurement Plan for  
MODIFICATIONS TO EXISTING CONTRACTS  
Period: 10/1/02 - 9/30/03**

**Contract Number:**

**Office:**

**Project Officer:**

**Phone:** \_\_\_\_\_

**Contractor:**

**Title of Procurement:**

**Current expiration date:**

**Procurement Actions Planned During the Next 12 Months**

<b>Date the RFPA will be submitted to ADM/DC</b>	<b>Description of Action</b>	<b>Job Code</b>	<b>Amount of Funds to be Certified</b>

**Has Project Officer completed Acquisition for Project Officers Course (Circle one)?**

Yes

No

**Exhibit 2**  
**Individual Evaluation**  
**Worksheet**

Individual Evaluation Worksheet

RFP No. \_\_\_\_\_

Offeror: \_\_\_\_\_

Evaluator: \_\_\_\_\_

Total Initial Score: \_\_\_\_\_

Total Final Score: \_\_\_\_\_

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**Exhibit 2 (continued)**

Technical Proposal	Total Points	Initial Score	Final Score
Major Criteria _____ _____	_____	_____	_____
Subcriteria (if any): _____ _____	( )	( )	( )
			<b>Page in Proposal</b>
a. Strengths _____ _____ _____ _____ _____			_____ _____ _____ _____ _____
b. Weaknesses _____ _____ _____ _____ _____			_____ _____ _____ _____ _____
c. Questions for Discussions _____ _____ _____ _____ _____			_____ _____ _____ _____ _____
d. Evaluation of Proposal Revisions (Comments) _____ _____ _____ _____ _____			_____ _____ _____ _____ _____
<b>OFFICIAL USE ONLY</b>			

## Exhibit 2 (continued)

### COST PROPOSAL EVALUATION

RFP Number:  
Offeror:

**Instructions regarding the evaluation of the cost proposal:**

- a. You may want to compare the cost proposal with your government cost estimate form.
- b. If the answer is yes to the following self-explanatory questions regarding the cost proposal, please write "yes" behind the question. If the answer is no, write "no" and provide an explanation in the space beneath the question. If the question is not applicable to this RFP, then write "N/A".
- c. The Contract Specialist will obtain advice from the offeror's government auditor regarding the acceptability of the labor rates and indirect rates (overhead, fringe, and G&A).

1. Are the Prime Contractor's proposed labor categories reasonable?
2. Are the Prime Contractor's proposed hours for each labor category reasonable?
3. Are the Prime Contractor's proposed labor rates for each labor category reasonable?
4. Are the Subcontractor's proposed labor categories reasonable?
5. Are the Subcontractor's proposed hours for each labor category reasonable?
6. Are the Subcontractor's proposed labor rates for each labor category reasonable?
7. Are the travel plans in accordance with the RFP? (Purpose, location, number of days, number of personnel. The Contract Specialist will verify per diem rates and transportation rates.)

**Exhibit 2 (continued)**

8. Are the purpose, number of hours and hourly rate for any proposed consultant, considering his/her level of expertise, reasonable?
9. Are the proposed quantity and prices for any other direct costs (such as telephone, express mail, computer time, materials, etc.) necessary and reasonable?
10. Is any proposed testing and/or special equipment necessary for performance of work under this contract? If yes, are the quantity and prices reasonable?
11. The Contract Specialist will prepare a "weighted guideline" to determine a fair and reasonable profit/fee. The Federal Acquisition Regulations (FAR) allows a maximum of 10% of total cost for a profit which is reserved for situations where the offeror would assume a considerable cost risk. In a typical cost type contract, for which a Contractor would be reimbursed for all allowable costs, the fee generally would average 7% of the total estimated cost. If the offeror is proposing a fee of more than 7%, please provide applicable information for the Contract Specialist to use in considering reasons for increasing the profit (e.g. state-of-the-art, complexity, uncertainties of performance, likelihood of changes, etc.)
12. Other comments, if applicable:

**Exhibit 2 (continued)**

**Conflict of Interest Consideration**

Evaluators must review the regulation regarding NRC Contractor Organizational Conflicts of Interest (41 CFR Part 20) and check the appropriate block below (and comments) for this offeror:

- a. ☐ There exists an apparent or actual conflict of interest with respect to this offeror performing the work required.
- b. ☐ No apparent or actual conflict of interest exists with respect to this offeror performing the work required.

If block "a" above is checked, please explain conflict:

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**Current/former NRC Employees (check one)**

- ☐ a. Current/former NRC employees are included in the proposal.
- ☐ b. No current/former NRC employees are included in the proposal.

If block "a" is checked, please list name and title of current/former NRC employees below:

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## Exhibit 2 (continued)

### OVERALL SUMMARY AND COMMENTS

#### A. Initial Evaluation

1. As a result of my initial evaluation, I would classify this proposal as:
  - a. ☐ Acceptable as submitted without further discussion.
  - b. ☐ Not acceptable as submitted, but which, in my best judgment, could be made acceptable for award by discussion without requiring a major rewrite of the proposal.
  - c. ☐ Not acceptable as submitted and which, in my best judgment, could not be made acceptable for award even by discussion.
2. If category (c) above is checked, please list major deficiencies which resulted in your determination of non-acceptability:

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Evaluator's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Initial Evaluation)

#### B. Evaluation of Proposal Revisions

As a result of my final evaluation, I would classify this proposal as:

- ☐ Acceptable as revised.
- ☐ Not acceptable as revised.

Note: The above classification pertains to the technical aspects of the proposal and does not necessarily mean that the offeror's proposal will be selected for award if classified as acceptable.

Evaluator's Signature: \_\_\_\_\_ Date: \_\_\_\_\_



## Exhibit 3 Final Evaluation Report

### INSTRUCTIONS FOR THE PREPARATION OF THE SEP FINAL EVALUATION RECOMMENDATION REPORT

#### Introduction

The Final Evaluation Recommendation Report is the official Source Evaluation Panel (SEP) report recommending that offeror for contract award whose technical/cost relationship is the most advantageous to the Government.

The report contains the evaluation of the proposal revisions submitted by the offerors with whom discussions were held.

Thoroughness and clarity are essential, as this report becomes the official agency document. The report will serve as the basis for the source selection decision and will also aid the NRC in debriefings of unsuccessful offerors.

The report is comprised of four main parts: Background; SEP Final Rating Summary; Final Evaluation; and Contractor Selection. The individual Panel member's score sheets for the offerors in the competitive range shall be attached to the Final Evaluation Recommendation Report.

#### A. Background

This section provides information related to negotiations, proposal revisions, and the SEP meeting to discuss the final evaluation of proposals.

Include the following information in this section:

1. The date of receipt of proposal revisions.
2. The date that the SEP met to discuss final evaluations

#### B. SEP Final Rating Summary

In this section of the report, use the SEP Rating Summary format to list the total final technical score and proposed cost for all proposals in the competitive range. List offerors in descending order of total final technical score (or cost, as appropriate).

1. Enter the total possible score.
2. Enter the criterion number and the total possible score for that criterion.
3. Enter the name of the offeror.
4. Enter the names of the SEP members performing the evaluation.
5. Enter each SEP member's score for each criterion.  
thru  
9.
10. Enter the SEP member's total score for the proposal.

### Exhibit 3(continued)

11. Enter the SEP averaged score for the proposal.

12. Enter the offeror's proposed cost.

(Continue with each proposal in the same manner.)

C. Final Evaluation

In this section, discuss the evaluation of proposal revisions. Each offeror shall be discussed separately. Begin with the selected offeror's proposal, discussing the basis for determining that the proposal's cost/price is fair and reasonable to the Government. Continue addressing each offeror in descending order of final technical score (or cost, as appropriate).

For each offeror:

- Indicate the total final SEP technical score and proposed cost.
- State and address each criterion separately. For each criterion, indicate the total possible score and the total score received by the offeror for the criterion. The score received is the average score of all SEP members.
- Address the proposal's strengths and weaknesses for each criterion. Be sure that the narrative matches the score. Discuss how each offeror improved or did not improve his proposal as a result of discussions and proposal revisions.
- Discuss whether an actual or potential organizational conflict of interest would exist should the offeror be awarded the contract. If so, thoroughly discuss the circumstances giving rise to the conflict of interest.
- Indicate if any of the offeror's proposed employees are current or former NRC employees. If so, discuss the role the person would perform under the contract.

D. Technical/Price Trade Off

In this section, identify and compare the strengths and weaknesses of each proposal against each other along with consideration of the differences in overall price (cost). Identify the strengths and weaknesses of the higher cost, higher rated proposals and of the lower cost, lower rated proposals.

The report should identify the technical/cost relationship stated in the RFP, i.e. technical greater than cost, technical/cost equal, and cost greater than technical. The recommendation for award should then be tied to the appropriate evaluation scheme and a rationale provided.

### Exhibit 3(continued)

For example,

- If the higher rated, higher priced proposal is not being recommended for award, then a statement should be written to the effect that the proposal's strengths or benefits do not justify its selection at its higher price (cost) over the lower priced, lower rated proposal being recommended for award.
- If the SEP recommends award to other than the lowest offeror and the lower priced, lower scored offer meets the Government's needs, recommendation of a higher priced, higher scored offer shall be supported by a specific determination by the SEP that the technical superiority of the higher priced offer warrants the additional cost involved in the award of a contract to that offeror. Discuss what the agency will receive for the extra cost.
- Recommendation for Contractor Selection

In this section, identify the offeror recommended for award. Provide the final score and total amount of the award. Discuss the rationale for recommending the offeror, being specific as to why this recommendation is in the Government's best interests.

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**Exhibit 3 (continued)**

**MEMORANDUM TO:** (Name), Contracting Officer  
Division of Contracts  
Office of Administration

**FROM:** (Name), Designating Official

**SUBJECT:** FINAL EVALUATION RECOMMENDATION FOR PROPOSALS  
SUBMITTED UNDER RFP NO. RS- ENTITLED " "

The attached final evaluation recommendation report for the subject RFP has been submitted to me by the Source Evaluation Panel. I have independently evaluated the Panel's report and concur in the recommendation that the contract be awarded to (Name of Firm).

**Attachments:**  
1. Final Evaluation Recommendation Report  
2. Individual Evaluation Worksheets

### Exhibit 3 (continued)

#### FOREWORD

THIS REPORT COVERS THE EVALUATION BY THE  
SOURCE EVALUATION PANEL  
FOR  
(TITLE OF RFP)

#### Final Evaluation Report

Distribution is limited to those strictly on a need-to-know basis and this material must be treated as "OFFICIAL USE ONLY." If transmitted by mail, the report must be sealed in an envelope addressed to the appropriate individual with the notation on the envelope as follows:

"TO BE OPENED BY ADDRESSEE ONLY,  
CONTAINS SEP REPORT"

This report is submitted by:

\_\_\_\_\_  
(Name, Chairman)      Date

\_\_\_\_\_  
(Name, Member)      Date

\_\_\_\_\_  
(Name, Member)      Date

Reviewed and Approved:

\_\_\_\_\_  
(Name, Designating Official)

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**Exhibit 3 (continued)**

FINAL EVALUATION RECOMMENDATION REPORT  
RFP NO.

A. Background

- Project title:
- Date proposal revisions received:
- Date SEP met:

B. SEP Final Rating Summary

CRITERIA (100 POSSIBLE POINTS)

Officer: ( ) ( ) ( ) ( ) ( ) ( ) TOTAL COST

(Company) \_\_\_\_\_  
(member) \_\_\_\_\_  
(member) \_\_\_\_\_  
(member) \_\_\_\_\_

(Company) \_\_\_\_\_  
(member) \_\_\_\_\_  
(member) \_\_\_\_\_  
(member) \_\_\_\_\_

(Company) \_\_\_\_\_  
(member) \_\_\_\_\_  
(member) \_\_\_\_\_  
(member) \_\_\_\_\_

### Exhibit 3 (continued)

C. Final Evaluation

Offeror:

Proposed Cost:

Averaged SEP Technical Score:

1. Criterion Title:

Total Possible Score:

Strengths:

Weaknesses:

(Address remaining criteria in same format)

Overall Assessment of the Proposal:

Organizational Conflict of Interest:

Current/Former NRC Employee:

D. Contractor Selection:

Offeror Selected:

Proposed Cost:

Rationale:

**Exhibit 3 (continued)**

**COST PROPOSAL EVALUATION**

RFP Number:  
Offeror:  
Page 1 of 2

Instructions regarding the evaluation of the cost proposal:

- a. You may want to compare the cost proposal with your government cost estimate form.
  - b. If the answer is yes to the following self-explanatory questions regarding the cost proposal, please write "yes" behind the question. If the answer is no, write "no" and provide an explanation in the space beneath the question. If the question is not applicable to this RFP, then write "N/A".
  - c. The Contract Specialist will obtain advice from the offeror's government auditor regarding the acceptability of the labor rates and indirect rates (overhead, fringe, and G&A).
1. Are the Prime Contractor's proposed labor categories reasonable?
  2. Are the Prime Contractor's proposed hours for each labor category reasonable?
  3. Are the Prime Contractor's proposed labor rates for each labor category reasonable?
  4. Are the Subcontractor's proposed labor categories reasonable?
  5. Are the Subcontractor's proposed hours for each labor category reasonable?
  6. Are the Subcontractor's proposed labor rates for each labor category reasonable?



**Exhibit 3 (continued)**

RFP Number:  
Offeror:  
Page 2 of 2

7. Are the travel plans in accordance with the RFP? (Purpose, location, number of days, number of personnel. The Contract Specialist will verify per diem rates and transportation rates.)
8. Are the purpose, number of hours and hourly rate for any proposed consultant, considering his/her level of expertise, reasonable?
9. Are the proposed quantity and prices for any other direct costs (such as telephone, express mail, computer time, materials, etc.) necessary and reasonable?
10. Is any proposed testing and/or special equipment necessary for performance of work under this contract? If yes, are the quantity and prices reasonable?
11. The Contract Specialist will prepare a "weighted guideline" to determine a fair and reasonable profit/fee. The Federal Acquisition Regulations (FAR) allows a maximum of 10% of total cost for a profit which is reserved for situations where the offeror would assume a considerable cost risk. In a typical cost type contract, for which a Contractor would be reimbursed for all allowable costs, the fee generally would average 7% of the total estimated cost. If the offeror is proposing a fee of more than 7%, please provide applicable information for the Contract Specialist to use in considering reasons for increasing the profit (e.g. state-of-the-art, complexity, uncertainties of performance, likelihood of changes, etc.)
12. Other comments, if applicable:

Evaluator's Signature: \_\_\_\_\_, Project Officer

Date Evaluation completed and returned to Contract Specialist: \_\_\_\_\_

## Exhibit 4

### Justification for Other Than Full and Open Competition

U.S. NUCLEAR REGULATORY COMMISSION  
DIVISION OF CONTRACTS AND PROPERTY MANAGEMENT  
JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION  
RES-02-000

1. The U.S. Nuclear Regulatory Commission (NRC) proposes to enter into a sole source contract entitled, "Technical Development of Frequency Distributions," with (name of firm) in conjunction with (name of firm) to provide technical support to the NRC staff as they develop a regulatory guide on Leak-Before-Break (LBB) evaluation procedures and provide technical support for risk-informing 10 CFR 50.48. The period of performance for this project is approximately 3 years at an estimated total cost of \$X,XXX,XXX. This proposed contract is a follow-on effort to contract NRC-04-00-000 entitled "Technical Support for Regulatory Guide on Leak-Before-Break (LBB) Evaluation Procedures."
2. The statutory authority permitting Other Than Full and Open Competition is 41 U.S.C. 253(c)(1), as implemented by FAR 6.302-1(b)(1) which provides for limiting competition in those situations where the services are available from only one responsible source and no other type of services will satisfy NRC's requirements.
3. The ability of the NRC to make informed, knowledgeable decisions concerning the safety of the emergency core cooling system (ECCS), adequacy of leak-before-break (LBB) analyses, and commercial nuclear plant piping integrity requires expertise in the knowledge of LBB computer codes and analyses, pipe cracking and degradation mechanisms, and potential LOCA initiating events. Further, specific expertise is required in ASME codes applicable to piping; structural mechanics; thermal-hydraulics; nuclear piping systems; seismic, thermal, and vibration loading on piping; intergranular stress corrosion cracking (IGSCC); thermal aging; primary stress corrosion cracking (PWSCC); piping service failure history; and alternative LOCA mechanisms.  
  
Outstanding issues still exist, which remain to be addressed directly through revision of NUREG/CR-5750 LOCA frequencies, development of a LBB Regulatory Guide, and through the rule-making packages which will be developed to support risk-informing 10 CFR 50.48. The NRC has funded previous piping studies involving researchers at (name of firm) and (name of firm) over the last twenty years with a total expenditure of over \$25M. These efforts provided a significant increase in understanding and improved modeling of piping fracture mechanics, but additional study and modeling are required to fully and accurately assess all applicable degradation mechanisms, particularly in light of recent events involving PWSCC and reactor head corrosion.
4. (Name of firm(s)) have personnel with unique experience and expertise necessary for developing physical models represented through computer simulation, to provide the NRC with an analytical and predictive model and understanding of fracture mechanics and multiple degradation mechanisms for piping systems in commercial light-water reactor nuclear power plants. Neither organization contains the expertise necessary to solely perform this effort due to the interrelationship between required tasks in the SOW.

## Exhibit 4 (continued)

RES-02-000

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Mr. XXX XXX of (name of firm), the principal investigator for this proposed program, is uniquely qualified for portions of this effort. He has attained international recognition in the area of nuclear plant piping systems and has over twenty years of experience. Mr. XXX was the principal investigator and/or program manager for several relevant past NRC projects. These include the Integrity of Nuclear Piping (INP) Program (NRC-04-97-000) and Leak-Before-Break (LBB) Regulatory Guide Program (NRC-04-98-000). The INP program addressed important technical issues associated with nuclear power plant integrity. The LBB program provided the necessary technical basis for the NRC LBB analysis procedure and the development of draft Standard Review Plan 3.6.3, "Leak-Before-Break Evaluation Procedures."

Recently, Mr. XXX and (name of firm) have been involved and performed preliminary modification on several software codes which are critical to this effort, including the SQUIRT code (Seepage Quantification of Upsets in Reactor Tubes) that predicts the onset of leaking for dual-phase mediums and pcPRAISE (Piping Reliability Analysis Including Seismic Events) which predicts subcritical crack initiation and growth due to thermal and vibration fatigue loading. (Name of firm), under the direction and guidance of Mr. XXX XXX, has also been directly responsible for the development of several LBB-related computer code modules utilized to assess the impact of degradation mechanisms on piping system reliability. These codes are essential to the success of the project.

5. Dr. YYY YYY of (name of firm), the other important contributor, has attained uncontested, international leadership in the area of nuclear plant piping systems through over twenty years of experience, participation in international technical groups, and research projects on this subject. Dr. YYY was the principal investigator and developer of the NRC's First and Second International Piping Integrity Research Group (IPIRG-1 under NRC-04-86-000 and IPIRG-2 under NRC-04-91-000 respectively) programs. Both programs involved international collaboration and coordination with up to fifteen countries. The main objective of IPIRG-1 was to verify pipe fracture under dynamic loading. The IPIRG-2 program conducted seismic loading experiments on cracked-pipe systems, evaluated various analytical codes, and investigated the seismic load history interaction on material properties (toughness and strength).

Dr. YYY was also the principal investigator of NRC's "Short Cracks in Piping and Pipe Welds" (NRC-04-90-000) and phase II of the degraded piping program (NRC-04-84-000). The short crack program involved experimental and analytical evaluation of shorter circumferential crack failure criteria, effects of anisotropic fracture toughness properties, dynamic strain aging, and fracture of bimetallic welds. The structural piping failure prediction code PROLBB was created as part of this program. The degraded piping program involved combining material characterization, full-scale pipe fracture experiments, and analytical fracture mechanics predictions.

6. There are several major technical and subtasks described by the SOW. These tasks include developing a piping LOCA computer code for risk-informing 10 CFR 50.46 (Task 1), providing technical assistance to NRC Staff for Leak-Before-Break (LBB), RI-ISI, and flaw distribution studies (Task 2); developing LOCA frequency distributions and pipe break size redefinition (Task 3); and providing technical facilitation for the expert

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**Exhibit 4 (continued)**

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elicitation process (Task 5). Both (name of firms) have the individual expertise which is uniquely tailored for certain individual tasks and subtasks. However, neither contains the expertise to perform all tasks described within the SOW. Additionally, no other team, or individual group possesses the unique knowledge required to perform the required effort within the allotted time.

The Task 1 effort will consist of several major subtasks to develop specific modules for the overall computer code. There will be a leak rate module, a subcritical crack growth module, a pipe failure module, and a module which accounts for other LOCA mechanisms. The experience which (name of firm) has with the SQUIRT and pcPRAISE codes makes this organization uniquely suited to develop the leak rate module and the subcritical crack growth module. Conversely, the (name of firm) experience in development of the PROLBB code will be necessary to construct the pipe failure module. Dr. YYY and (name of firm) also have the most experience dealing with other LOCA mechanisms. (Name of firm) is currently the lead on the CRDM cracking problem and is a principal contributor to the evaluation of the LOCA potential from the Davis Besse head erosion. It has also been involved in flange bolting failure analysis which is another potential LOCA mechanism.

The Task 2 requirements are best performed at (name of firm). The LBB experience and code development resulting from the LBB program is required for providing assistance for LBB submissions and developing the supporting regulatory guide. The facilities and collection of nuclear fabricated piping at (name of firm) is also an important requirement for conducting the flaw distribution studies defined in this task.

Dr. YYY and (name of firm) have specific expertise required for Tasks 3 and 4. The elicitation support (Task 4) requires an understanding of all aspects of nuclear piping, nuclear operation, nuclear piping failures, and will require relevant international nuclear experience to be incorporated into the elicitation. The elicitation facilitator will also need to be well regarded by the elicitation panel members. YYY YYY has obtained this knowledge and respect through his leadership on the previously described NRC-sponsored programs, especially the IPIRG programs. The results from the elicitation will be utilized directly within Task 3 to develop LOCA frequencies and pipe break size redefinition. Therefore, participation within the elicitation process is a necessary requirement for conducting this next task.

While many of the tasks and subtasks are tailored for either Battelle or EMC<sup>2</sup> expertise, these tasks are tightly interrelated and must be developed into comprehensive end products for NRC use. Therefore, cooperation and communication between the contributing organizations is critical. The Task 1 code development must be integrated into a single code for use by the NRC. This code will be developed, in part, from information developed from the elicitation process (Task 4) and supporting LOCA frequency estimations (Task 3). The LBB guidelines and flaw size redefinition efforts in Task 2 will also contribute to the code development. It is envisioned that the final Task 1 computer code will be utilized to evaluate the Task 3 study of the feasibility of pipe break size redefinition.

Because of the complexity and interrelationship of the tasks, it is also important to have a lead organization oversee the effort and provide a single point of contact for the NRC.

Exhibit 4 (continued)

RES-02-000

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(Name of firm) and Mr. XXX XXX, are expected to lead several of the tasks and participate in all tasks. (Name of firm) also has the required mix of theoretical expertise and experimental facilities to best coordinate the entire effort.

7. In the event that another source, free from organizational conflict of interest, could be found to perform this work, the NRC research staff estimates that it would take at least three to four years and five million dollars to develop the required staff expertise already demonstrated at (name of firm) and (name of firm). A duplication of cost of this magnitude would not be expected to be recovered through competition. Additionally, award to another firm would seriously affect the ability of the NRC to meet milestones in several critical research efforts. SECY-02-0057 on risk-informing 10 CFR 50.46 requires that rulemaking related to LOCA-LOOP revision be finalized in the summer of 2003. The LOCA redefinition effort (subtask 3a in the SOW) will provide LOCA frequencies to support this effort. The SECY paper also requires that the spectrum of break sizes be completed by June 2004. The technical work supporting this milestone is contained in subtask 3b of the SOW. The SOW (subtask 3b) also describes follow-on technical effort to support potential rulemaking enacted from the generic redefinition of pipe break sizes. This additional support and all modeling codes is required to be completed by June 2005.

These milestone dates would be missed if another contractor were to perform this technical work. Another negative impact in start-up delay would occur in the current effort to revise the NUREG/CR-5750, Initiating Plant Event Frequencies for LOCAs. Since the LOCA frequencies contained in this report are utilized in other research efforts (especially 10 CFR 50.61 revision) and plant IPEs, resolution of appropriate LOCA frequencies as promptly as possible is critical to assessing the regulatory viability of these efforts. A delay in this research is unacceptable because it will seriously impact ongoing research efforts and the license review process.

8. Thus, (name of firm), offering the services of Mr. XXX XXX, and (name of firm), with Dr. YYY YYY, is the only known team capable of performing this effort in the required time frame.
9. This proposed procurement was synopsisized in the Federal Business Opportunities (FBO) website on June 12, 2002 in accordance with FAR 5.201. No responses were received from interested parties.
10. To ensure that the cost to the Government for these services will be fair and reasonable, a separate cost analysis will be performed for this proposed contract by the Contract Negotiator.

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**Exhibit 4 (continued)**

RES-02-000

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Technical Certification

As prescribed in Subpart 6.303-1(a) of the Federal Acquisition Regulations, the above-described Justification for Other Than Full and Open Competition for the acquisition of research services from the (name of firm) is hereby certified as complete and accurate.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name), Director  
Division of Engineering Technology  
Office of Nuclear Regulatory Research

Contracting Officer's Certification

In accordance with Subpart 6.303-1(a) of the Federal Acquisition Regulations, the accuracy and completeness of this Justification for Other Than Full and Open Competition is hereby certified.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name), Contracting Officer  
Division of Contracts

Competition Advocate's Approval

Pursuant to Subpart 6.304(a)(2) of the Federal Acquisition Regulations, the above-described justification for Other Than Full and Open Competition has been reviewed and / / approved / / disapproved.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name)  
Competition Advocate

## Exhibit 4 (continued)

U.S. Nuclear Regulatory Commission  
Division of Contracts and Property Management  
Justification for Other Than Full and Open Competition

1. The U.S. Nuclear Regulatory Commission (NRC) proposes to enter into a sole source contract with the Institute of Nuclear Power Operations (INPO) for computer access to INPO's Equipment Performance and Information Exchange (EPIX) System Database, manuals, associated training and support services, and a copy of the EPIX component data on a cost-recovery basis. The period of performance for this requirement is five years at a total estimated cost of \$X,XXX,XXX.XX.
2. The statutory authority permitting Other Than Full and Open Competition is 41 U.S.C. 253(c)(1), as implemented by FAR 6.302-1(b)(1) which provides for limiting competition in those situations where the services are available from only one responsible source and no other type of services will satisfy NRC's requirements.
3. The NRC requires access to the EPIX system which is a component-level, e.g., valves, pumps, circuit breakers, database containing engineering and failure information for selected nuclear plant components within the scope of the Maintenance Rule (10 CFR 50.65) and for other equipment failures that cause power reductions. It also provides failure rate and reliability information for a limited number of risk-significant plant components. INPO is the sole owner/manager of this database. The NRC requires 100 access codes to the web-based database and a complete set of EPIX reporting manuals and usage guides for each NRC-authorized access code holder, plus five copies for the NRC EPIX Coordinator. The NRC also requires support services from INPO, such as training, technical support, and an electronic copy of the EPIX component database.

In March 1997, the Nuclear Energy Institute (NEI) proposed that the NRC accept EPIX as part of a voluntary industry approach for reporting reliability data in lieu of a proposed NRC rule. In June 1997, the NRC approved the staff recommendation to accept the voluntary approach proposed by the industry in lieu of a proposed rule (10 CFR 50.65). The NRC staff recommendation to the Commission (SECY 97-101) estimated the present value savings of the voluntary approach as compared to rule-making at \$50 million.

In September 2001, INPO released EPIX, version 4.0, a totally web-based system for the entry and retrieval of information. EPIX 4.1, now referred to as Consolidated Data Entry (CDE) 2.0, will serve as the platform for CDE, a nuclear power plant industry-wide effort to consolidate industry reporting requirements for performance indicators and equipment failure information and minimize duplication of effort.

At the present time, the database is being used by NRR and RES, as well as the Regions. Unrestricted access to the EPIX database is important to the mission of the NRC because there is no other database that contains comparable data and failure information on key components of major nuclear power plant systems.

## Exhibit 4 (continued)

4. INPO developed EPIX to meet current and projected industry needs for component-level information exchange and to replace the Nuclear Plant Reliability Data System (NPRDS). The EPIX system is a web-based database that provides information on components important to nuclear plant safety and reliability. In addition, EPIX provides access for retrieval of data reported to NPRDS from January 1973 through December 1996.

EPIX contains engineering data and failure information on key components in systems within the scope of the NRC Maintenance Rule for all operating U.S. nuclear generating plants. In addition, reliability data are also collected to support the application of probabilistic safety analysis (PSA) techniques to risk-informed management of equipment performance issues.

5. EPIX is a proprietary database managed by INPO for exclusive use by its member utility organizations. Non-INPO utility member access to EPIX is granted only by written agreement and with the approval of INPO member organizations. Since this data base presently resides only at INPO and we are unaware of the existence of a comparable data base, it is impossible to obtain the data from any other source.
6. INPO also classifies the EPIX data as proprietary, so no further distribution of the unit-specific data is possible. Any recreation of the data base would be both time consuming and costly, and, thus, not cost-effective.

The EPIX will be used routinely for activities involving research and analysis by the Office of Nuclear Regulatory Research, the Office of Nuclear Reactor Regulation, the Regions, the NRC contractors at Brookhaven National Laboratory, Idaho National Engineering and Environmental Laboratory, and Oak Ridge National Laboratory. The impact of denied access to EPIX would constitute a detriment to the Agency's day-to-day analysis of operational experience data. In particular, a loss of access to the EPIX database would have a serious negative impact on a number of important Commission projects.

This data base is presently available and continuously updated at INPO. The NPRDS archive which is also available to NRC from the EPIX Home Page on the Web contains data as far back as 1973. It would be very costly, as well as require an enormous amount of time, to recreate this data base, either within the NRC or through an outside contractor. Current data are needed by the NRC to perform its function and these data can be supplied only by INPO.

In order to meet NRC's access requirements, EPIX must be made available to the Agency daily, on a twenty-four (24) hour basis.

7. Thus, INPO, as the owner and maintainer of the EPIX database containing proprietary data that are necessary for NRC regulatory programs is the only source capable of providing these data in the required time frame.
8. Notification of NRC's intent to negotiate a noncompetitive procurement with INPO was posted on the Federal Business Opportunities (FedBizOpps) electronic posting system on March 11, 2002.



## Exhibit 4 (continued)

9. To ensure that the cost to the Government for these services will be fair and reasonable, a separate cost analysis will be performed for this proposed procurement by the Contract Specialist.
10. This Justification for Other Than Full and Open Competition also covers a one-month extension to NRC-26-97-266, the current contract providing these services, in order to avoid a break in services and allow time for the negotiation and award of the new contract.

### Technical Certification

As prescribed in Subpart 6.303-1(b) of the Federal Acquisition Regulation (FAR), this Justification for Other Than Full and Open Competition for the acquisition of computer access to the EPIX system and related support services from INPO is hereby certified as complete and accurate.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name), Director  
Division of Risk Analysis and Applications  
Office of Nuclear Regulatory Research

### Contracting Officer's Certification

In accordance with Subpart 6.303-1(a) of the FAR, the accuracy and completeness of this Justification for Other Than Full and Open Competition is hereby certified.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name), Contracting Officer  
Division of Contracts

### Competition Advocate's Approval

Pursuant to Subpart 6.304(a)(2) of the FAR, and MD 11.1, Section 5.2.1.1, the above-described Justification for Other Than Full and Open Competition has been reviewed and ( ) approved  
( ) disapproved.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name)  
Competition Advocate

## Exhibit 4 (continued)

U.S. Nuclear Regulatory Commission  
Division of Contracts and Property Management  
Justification for Other Than Full and Open Competition  
RS-CIO-01-000

1. The U.S. Nuclear Regulatory Commission (NRC) proposes to enter into a sole source fixed-price contract with FileNET Corporation to acquire software maintenance for the FileNET document management software suite of products which support the Agency-wide Documents Access and Management System (ADAMS). The period of performance for the contract is 1 year with a cost of \$XXX,XXX.XX.
2. The statutory authority permitting other than full and open competition is 41 U.S.C. 253(c)(1), as implemented by FAR 6.302-1(b)(1), which provides for limiting competition in those situations where the services are available from only one responsible source and no other type of services will satisfy NRC's requirements.
3. ADAMS is the automated document and records management system that NRC uses to manage the hundreds of legal, administrative, and regulatory documents that it receives and creates each day. The system is used to enter incoming and NRC-generated documents and electronically distribute them to NRC addressees; make documents publicly available; and serves as a repository for the staff and the public to search for, view, retrieve, and print NRC records. Maintenance of the software product is required to resolve problems, perform preventive maintenance, and incorporate upgrades and enhancements to the product. The maintenance includes access to a 24-hour help desk. Maintenance is essential to ensure the availability and proper performance of the software. Prolonged periods of system downtime can severely impact NRC's ability to carry out its mission and have a significant impact on Agency operations due to lost productivity and the inability to retrieve Agency records vital to regulatory decision making. Also, since ADAMS is the Agency vehicle for providing public access to documents, the unavailability of the system would diminish public confidence in the ability of the NRC to effectively communicate and provide timely information.

ADAMS was built using proprietary commercial software products acquired from the FileNET Corporation supplemented by software developed by the NRC's prime systems integration contractor, Computer Sciences Corporation (CSC). FileNET's document management software is proprietary software which is owned exclusively by FileNET Corporation. The document management software source code, logic diagrams and manuals, schematics and drawings, are confidential and proprietary trade secrets of FileNET Corporation. All such confidential and proprietary information grants neither NRC or any other commercial vendor the rights to the proprietary software. Consequently, no other vendor can provide maintenance for the solely-owned FileNET software due to the proprietary nature of the product.

4. FileNET has provided software maintenance support to the NRC since 1994. This support was provided under contract number NRC-02-94-000 for the NMSS Information/File Management System software product. Purchase Order No. DR-96-0456 and DR-00-0258 were awarded to provide continuation of the services.

**Exhibit 4 (continued)**

- 2 -

RS-CIO-01-000

5. This proposed procurement was synopsisized in the Federal Business Opportunities website (FedBizOpps) in accordance with FAR 5.201. No responses were received in reply to the synopsis. This further supports that no other source can meet the Government's needs for this software maintenance support.
6. To ensure that the cost to the Government for these services will be fair and reasonable, separate cost analyses will be performed for this proposed contract.

**TECHNICAL CERTIFICATION**

As prescribed in Subpart 6.303-1(b) of the Federal Acquisition Regulation, the above-described Justification for Other Than Full and Open Competition for the acquisition of technical assistance services with FileNET is hereby certified as complete and accurate.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name), Director  
Information Management Division  
Office of the Chief Information Officer

**CONTRACTING OFFICER CERTIFICATION**

In accordance with Subpart 6.303-1(a) of the Federal Acquisition Regulation, the accuracy and completeness of this Justification for Other Than Full and Open Competition is hereby certified.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name), Contracting Officer  
Division of Contracts

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**Exhibit 4 (continued)**

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RS-CIO-01-000

**COMPETITION ADVOCATE'S APPROVAL**

Pursuant to Subpart 6.304(a)(2) of the Federal Acquisition Regulations, the above described  
Justification for Other Than Full and Open Competition has been reviewed and ( ) approved  
( ) disapproved.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name)  
Competition Advocate

## Exhibit 5

### Determination of Personal Services and Inherently Governmental Functions

Source: OFPP Policy Letter 92-1

#### Personal Service and Inherently Governmental Function Determinations

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

1. The direct conduct of criminal investigations.
2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).
3. The conduct of foreign relations and the determination of foreign policy.
4. The determination of agency policy, such as determining the content and application of regulations, among other things.
5. The determination of Federal program priorities or budget requests.
6. The direction and control of Federal employees.
7. The direction and control of intelligence and counter-intelligence operations.
8. The selection or nonelection of individuals for Federal Government employment.
9. The approval of position descriptions and performance standards for Federal employees.
10. The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).
11. In Federal procurement activities with respect to prime contracts,
  - (a) determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);
  - (b) participating as a voting member on any source evaluation panels;
  - (c) approval of any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

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**Exhibit 5 (continued)**

-2-

11. (d) awarding contracts;  
  
(e) administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);  
  
(f) terminating contracts; and  
  
(g) determining whether contract costs are reasonable, allocable, and allowable.
12. The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgement in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.
13. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.
14. The approval of Federal licensing actions and inspections.
15. The determination of budget policy, guidance and strategy.
16. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as title 31 U.S.C. 952 (relating to private collection contractors) and title 31 U.S.C. 3718 (relating to private attorney collection services), but not including:
  - (a) collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base exchanges concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard cash management techniques; and
  - (b) routine voucher and invoice examination.
17. The control of the treasury accounts.
18. The administration of public trusts.

## Exhibit 5 (continued)

-3-

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

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

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.
2. Services that involve or relate to reorganization and planning activities.
3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
4. Service that involve or relate to the development of regulations.
5. Services that involve or relate to the evaluation of another contractor's performance.
6. Services in support of acquisition planning.
7. Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).
8. Contractors providing technical evaluation of contract proposals.
9. Contractors providing assistance in the development of statements of work.
10. Contractors providing support in preparing responses to Freedom of Information Act requests.
11. Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in FAR 4.402(b)).

**Exhibit 5 (continued)**

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12. Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.
13. Contractors participating in any situation where it might be assumed that they are agency employees or representatives.
14. Contractors participating as technical advisors to a source evaluation panel or participating as voting or nonvoting members of a source evaluation panel.
15. Contractors serving as arbitrators or providing alternative methods of dispute resolution.
16. Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.
17. Contractors providing inspection services.
18. Contractors providing legal advice and interpretations of regulations and statutes to Government officials.
19. Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.



## Exhibit 6 A-76 Cost Comparison

**A. The Generic A-76 Cost Comparison (GCCF)  
In-House VS. Contract or ISSA\* Performance**

	Performance Periods					Reference
	1st	2nd	3rd	Add'l	Total	
<b>In-House Performance</b>						
1. Personnel						
2. Material and Supply						
3. Other Specifically Attributable						
4. Overhead						
5. Additional						
6. Total In-House						
<b>Contract or ISSA Performance</b>						
7. Contract/ISSA Price						
8. Contract Administration						
9. Additional						
10. One-time Conversion						
11. Gain on Assets	( )	( )	( )	( )	( )	
12. Federal Income Taxes	( )	( )	( )	( )	( )	
13. Total Contract or ISSA						
<b>Decision</b>						
14. Minimum Conversion Differential						
15. Adjusted Total Cost of In-house Performance						
16. Adjusted Total Cost of Contract or ISSA Performance						
17. Decision—Line 16 minus Line 15						
18. Cost Comparison Decision: Accomplish Work In-house (+) Contract or ISSA (-)						

\*An "ISSA" is the provision of a commercial activity, in accordance with an interservice support agreement, on a reimbursable basis. This commercial activity includes franchise funds, revolving funds and working capital funds.

**Exhibit 6 (continued)**

19. In-house MEO certified by:

Date:

Office and Title:

I certify that, to the best of my knowledge and belief, the in-house organization reflected in this cost comparison is the most efficient and cost effective organization that is fully capable of performing the scope of work and tasks required by the Performance Work Statement. I further certify that I have obtained from the appropriate authority concurrence that the organizational structure, as proposed, can and will be fully implemented - subject to this cost comparison, and in accordance with all applicable Federal regulations.

20. In-House cost estimate prepared by:

Date:

21. Independent reviewer:

Date:

Office and Title:

I certify that I have reviewed the Performance Work Statement, Management Plan, In-house cost estimates and supporting documentation available prior to bid opening and, to the best of my knowledge and ability, have determined that: 1. the ability of the in-house MEO to perform the work contained in the Performance Work Statement at the estimated costs included in this cost comparison is reasonably established and, 2. that all costs entered on the cost comparison have been prepared in accordance with the requirements of Circular A-76 and its Supplement.

22. Cost comparison completed by:

Date:

23. Contracting Officer:

Date:

24. Tentative cost comparison decision announced by:

Date:

25. Appeal Authority (if applicable):

Date:

### Exhibit 6 (continued)

**B. The Streamlined A-76 Cost Comparison Form (SCCF)  
(Limited to 65 FTE or Less)  
In-House VS. Contract or ISSA\* Performance**

	Performance Periods					Reference
	1st	2nd	3rd	Add'l	Total	
<b>In-House Performance</b>						
1. Personnel						
2. Material						
3. Overhead						
4. Other						
5. Total In-House						
<b>Contract or ISSA Performance</b>						
6. Contract and ISSA Price Range						
7. Contract Administration						
8. Federal Taxes (-)						
9. Total Contract and ISSA Price Range						
<b>Decision</b>						
10. Minimum Conversion Differential						
11. Adjusted Total Cost of In-house Performance						
12. Adjusted Total Cost of Contract or ISSA Performance						
13. Cost Comparison (Line 12 minus Line 11)						
14. Cost Comparison Decision: Perform work In-house						
Convert to contract or ISSA						
15. In-house cost estimate prepared by: Date:						

\*An "ISSA" is the provision of a commercial activity, in accordance with an interservice support agreement, on a reimbursable basis. This commercial activity includes franchise funds, revolving funds and working capital funds.

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**Exhibit 6 (continued)**

16. Independent reviewer:

Date:

Office and Title:

I certify that I have reviewed the proposed contract, in-house and ISSA cost estimates and contract prices and find them to be reasonable and calculated in accordance with the principles and procedures of Circular A-76 and its Supplement.

17. Cost Comparison Completed by:

Date:

18. Contracting Officer:

Date:

19. Tentative cost comparison decision announced by:

Date:

20. Appeal authority (if applicable):

Date:

## Exhibit 7 Chairman Paper

Date  
(Month, Day, Year)

MEMORANDUM TO: Chairman (Last Name)

FROM: (Name)  
Executive Director for Operations

SUBJECT: ACQUISITION OF TECHNICAL ASSISTANCE TO SUPPORT  
REGIONAL TEAM INSPECTIONS

In accordance with Management Directive 11.1, you are requested to approve the project described in this memorandum and authorize the Contracting Officer to enter into a contract that exceeds \$3,000,000.

### Background

In accordance with the Baseline Inspection portion of the NRC Reactor Oversight Process, NRC inspects various activities at power reactor plants. Contractor assistance is required by the NRC on some of these inspections, primarily the Safety System Design and Performance Capability (SSDPC) inspections. SSDPC inspections verify that design bases have been correctly implemented for the selected risk-significant system(s) to ensure that the system(s) can be relied upon to meet functional requirements. SSDPC inspections are performed in accordance with Inspection Procedure 812.2, "Safety System Design and Performance Capability." Periodically, contract support is also required for other Baseline Inspections and supplemental inspections at plants which experience degraded performance in accordance with the Action Matrix. In addition, contractor assistance may be required for inspection program development and inspections related to future nuclear power plant construction.

Contractor assistance is valuable during periods of unanticipated activity, such as the recent inspection activities at Davis Besse and Indian Point 2. These resources provide flexibility when region-based inspectors are needed to backfill for resident inspectors, a more frequent occurrence with the transition to the "N" resident inspector staffing policy. Contractor assistance also provides technical expertise in areas, such as design, where regions have been challenged in hiring equivalent staff. In general, based on their industry experiences, contractor personnel have made significant inspection findings and assisted in training less experienced NRC inspectors.

CONTACTS: (Name), (Sponsoring Office/Division)  
415-XXXX (e mail ID)

(Name), ADM/DC  
415-XXXX (e mail ID)

Source Selection Information  
"Limited Internal Distribution Permitted"

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**Exhibit 7 (continued)**

Chairman (Last Name)

- 2 -

**Discussion**

The Division of Contracts proposes to issue a competitive small business set-aside solicitation for this requirement. The objective of this procurement is to obtain expert technical assistance to support NRC inspection teams in evaluating the design, installation, and operation of power reactor plants, as well as inspection program development and inspections related to future nuclear power plant construction.

It is anticipated that this procurement action will result in the award of a cost-plus-fixed-fee, indefinite quantity, task-ordering type contract. The proposed contract will have a 3-year base period of performance with two 1-year option periods. The proposed Statement of Work is attached. The proposed contract will replace the existing contract NRC-00-00-000.

The total estimated cost for the 5-year period (FY 2003 through FY 2008) is \$6,000,000. It is anticipated that this contract will commence during the third quarter of FY 2003 and conclude in the third quarter of FY 2008. The NRR budget estimates for this activity are summarized below:

JOB CODE	FY03	FY04	FY05	FY06	FY07	FY08
J2XXX	\$X00K	\$X.2M	\$X.2M	\$X.2M	\$X.2M	\$X00K
J2XXX	\$X00K	\$X00K	\$X00K	\$X00K	\$X00K	\$X00K

This procurement is being funded to support the NRC Reactor Oversight Process inspection program and does not duplicate other NRC work. Resources for FY 2003 are within NRR's current budget, and FY 2004 through FY 2008 resource estimates will be included in NRR's Planning, Budgeting, and Performance Management (PBPM) process.

The Source Evaluation Panel and the Contracting Officer will consider the question of organizational conflict of interest in accordance with NRC policy stated in the Nuclear Regulatory Commission Acquisition Regulation, Subpart 2009.5, and will ensure that no organizational conflict of interest exists in the resulting contract award.

To comply with various provisions of the Federal Acquisition Regulation that are directed toward safeguarding the acquisition process, it is requested that all budget information concerning this procurement be regarded as confidential until after the contract is awarded.

Source Selection Information  
"Limited Internal Distribution Permitted"

## Exhibit 7 (continued)

Chairman (Last Name)

- 3 -

I recommend that you provide approval to enter into a contract providing technical assistance in power reactor plant inspections as described in this memorandum. If you or your staff desire, a briefing on this project can be provided.

Attachment: Statement of Work

cc: Commissioner (Last Name)  
Commissioner (Last Name)  
Commissioner (Last Name)  
Commissioner (Last Name)  
SECY  
OGC  
OCA  
OPA  
CFO

DISTRIBUTION w/attach:

EDO r/f  
WITS No.  
(EDO)  
(DEDM)  
ADM r/f  
DC r/f

## **Exhibit 8**

### **SEP Certification Statement**

**MEMORANDUM TO:** (Name), Contracting Officer

**FROM:** (Name), Project Officer

**SUBJECT:** PROJECT OFFICER'S CERTIFICATION STATEMENT:  
RFP NO. NRR-02-000

In anticipation of my participation in the subject procurement, I certify that:

- A. I will not disclose any information concerning this procurement to any one who is not also participating in the same proceedings and then only to the extent that such information is required in connection with such proceedings. Furthermore, I will report to the Contracting Officer any communication concerning the procurement or the Panel's composition and activities directed to me from any source outside the Panel.
- B. I (do) (do not) now have any stock ownership or other financial interest in any organization which routinely deals in the services or supplies that are the subject of this procurement or which otherwise may reasonably be anticipated to participate in this procurement.
- C. I (have) (have not) ever been employed by any organization which routinely deals in the services or supplies that are the subject of this procurement or which otherwise may reasonably be anticipated to participate in this procurement.
- D. Should any conflict of interest develop, I shall immediately notify the Contracting Officer.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)



## Exhibit 8 (continued)

MEMORANDUM TO: (Name), Contracting Officer  
FROM: (Name), Member  
SEP  
SUBJECT: PANEL MEMBER'S CERTIFICATION STATEMENT:  
RFP NO. NRR-02-000

**PART I** - To be completed upon appointment to the Source Evaluation Panel (SEP)

In anticipation of my participation in the subject procurement, I certify that:

- A. I will not disclose any information concerning this procurement to any one who is not also participating in the same proceedings and then only to the extent that such information is required in connection with such proceedings. Furthermore, I will report to the Contracting Officer any communication concerning the procurement or the Panel's composition and activities directed to me from any source outside the Panel.
- B. I (do) (do not) now have any stock ownership or other financial interest in any organization which routinely deals in the services or supplies that are the subject of this procurement or which otherwise may reasonably be anticipated to participate in this procurement.
- C. I (have) (have not) ever been employed by any organization which routinely deals in the services or supplies that are the subject of this procurement or which otherwise may reasonably be anticipated to participate in this procurement.
- D. Should any conflict of interest develop, I shall immediately notify the Contracting Officer.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

**PART II** - To be completed upon receipt of proposals:

In anticipation of my participation in the evaluation of the proposal(s) submitted in response to the subject RFP, I certify that:

- E. I have reviewed the list of organizations submitting proposals for the subject solicitation and certify that I (do) (do not) have any interest of the types specified in Paragraphs B and C above in any of these organizations.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

## Exhibit 9 Competitive Range Report

### INSTRUCTIONS FOR THE PREPARATION OF THE SEP COMPETITIVE RANGE RECOMMENDATION REPORT

#### Introduction

Upon completion of their individual technical evaluation of all proposals received in response to the solicitation, the Source Evaluation Panel (SEP) will meet to thoroughly discuss strengths and weaknesses of all proposals received and decide the status of the proposals. After this meeting, the SEP Chairperson will write a Competitive Range Recommendation Report. The Competitive Range Recommendation Report is the official report from the Designating Official to the Contracting Officer that recommends those proposals to be within the competitive range and those out of the competitive range. Like the individual SEP member's evaluation report, the Competitive Range Recommendation Report must summarize the strengths and weaknesses of each criterion for each proposal.

The competitive range represents that group of highly rated offerors with whom it is possible to conduct meaningful discussions.

Thoroughness and clarity are essential as this report becomes the official agency document. The report will serve as the basis for the establishment of questions for negotiations, debriefing unsuccessful offerors, and responding to any protests received.

The report is comprised of four main parts. Background; SEP Rating Summary; Offerors in the Competitive Range; and Offerors Not in the Competitive Range. The original individual evaluation worksheets from each member and a list of all persons who have had access to this report or any other source selection information for this project, shall be attached to the report.

#### A. Background

This section provides information related to the solicitation. Include the following information in this section:

1. State the title or give a brief description of the work.
2. State the issuance and closing dates of the RFP.
3. Indicate the date of the SEP meeting to discuss evaluation of proposals.

#### B. SEP Rating Summary

In this section of the competitive range report, use the SEP Rating Summary format to list the individual SEP member's technical score, the total consensus technical score, and the cost for all proposals received. For those procurements where the technical merit is more important than cost, list offerors in descending order of the total averaged SEP technical score. For those procurements where cost is more important than technical, list offerors in descending order of cost.

1. Enter the total possible score.

## Exhibit 9 (continued)

2. Enter the criterion number and total possible score for that criterion.
3. Enter the name of the offeror.
4. Enter the names of the SEP members performing the evaluation.
5. thru 9. Enter each SEP member's score for each criterion.
10. Enter the total score for the criterion.
11. Enter the SEP averaged score.
12. Enter the proposed cost.

(Continue with each offeror in the same manner.)

**C. Offerors in the Competitive Range**

In this section, summarize the SEP's evaluation of those proposals in the competitive range. Each proposal shall be discussed separately. Begin with that proposal with the highest total averaged SEP technical score (or cost, as appropriate) and address each proposal in descending order.

For each proposal:

- o Identify the name of the firm, the consensus SEP technical score, and proposed cost.
- o Summarize the SEP's findings on each criterion separately. Also provide the criterion's title, the total possible score of that criterion, and the total averaged SEP technical score.
- o Address the proposal's strengths and weaknesses for each criterion. Be sure that the narrative matches the score given by the SEP.
- o Provide an overall assessment of the proposal, being careful not to compare it with other proposals.
- o Discuss whether an actual or potential organizational conflict of interest would exist should the offeror be awarded the contract. If so, thoroughly discuss the circumstances giving rise to the conflict of interest.
- o Indicate if any of the proposed offeror's employees are current or former NRC employees. If so, discuss the role that person would perform under the contract.
- o Summarize any cost concerns dealing with labor categories, labor rates, proposed hours, travel, direct costs, equipment, or other concerns.

## **Exhibit 9 (continued)**

- o List all technical and cost-related questions that will be posed to the offeror during negotiations. As a minimum, questions should address weaknesses, ambiguities, or clarifications needed to the proposal.

**D. Offerors Not in the Competitive Range**

In this section, discuss the evaluation of those proposals not in the competitive range. Address each proposal separately in descending order of total technical score. Provide the same information for each proposal as was done in the first four steps of Section C above.

Provide a summary giving the rationale for excluding the offerors from the competitive range. Include the weaknesses and reasons why they are not among the highly rated proposals considering both non-price and price/cost factors. The summary should be succinct and presented in a manner that would allow for verbatim extraction from the report by the Contract Specialist when corresponding with unsuccessful offerors, giving reasons as to their exclusion from the competitive range. Such presentation would eliminate the need for Project Officer concurrence on these letters for the SEP.

**Final Note**

Any questions you may have in writing the report may be directed to the cognizant Contract Specialist.

**REMEMBER TO INCLUDE ALL OF THE EVALUATOR'S WORKSHEETS WITH THE REPORT!**

## Exhibit 9 (continued)

Note: This memo is to be typed on NRC letterhead paper.

MEMORANDUM TO: (Name), Contracting Officer  
Division of Contracts  
Office of Administration

FROM: (The person who signed RFPA, Block #16), Designating Official  
(Office)

SUBJECT: COMPETITIVE RANGE RECOMMENDATION FOR  
PROPOSALS SUBMITTED UNDER RFP NO. NRR-  
ENTITLED "

The Source Evaluation Panel has completed its evaluation of all proposals that were received in response to the subject RFP and developed the attached Competitive Range Recommendation as a result of that evaluation.

I have independently evaluated the Panel's report, concur in the recommendations provided, and request that negotiations be conducted with those offerors whose proposals were found by the Panel to be within the competitive range.

Attachments:

1. Competitive Range Recommendation Report
2. Individual Evaluation Worksheets

**Exhibit 9 (continued)**

**FOREWORD**

**THIS REPORT COVERS THE EVALUATION BY THE  
SOURCE EVALUATION PANEL  
FOR  
(TITLE OF RFP)**

**Competitive Range Recommendation**

Distribution is limited to those strictly on a need-to-know basis and this material must be treated as "OFFICIAL USE ONLY." If transmitted by mail, the report must be sealed in an envelope addressed to the appropriate individual with the notation on the envelope as follows:

**"TO BE OPENED BY ADDRESSEE ONLY,  
CONTAINS SEP REPORT"**

This report is submitted by:

\_\_\_\_\_  
(Name, Chairman)      Date

\_\_\_\_\_  
(Name, Member)      Date

\_\_\_\_\_  
(Name, Member)      Date

Reviewed and Approved:

\_\_\_\_\_  
(Name, Designating Official)

**Exhibit 9** (continued)

COMPETITIVE RANGE RECOMMENDATION REPORT  
RFP NO.

A. Background

- o Project Title:
- o RFP Issued: RFP Closed:
- o Date SEP Met:

B. SEP Rating Summary

CRITERIA (100 POSSIBLE POINTS)

OFFEROR: ( ) ( ) ( ) ( ) ( ) ( ) TOTAL COST

(Company) \_\_\_\_\_  
(member) \_\_\_\_\_  
(member) \_\_\_\_\_  
(member) \_\_\_\_\_

(Company) \_\_\_\_\_  
(member) \_\_\_\_\_  
(member) \_\_\_\_\_  
(member) \_\_\_\_\_

(Company) \_\_\_\_\_  
(member) \_\_\_\_\_  
(member) \_\_\_\_\_  
(member) \_\_\_\_\_

**Exhibit 9 (continued)**

**C. OFFERORS IN THE COMPETITIVE RANGE**

Offeror:

Proposed Cost:

Consensus SEP Technical Score:

1. Criterion Title:

Total Possible Score:

Strengths:

Weaknesses:

(Address remaining criteria in same format)

Overall Assessment of the Proposal:

Organizational Conflict of Interest:

Current/Former NRC Employee:

Cost Issues:

Questions for Discussion:



**Exhibit 9 (continued)**

**D. OFFERORS NOT IN THE COMPETITIVE RANGE**

Offeror:

Proposed Cost:

Consensus SEP Technical Score:

1. Criterion Title:

Total Possible Score:

Strengths:

Weaknesses:

(Address remaining criteria in same format)

Overall Assessment of the Proposal:

## **Exhibit 10**

### **SOW Considerations for Waste Characterization, Packaging, and Disposal Requirements**

1. For projects that will generate chemical or radiological waste, the Statement of Work (SOW) shall describe those aspects of the project that will result in the generation of the waste and the contractor's responsibility for the characterization, packaging, and disposal of the waste. NRC's financial responsibilities for these activities, if any, also should be described.
2. Categories of waste streams, materials, components, and facilities that may require characterization, packaging, and disposal include those such as activated metals, contaminated materials, ion-exchange resins, and other low-level waste streams. Characterization of the waste streams should be designed to collect data that will fulfill the requirements of the disposal facility (for example, the data should demonstrate that the waste meets the acceptance criteria of the disposal facility) and the Uniform Manifest requirements of 10 CFR Part 20, Appendix G, when that form is needed. The offeror's proposal shall include a copy of the disposal site manifest requirements that explicitly provide the information required with the shipment.
3. Chemical waste is any waste that includes chemicals (e.g., Ni, Fe, EDTA) that are not classified as radioactive waste and requires special handling for its disposal. The chemical waste also may need to be characterized to meet the requirements of the waste disposal facility. Mixed waste (waste containing both RCRA Subtitle C hazardous waste and low-level radioactive waste) shall not be generated without prior express written approval of NRC. The contractor shall institute measures to minimize the amount of waste generated. If mixed waste streams are accepted by a contractor for analysis, an agreement for dispositioning of the samples (for example, returning to the place of origin), should be established before the sample is accepted for analysis.
4. The contractor is responsible for the costs of decommissioning a project or facility. When a facility is dedicated exclusively to an NRC project and the residual radioactivity to be removed during decommissioning can be solely attributed to the NRC project, NRC is responsible for these costs. These costs shall be explicitly identified and addressed by the contractor in accordance with the provisions of paragraph 7 below.
5. The proposal shall provide a full description of specific activities necessary for the NRC project, including waste characterization, packaging, and disposal activities and the associated costs for conducting these activities for which NRC is responsible.

**Exhibit 10 (continued)**

6. The SOW should specify which party has responsibility for payment of the costs of characterization, packaging, and waste disposal. Guidance for making this determination is as follows:
  - a. NRC, generally as project designer, is responsible for the costs of characterization, packaging, and disposal of waste when the waste is generated as an essential part of the project. The contractor is generally responsible for decommissioning activities and costs, except as noted in paragraph 4 above.
  - b. NRC is not responsible for the costs of waste volume generated beyond what reasonably can be expected in the performance of the project because of the laboratory's noncompliance with NRC or the contractor's policies or other good business practices.
7. When NRC is responsible for payment of costs associated with the characterization, packaging, and disposal of waste, the cognizant project manager shall—
  - a. Ensure that the project statement of work contains a task for the characterization, packaging, and disposal of waste generated under the project.
  - b. Include, as part of the independent government cost estimate, costs for waste characterization, packaging, and disposal.
  - c. Evaluate the laboratory proposal to ascertain whether costs proposed for the waste characterization, packaging, and disposal are reasonable.
  - d. Negotiate a reasonable amount for such costs and document the basis for the agreement in the Summary of Negotiations.
  - e. Review monthly status reports submitted by the laboratory to ensure that expended costs for the waste characterization, packaging, and disposal are reasonable and are in accordance with the project spending plan.

## Exhibit 11 Oversight of Service Contracting

### OVERSIGHT OF SERVICE CONTRACTING (ADVISORY & ASSISTANCE SERVICES)

#### Appendix A

The following is a series of questions to help agencies analyze and review requirements for service contracts.

#### A. Inherently Governmental Functions

If the response to either of the following questions is affirmative, the contract requirement is for an inherently governmental function that must be performed by Government officials:

(1) Is the requirement for a function that is listed in or closely resembles a function listed in Appendix A of OFPP Policy Letter 92-1, Inherently Governmental Functions?

(2) If not, is the requirement for an inherently Governmental function based on an analysis of the totality of the circumstances discussed in section 7(b) of Policy Letter 92-1?

#### B. Cost of Effectiveness

If the response to any of the following questions is affirmative, the agency may not have a valid requirement or may not be obtaining the requirement in the most cost effective manner:

(1) Is the statement of work so broadly written that it does not support the need for a specific service?

(2) Is the statement of work so broadly written that it does not permit adequate evaluation of contractor versus in-house cost and performance.

**Exhibit 11 (continued)**

(3) Is the choice of contract type, quality assurance plan, competition strategy, or other related acquisition strategies and procedures in the acquisition plan inappropriate to ensure good contractor performance to meet the user needs?

(4) If a cost reimbursement contract is contemplated, is the acquisition plan inadequate to address the proper type of cost reimbursement to ensure that the contractor will have the incentive to control cost under the contract?

(5) Is the acquisition plan inadequate to address the cost effectiveness of using contractor support (either long-term or short-term) versus in-house performance?

(6) Is the cost estimate, or other supporting cost information, inadequate to prevent the contracting office from affectively determining cost reasonableness?

(7) Is the statement of work inadequate to describe the requirement in terms of "what" is to be performed as opposed to "how" the work is to be accomplished?

(8) Is the acquisition plan inadequate to ensure that there is proper consideration given to "quality" and "best value"?

**C. Control**

If the response to any of the following questions is affirmative, there may be a control problem:

(1) Are there insufficient resources to evaluate contractor performance when the statement of work requires the contractor to provide advice, analysis and evaluation, opinions, alternatives, or recommendations that could significantly influence agency policy development or decision-making?

**Exhibit 11 (continued)**

(2) Is the quality assurance plan too general to monitor adequately contractor performance?

(3) Is the statement of work so broadly written that it does not specify a contract deliverable or require progress reporting on contractor performance?

(4) Is there concern that the agency lacks the expertise to evaluate independently the contractor's approach, methodology, results, options, conclusions, or recommendations?

(5) Is the requirement for a function or service listed in Appendix B of OFPP Policy Letter 92-1, or similar to a function or service on that list, such that a greater management scrutiny is required of the contract terms and the manner of its performance?

**D. Conflicts of Interest**

If the response to any of the following questions is affirmative, there may be a conflict of interest:

(1) Can the potential offeror perform under the contract in such a way as to influence the award of future contracts to that contractor?

(2) If the requirement is for support services (such as system engineering or technical direction), were any of the potential offerors involved in developing the system design specifications or in the production of the system?

(3) Has the potential offeror participated in earlier work involving the same program or activity that is the subject of the present contract?

(4) Will the contractor be evaluating a competitor's work?

### Exhibit 11 (continued)

(5) Does the contract allow the contractor to accept products or activities on behalf of the Government?

(6) Will the work, under this contract, put the contractor in a position to influence Government decision-making, e.g., developing regulations, that will affect the contractor's current or future business?

(7) Will the work under this contract affect the interests of the contractor's other clients?

(8) Are any of the potential offerors, or their personnel who will perform the contract, former agency officials who—while employed by the agency—personally and substantially participated in (a) the development of the requirement for, or (b) the procurement of these services within the past two years?

#### E. Competition

If the response to any of the following questions is affirmative, competition may be unnecessarily limited:

(1) Is the statement of work narrowly defined with the overly restrictive specifications or performance standards?

(2) Is the contract formulated in such a way as to create a continuous and dependent arrangement with the same contractor?

(3) Is the use of an indefinite quantity or term contract arrangement inappropriate to obtain in the required services?

(4) Will the requirement be obtained through the use of other than full and open competition?

## **Exhibit 12**

### **Individual Evaluation Worksheet for Oral Presentation**

OFFEROR:

RS-XXX-98-000

#### **INDIVIDUAL EVALUATION WORKSHEET - ORAL PRESENTATION UNDER RFP RS-XXX-98-000**

##### Instructions

##### **Documentation Review**

Source Evaluation Panel members must review the Offeror's supporting documentation prior to the oral presentation and determine if the information submitted by the Offeror conforms to that requested under Section L of the RFP. The corresponding sections of the worksheet should be completed accordingly. Panel members should become familiar with the Offeror's presentation material prior to the actual oral presentation and note on the evaluation worksheets any questions or concerns regarding the material.

##### **Presentation**

There shall be no discussion among SEP members during the Offeror's presentation. All questions shall be reserved for the interview session. Panel members should pay close attention to the Offeror's presentation and note all strengths and weaknesses perceived, as well as questions to be posed at the interview session, on the attached worksheets. Questions should be developed for any weaknesses which resulted in a score assessed at less than full criterion weight. Questions must relate to the evaluation criteria and presentation material and must not address cost. Please number the questions to be asked.

##### **Interview**

The initial interview session is intended to assist the Panel in determining the Offeror's knowledge and competence with regard to the NRC's requirement and program objectives and in setting the competitive range. SEP members are cautioned that during the interview session the Contract Specialist will inform the Offeror to disregard any questions which may arise that are not related to the evaluation criteria or presentation material or which do not test the Offeror's knowledge and competence with regard to the requirement being solicited. Questions should be limited to those that are intended to enhance understanding, clarify meaning, eliminate ambiguity, or discuss past performance. Please note the question number for each answer recorded on the Interview Worksheet.

Once the competitive range is set and subsequent interviews take place, questions that relate to weaknesses and deficiencies may be asked.

Two distinct sets of questions should be devised for each criterion—those that intend to clarify ambiguities and enhance understanding during interviews and those intended to point out weaknesses and deficiencies after a competitive range is set.

Failure to observe these guidelines could result in an improper award.

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## Exhibit 12 (continued)

OFFEROR:

RS-XXX-98-000

### 1. PERSONNEL QUALIFICATIONS/EXPERIENCE

The objective of this part of the oral presentation shall be to clearly demonstrate to the NRC that the proposed personnel have the requisite qualifications to perform the effort as described in Section C of this solicitation. The offeror should address the availability of personnel with expert knowledge and experience in the following areas to perform under any resultant contract.

- Design, maintenance and operation of commercial nuclear power plants
- Nuclear power plant systems (mechanical, structural, and electrical), components and structures
- NRC licensing requirements, generic issue resolution, backfit procedures and safety goals
- Cost/benefit (value/impact) analysis
- Health physics
- Nuclear, mechanical, structural, metallurgical, and electrical engineering disciplines
- Nuclear power plant probability risk assessment (PRA) analysis methods and accident risk calculations
- Industry codes and standards
- Software development and utilization of engineering and computational software

The offeror shall describe the composition of the proposed project team(s) to be assigned to this effort, and delineate the responsibilities of the team members inclusive of technical, management, and administrative functions.

### SUPPORTING DOCUMENTATION REQUIREMENTS

The offeror shall provide paper copies of overheads documenting the main points of each topic to be discussed through the oral presentation with the identity of the individual presenting the topic noted.

The offeror shall identify all individuals anticipated to perform this effort and shall provide resumes for each individual in accordance with the format outlined below. The resumes should be directed to the specific needs of the contract and not be general in nature. Resumes shall be included for any subcontractor/consultant personnel, if known. The offeror shall indicate the extent to which each individual will be available to perform this effort. Resumes should not exceed 2 pages in length for each individual identified.

State whether the person proposed will fill a Key Personnel position and indicate the percentage of time this person will commit to this effort.

If any of the personnel are not employed by the offeror or proposed subcontractor at that time, firm written commitments assuring the availability of such individuals are to be included with the supporting documentation.

### 2. PAST PERFORMANCE

The offeror shall describe all corporate qualifications and experience in performing contracts, similar in size and scope to this procurement, over the past 4 years, and the

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**Exhibit 12 (continued)**

**OFFEROR:**

**RS-XXX-98-000**

extent to which the necessary knowledge, experience and skills remain available within the organization. The presentation shall include, but shall not be limited to, a discussion of the offeror's qualifications and experience in regard to the following:

- the generic issue process
- prioritization of generic issues
- Level 1, 2, and 3 probabilistic risk assessment
- performance of cost/benefit analyses
- NRC regulatory processes

The offeror shall identify the key personnel who performed under the contracts discussed.

**SUPPORTING DOCUMENTATION REQUIREMENTS**

The offeror shall provide paper copies of overheads documenting the main points of each topic to be discussed through the oral presentation with the identity of the individual presenting the topic noted.

The offeror shall provide the information outlined below for three specific contracts similar in size and scope to this procurement performed over the past 4 years. The NRC will contact the references provided and request they complete a survey questionnaire. This information will be used to evaluate the degree of the offeror's success in past performance.

Contract No.:  
Name and address of Government/commercial entity:  
Point of Contact:  
Contracting Officer:  
Telephone Number:  
Technical Representative:  
Telephone Number:  
Date contract awarded:  
Period of performance of the contract (including extensions):  
Dollar value of the contract:  
If applicable, the dollar value of the modifications to the contract:  
Type of contract awarded:  
Brief description of the work:

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**Exhibit 12 (continued)**

OFFEROR:

RS-XXX-98-000

**3. QUALITY ASSURANCE**

The objective of this part of the oral presentation shall be to clearly demonstrate to the NRC the extent and adequacy of the offeror's plans and policies for quality assurance (QA), and to demonstrate the familiarity of the proposed personnel with the plans and policies. The offeror shall also discuss the responsibility and authority of the personnel responsible for ensuring that the QA program is implemented.

**SUPPORTING DOCUMENTATION REQUIREMENTS**

The offeror shall provide paper copies of overheads documenting the main points of each topic to be discussed through the oral presentation with the identity of the individual presenting the topic noted.

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Exhibit 12 (continued)

OFFEROR:

RS-XXX-98-000

1. PERSONNEL QUALIFICATIONS/EXPERIENCE - WORKSHEET

Documentation review

Did the offeror provide the information requested? Yes ☐ No ☐ (comment)

Presentation

Strengths: \_\_\_\_\_

Weaknesses: \_\_\_\_\_

Interview Questions: \_\_\_\_\_

Weight: 40

Initial Score: \_\_\_\_

Final Score: \_\_\_\_

2. PAST PERFORMANCE - WORKSHEET

Documentation review

Did the offeror provide the information requested? Yes ☐ No ☐ (comment)

Presentation

Strengths: \_\_\_\_\_

Weaknesses: \_\_\_\_\_

Interview Questions: \_\_\_\_\_

Weight: 40

Initial Score: \_\_\_\_

Final Score: \_\_\_\_

3. QUALITY ASSURANCE - WORKSHEET

Documentation review

Did the offeror provide the information requested? Yes ☐ No ☐ (comment)

Presentation

Strengths: \_\_\_\_\_

Weaknesses: \_\_\_\_\_

Interview Questions: \_\_\_\_\_

Weight: 20

Initial Score: \_\_\_\_

Final Score: \_\_\_\_

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**Exhibit 12 (continued)**

OFFEROR:

RS-XXX-98-000

**CONFLICT OF INTEREST CONSIDERATION**

Evaluators must review the NRC Contractor Organizational Conflicts of Interest contract provisions and check the appropriate block below for this offeror:

- ( ) No apparent or actual conflict of interest exists with respect to this offeror performing the work required.
- ( ) There exists an apparent or actual conflict of interest with respect to this offeror performing the work required.

Please explain conflict:

**CURRENT/FORMER NRC EMPLOYEES (CHECK ONE)**

- ( ) No current/former NRC employees have been identified
- ( ) Current/former NRC employees have been identified

Please list name and title of current/former NRC employees below:

Total final score: \_\_\_\_\_

\_\_\_\_\_  
Evaluator's signature

\_\_\_\_\_  
Date

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**Exhibit 13**  
**An Example of a Letter of Recommendation and an  
Evaluation of an Unsolicited Proposal**

MEMORANDUM TO: (Name), Director, DC/ADM

FROM: (Name), Director, FMPAS, RES

SUBJECT: UNSOLICITED PROPOSAL FROM RADIATION SAFETY  
ENGINEERING INC., DOC. NO. 98-1, ENTITLED "A METHOD  
FOR DETERMINING TOTAL LUNG CLEARANCE RATES FOR  
INHALED RADIONUCLIDES FROM SOLUBILITY TEST DATA"

The subject proposal was reviewed and evaluated according to the criteria for unsolicited proposals. While the proposal has scientific merit and the offeror appears qualified to conduct the study, RES cannot fund this proposal because the work proposed does not meet the current programmatic needs of this office. There are currently no staff recommendation or request for anticipatory research in the area of updating lung models to ICRP 66 to ascertain internal dose calculations.

I am returning to you all copies of the proposal and RES' evaluation. If you have any questions concerning this matter, please contact (Name), (phone number), of my staff.

Attachment:  
RES evaluation

**Exhibit 13 (continued)**  
**Example of an Evaluation of an Unsolicited Proposal**

Page 1 of 1

**EVALUATION OF UNSOLICITED PROPOSAL**

Title: \_\_\_\_\_

Applicant: \_\_\_\_\_

Criterion Evaluated: (An evaluation sheet with the above heading should be provided for each of the following criteria which should be reviewed for strengths and weaknesses:)

1. Does the research proposal demonstrate unique and innovative methods, approaches, or concepts?
2. Does the proposal have overall scientific, technical, or socioeconomic merits?
3. Does the proposer have capabilities, related experience, facilities, or techniques, or unique combinations thereof, which are considered to be integral factors necessary to achieve the proposed objectives?
4. Will the proposed effort make a potential contribution to the Agency's specific mission at this time?
5. Are the qualifications, capabilities, and the experience of the proposed principal investigator, team leader or key personnel considered to be critical in achieving the objectives of the proposal?

a. Strengths:

b. Weaknesses:

\_\_\_\_\_  
Evaluator

\_\_\_\_\_  
Date



## Exhibit 14

### Example of Ratification of an Unauthorized Action

U.S. NUCLEAR REGULATORY COMMISSION  
DIVISION OF CONTRACTS  
REQUEST FOR RATIFICATION OF AN UNAUTHORIZED COMMITMENT

STATEMENT OF FACTS

1. Contract No. NRC XX-XX-XXX for providing (service or supply procured) by (name of firm) commenced on November 1, 1996, and continued through December 31, 1998. This is a fixed price requirements contract with work to be issued by work order. The contract ceiling is \$XXXXX.XX. The amount obligated during this period was \$XXXXX.XX.
2. In March 1990, a final invoice in the amount of \$XXXX.XX was received for payment. This invoice exceeds the obligated amount under the contract by \$XXXX.XX. The former Project Officer had issued work orders in excess of the obligated amount of the contract. As a result, additional funding is required in the amount of \$XXXX.XX. This will raise the obligated amount from \$XXXXX.XX to \$XXXXX.XX.
3. The prices as fixed under Contract No. XX-XX-XXX were fair and reasonable.
4. Funds were available at the time of the unauthorized commitment.
5. The funds certifying official determined that funds are available to ratify these services.

DETERMINATIONS:

Based on the foregoing, and in accordance with FAR 1.602-3(c), I hereby make the following determinations:

1. Services were provided and accepted by the NRC and the NRC has obtained a benefit resulting from the performance of the unauthorized commitment;
2. The ratifying official could have granted authority to enter or could have entered into a contractual commitment at the time it was made and still has the authority to do so;
3. The resulting contract modification would otherwise have been proper if made by an appropriate contracting officer;
4. The contracting officer reviewing the unauthorized commitment determines the prices charged to the Government for these services to be fair and reasonable;
5. The contracting officer recommends payments; and,
6. Certified funds are available for the unauthorized commitment.

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**Exhibit 14 (continued)**

NRC XX-XX-XXX  
page 2

Therefore, it is recommended that this unauthorized commitment be ratified for services rendered by XXXX and that additional funding be certified in the amount of \$X,XXX.XX.

Technical Certification

As prescribed by Subpart 1.602-3 of the Federal Acquisition Regulation, the Statement of Facts for the Request for Ratification of an Unauthorized Commitment incurred by (Name of firm) is hereby certified as complete and accurate.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name), Project Officer  
(Division)  
(Office)

Contracting Officer's Certification

In accordance with Subpart 1.602-3 of the Federal Acquisition Regulation, the accuracy and completeness of the Statement of Facts for the Request for Ratification of an Unauthorized Commitment for services incurred by (Name of firm) is hereby certified. I hereby recommend that the costs associated with this action be included in a modification to the subject contract and that payment be made for the services rendered.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name), Contracting Officer  
Division of Contracts  
Office of Administration

Approval Recommendation

In accordance with Management Directive 11.1, Section 11.11, I recommend approval of this Request for Ratification of an Unauthorized Commitment for services incurred by (Name of firm).

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name)  
Head of the Contracting Activity

Approval

Pursuant to Subpart 1.602-3(b)(2) of the Federal Acquisition Regulation, the above-described Request for Ratification of an Unauthorized Commitment for (type of services or supplies) has been ( ) approved ( ) disapproved for payment.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name)  
Competition Advocate

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