

U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

TN: DT-96-18

To: NRC Management Directives Custodians

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

Purpose: Directive and Handbook 11.1 replace Manual Chapters 5101, 5102, 5103, and 5105 and were revised to provide guidance to achieve the best value for each procurement for NRC's acquisition of supplies and services from commercial firms, nonprofit organizations, universities, States, and other Federal agencies that are under the Economy Act. 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, as appropriate, to help the reader successfully complete the step. MD 11.1 also incorporates changes in the procurement process brought about by recent legislation.

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

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Date Approved: July 23, 1996

Volume: 11 Procurement

Directive: 11.1 NRC Acquisition of Supplies and Services

Availability: U.S. Government Printing Office, (202) 512-2409

NRC Acquisition of Supplies and Services

Directive

*(Formerly
MCs 5101, 5102,
5103, and 5105)*

11.1

Contents

Policy	1
Objectives	1
Organizational Responsibilities and Delegations of Authority	2
Chairman	2
General Counsel, Office of the General Counsel (OGC)	2
Executive Director for Operations (EDO)	3
Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support (DEDS)	3
Director, Office of Administration (ADM)	3
Director, Office of Information Resources Management (IRM)	4
Director, Office of Personnel (OP)	4
Director, Office of Small Business and Civil Rights (SBCR)	4
Office Directors	5
Regional Administrators	5
Director, Division of Contracts (DC, ADM)	6
Director, Division of Accounting and Finance (DAF), Office of the Controller (OC)	7
Applicability	7
Handbook	7
References	8



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 acquisitions 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), the Federal Information Resources Management Regulation (FIRMR), 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 through interagency agreements, except for Department of Energy Laboratory agreements, which are covered by Management Directive 11.7, "NRC Procedures for Placement and Monitoring of Work With the Department of Energy," and other interagency agreements entered under the authority of the Energy Reorganization Act of 1974. (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 all proposed procurement actions expected to exceed a cost of \$3 million or more, or with an estimated cost of \$750,000 or more that involve topics not covered by the NRC Five-Year Plan. For this purpose, a "contract action" refers to any new award or modification to add new work to the contract.

General Counsel, Office of the General Counsel (OGC) (032)

- Reviews solicitation packages, unauthorized commitments, 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 disappointed offerors protest contract award actions, and coordinates the handling of those protests with the Division of Contracts (DC), Office of Administration (ADM), and affected program offices. (c)
- Advises DC and represents the agency on significant procurement issues (e.g., 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)

Executive Director for Operations (EDO)
(033)

- As Head of Agency (an authority that cannot be delegated), in accordance with NRCAR 2002.100, approves and recommends to the Chairman for approval requests for proposed contract actions as described above in Section (031) of this directive. (a)
- Provides the Chairman with 5 days 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)

**Deputy Executive Director for Nuclear
Materials Safety, Safeguards, and
Operations Support (DEDS)**
(034)

As the agency's Designated Senior Official (DSO) for information resources management approves all Federal information processing (FIP) acquisitions valued at \$10 million or more (see Management Directive (MD) 2.4, "Acquisition of Federal Information Processing Resources).

Director, Office of Administration (ADM)
(035)

- As the agency's Procurement Executive, as required by Executive Order 12352, 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)
- After consulting with the EDO or designee, approves justifications for award of contracts and task orders and for granting consent of subcontracts on a noncompetitive basis to former NRC employees. (b)
- Administers the appeals process in accordance with the Office of Management and Budget (OMB) Circular A-76, as revised August 4, 1983. (c)

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Directive 11.1

Director, Office of Administration (ADM)
(035) (continued)

- Approves justifications for noncompetitive actions of \$10 million or more.

Director, Office of Information Resources Management (IRM)
(036)

- Reviews and approves NRC acquisitions involving FIP resources that are delivered to the NRC or to an NRC designee, except in special circumstances where IRM approval authority has been redelegated to office senior information resources management officials (see MD 2.4).

Director, Office of Personnel (OP)
(037)

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.

Director, Office of Small Business and Civil Rights (SBCR)
(038)

- Reviews all proposed procurements in the advanced procurement plan (APP) and makes recommendations for small business participation to the requesting office. (a)
- 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)
- Works with DC to produce an annual forecast of contract opportunities for small businesses. (d)
- Reviews requests for procurement action in accordance with MD 11.4, "NRC Small and Disadvantaged Business Program" and makes recommendations for small business participation to DC. (e)

Office Directors
(039)

- Submit to the Director, DC, ADM, the annual office APP and any updates, in response to APP call from Director, ADM. (a)
- Serve as the designating official for requests for procurement action (RFP) within the office. The responsibilities of the designating official may not be redelegated below the level of division director or deputy division director, except in those offices where there is no division level. In such cases, the responsibility may be redelegated to a comparable level manager reporting to the office director. Any other official must be approved by the Head of Contracting Activity for acceptance of the RFP by DC staff (see Section (0311) of this directive). (b)
- Ensure that project officers (POs) receive required training in contract management skills. (c)
- Ensure completion of comprehensive technical evaluations of unsolicited proposals as requested by DC, in accordance with the criteria contained in FAR 15.506-2(a). (d)
- Ensure, in consultation with the contract specialist and the Office of General Counsel, that the proposed work does not create an organizational conflict of interest. (e)
- Ensure that POs and Designating officials carryout their responsibilities as prescribed in the MD 11.1 handbook. (f)

Regional Administrators
(0310)

- Act within the scope of their CO authority as delegated by Director, 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 \$2,500 or less in accordance with NRCAR 2001.602-3. (b)
- Approve, or delegate authority to approve, requests for payment of small purchases not to exceed \$500 (\$1,000 on a case-by-case basis) from the region's imprest fund. (c)

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Directive 11.1

Director, Division of Contracts (DC, ADM)
(0311)

- As Head of Contracting Activity, in accordance with NRCAR 2002.100, develops and implements agencywide contracting policies and 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. Obtains Chairman approval for actions with an estimated cost exceeding \$3 million and any procurement action exceeding \$750,000 that involves a topic not covered by the Five-Year Plan, and settles claims and terminations for convenience or default thereof (see Section (031) of this directive). (b)
- Appoints individuals to serve as COs, sets limitations on their authority, and terminates such appointments as authorized by delegation from the Director, ADM. (c)
- Notifies the Audit Followup Official (EDO) of any disagreement with the Office of the Inspector General (OIG) concerning contract audit recommendations before taking final action. (d)
- Notifies the EDO 5 workdays in advance of any termination of a contract previously approved by the Chairman. (e)
- Serves as the agency's Competition Advocate in accordance with the Competition in Contracting Act of 1984, challenging barriers to and promoting full and open competition of the agency's procurements and promoting the acquisition of commercial items. (f)
- Ensures the implementation of Federal policy regarding the performance of commercial activities in accordance with OMB Circular A-76. (g)
- Ensures that procurement documents are accurate and complete. (h)

Director, Division of Contracts (DC, ADM)
(0311) (continued)

- Reviews and, when appropriate, approves all ratifications of procurement actions greater than \$2500 presented by COs at headquarters and procurement personnel in the regions. (i)
- Approves all other than full and open competitions over \$100,000 and all waivers of notices in the *Commerce Business Daily* on the basis of urgent and compelling need. (j)
- Participates with OP in coordination of the design, development, and implementation of the agencywide contract management training curriculum and course materials. (k)

**Director, Division of Accounting and Finance (DAF),
Office of the Controller (OC)**
(0312)

- 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 (B&R), job code, and budget object classification). (a)
- 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 Federal information processing 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.).

Brooks Act (40 U.S.C. 759).

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."

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

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

Executive Order 12352, "Federal Procurement Reforms," March 17, 1982.

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

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

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

Federal Information Resources Management Regulation (FIRMR) (41 CFR 201).

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

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

References

(11.1-06) (continued)

FIRMR Bulletin C-4, "Performance and Capability Validation of FIP Systems," January 30, 1991.

General Services Administration, "Guidance to Federal Agencies on the Preparation of Specification, Selection, and Procurement of ADP Equipment Systems," June 30, 1991.

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

Kaufman, "What GSA [General Services Administration] Is Entitled to Know About an MAS Contractor's Commercial Discounts" (15 Pub. Cont. L.J. 224, 1985).

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, Department of Defense Document 5220.22m, January 1995.

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

NRC Management Directive 2.2, "Planning and Budgeting for Federal Information Processing Resources."

2.4, "Acquisition of Federal Information Processing Resources."

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

3.9, "NRC Staff and Contractor Speeches, Papers, and Journal Articles on Regulatory and Technical Subjects."

3.50, "Document Management."

4.2, "Administrative Control of Funds."

6.1, "Resolution and Followup of Audit Recommendations."

10.6, "Use of Consultants and Experts."

11.4, "NRC Small and Disadvantaged Business Program."

References

(11.1-06) (continued)

11.6, "Financial Assistance Program."

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

12.1, "NRC Facility 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," Revision of August 4, 1983.

—, 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, 1988.0

—, Circular A-125, "Prompt Payment," Revision of December 12, 1989.

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

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

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

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 (Pub. L. 95-507).

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

NRC Acquisition of Supplies and Services

Handbook

*(Formerly
Appendices
5101, 5102,
5103, and 5105)*

11.1

Contents

Part 1 Introduction	1-1
Part 2 Principles of Government Contracting	
2.1 Statutory and Regulatory References	2-1
2.2 Contract Law	2-2
Part 3 Procurement Roles and Responsibilities	
3.1 Project Officer (PO)	3-1
3.1.1 Planning and Initiation Phase	3-1
3.1.2 Performance Phase	3-3
3.1.3 Work Completion and Closeout Phase	3-4
3.2 Contracting Officer (CO)	3-4
3.3 Contract Specialist (CS)	3-5
3.3.1 Planning and Initiation Phase	3-5
3.3.2 Performance Phase	3-6
3.3.3 Work Completion and Closeout Phase	3-7
3.4 Procurement Specialist	3-7
3.5 Designating Official (DO)	3-8
3.6 Procurement Integrity	3-8
Part 4 Acquisition Planning	
4.1 Purpose of Advance Procurement Plans	4-1
4.2 Ensure a Valid Need for Contracting	4-1
4.2.1 Duplication	4-1
4.2.2 Personal Services	4-1
4.2.3 Inherently Governmental Functions	4-2
4.2.4 Performance of Commercial Activities (OMB Circular A-76)	4-2
4.2.5 Equipment Lease or Purchase	4-3
4.2.6 Acquisition of Commercial Items	4-4

Contents (continued)

4.3	Initial Contact With the Division of Contracts	4-5
4.4	Development of APP	4-6
Part 5 Considerations and Approvals Before Submitting a Request for Procurement Action		
5.1	Interaction With the Division of Contracts	5-1
5.2	Competition Requirements	5-2
5.2.1	Limited Competition or Sole-Source Acquisitions	5-2
5.2.2	Sole-Source Acquisitions Not Requiring A JOFOC (8(a) Set-Aside)	5-6
5.2.2.1	An 8(a) Designation on the APP and RFPA	5-6
5.2.3	Limited Competitions Not Requiring A JOFOC (Small Business Set-Aside)	5-6
5.3	Contracts Between NRC and Former NRC Employees	5-6
5.4	Contracts That Will Exceed 5 Years	5-8
5.5	Security Requirements	5-8
5.5.1	Types of Clearances	5-8
5.5.2	Other Action	5-10
5.6	Chairman Approval	5-10
5.7	Intraoffice and Interoffice Concurrences	5-10
5.7.1	Federal Information Processing Resource Acquisitions	5-10
5.7.2	Coordination With Division of Facilities and Property Management .	5-11
5.7.3	Justification for Use of Task Order Contracts	5-11
5.8	Considerations of Year-End Procurement Actions	5-12
5.9	Use of a Source Selection Process and a Source Evaluation Panel (SEP) for Negotiated Procurements	5-12
5.9.1	Membership of a SEP	5-13
5.9.2	Conduct of SEP	5-13
5.9.3	Responsibilities of SEP	5-14
5.9.4	Responsibilities of the SEP Chairperson	5-14

Contents (continued)

5.9.5	Responsibilities of the SEP Secretary	5-15
5.9.6	Access to Information/Release of Information	5-16
Flowcharts		
5-1:	Considerations/Approvals Before Submitting A Request for Procurement Action	5-17
5-2:	Procurements Using Other Than Full and Open Competition	5-19
5-3:	Use of Source Evaluation Panel (SEP) for Competitive Negotiated Procurements	5-21
Part 6 Development of the Request for Procurement Action (RFPA)		
6.1	Statement of Work (SOW)	6-1
6.1.1	Elements of the SOW	6-2
6.1.2	Writing the SOW	6-4
6.2	Independent Government Cost Estimate (IGCE)	6-6
6.3	Approvals and Coordinations	6-6
6.4	Certification of Funds	6-6
6.5	Determining Sources To Be Solicited	6-6
6.5.1	Sources Recommended by the Requesting Office	6-6
6.5.2	Advertising in the Commerce Business Daily (CBD)	6-7
6.5.3	Establishing and Maintaining a Bidders' Mailing List (BML)	6-7
6.5.4	Electronic Commerce/FACNET	6-8
6.5.5	Exploring for New Sources	6-8
6.5.6	Public Document Room (PDR)	6-8
6.6	Oversight of Service Contracting and Advisory and Assistance Services	6-8
6.7	Proposal Evaluation Criteria/Lowest Price vs. Best Value	6-9
6.7.1	Guidelines	6-10
6.7.2	Specific Categories of Criteria	6-11
6.7.3	Establishing Weights and Scoring for Technical Criteria	6-11
6.7.4	Criteria Not Numerically Rated	6-12
6.7.5	Oral Presentations	6-12
6.8	SEP Nominations/List of Procurement Officials	6-12

Contents (continued)

6.9	Transmittal of RFPA Package to DC	6-13
6.10	DC Receipt and Review of RFPA Package	6-13

Flowchart

6-1:	Preparing Request for Procurement Action (RFPA)	6-14
------	---	------

Part 7 Development of Solicitation

7.1	Determinations Before Development of a Solicitation	7-1
7.2	Contents of a Solicitation	7-1
7.3	Steps for Developing a Solicitation	7-2
7.3.1	Competitive Negotiated Procurements	7-3
7.3.2	Noncompetitive Negotiated Procurement	7-3
7.3.3	Sealed Bid	7-3
7.4	Instructions to Offerors or Bidders	7-3
7.5	Review and Approval of Solicitation	7-4
7.6	Issuance of the Solicitation	7-4
7.6.1	Supplementary Distribution	7-5
7.6.2	Cancellation of the Solicitation	7-5

Part 8 Types of Contracts

8.1	Fixed-Price Contracts	8-2
8.1.1	Basic Structure	8-2
8.1.2	Adjustments	8-2
8.2	Cost Reimbursement Contracts	8-3
8.2.1	Cost Contract	8-3
8.2.2	Cost-Sharing Contracts	8-3
8.2.3	Cost-Plus-Fixed-Fee Contracts	8-3
8.3	Other Types of Contracts	8-4
8.3.1	Labor Hour Contract	8-4

Contents (continued)

8.3.2	Time and Materials Contract	8-4
8.3.3	Letter Contract	8-4
8.3.4	Contracts for Uncertain Needs or Timing	8-4
8.4	Fee Arrangements To Promote Performance	8-5
8.5	Grants and Cooperative Agreements	8-6
 Part 9 Procurement Methods		
9.1	Competitive Negotiated Procurements	9-1
9.1.1	Preproposal or Prebid Conference, Conference Summary, and Amendment to Solicitation	9-1
9.1.2	Receipt of Proposals or Bids	9-2
9.1.3	Technical Proposal Distribution and Evaluation	9-3
9.1.4	SEP Discussion of Technical Proposals, Evaluation, and Review of Cost Proposals	9-4
9.1.5	Establishment of Competitive Range and Preparation of SEP Competitive-Range Recommendation Report	9-4
9.1.6	Notification to All Offerors of Competitive-Range Results	9-5
9.1.7	Written or Oral Discussions and Negotiations	9-5
9.1.8	Best and Final Offers (BAFOs)	9-7
9.1.9	SEP Final Evaluation Report	9-7
9.1.10	Preaward Approval and Award Notification Letter	9-8
9.1.11	Contract Award and Notification to Unsuccessful Offerors	9-8
9.1.12	Debriefings	9-9
9.1.13	Protests	9-10
9.2	Other Than Full and Open Negotiated Procurements	9-10
9.2.1	Processing a Procurement Under Other Than Full and Open Competition	9-10
9.2.2	Response From CBD Results in Competitive Action	9-11
9.2.3	Sole-Source Acquisition Because of Unusual and Compelling Circumstances	9-11
9.3	Sealed Bidding	9-11
9.4	Two-Step Sealed Bidding	9-13
9.4.1	Conditions of Two-Step Sealed Bidding	9-13

Contents (continued)

9.4.2	The Two Steps of Sealed Bidding	9-14
9.5	Other Methods	9-15
9.5.1	Broad Agency Announcement (BAA)	9-15
9.5.2	Unsolicited Proposals	9-16
9.5.3	8(a) Set-Aside	9-19
9.5.4	Small Business Set-Aside	9-20
9.5.5	Interagency Agreements/Use of the Economy Act	9-20
9.6	Delivery Orders	9-21

Flowcharts

9-1:	Competitive Negotiated Procurements	9-22
9-2:	Sealed Bid	9-25

Part 10 Simplified Acquisitions

10.1	Simplified Acquisition and FACNET	10-1
10.2	Micropurchases	10-1
10.3	BankCards	10-2
10.4	Imprest Fund Purchases	10-2
10.5	Procedures for All Open-Market Simplified Acquisitions	10-4
10.5.1	Small Business Set-Aside	10-4
10.5.2	Soliciting Competition (Use of FACNET), Evaluation of Quotes, and Award	10-5
10.5.3	Agency Use of Indefinite Delivery Contracts	10-6
10.6	Purchase Orders	10-6
10.6.1	Negotiation Requirement	10-7
10.6.2	Justifications	10-7
10.6.3	Determination of Requirements	10-7
10.6.4	Property	10-7
10.6.5	Certification of Available Funds	10-8
10.6.6	Placing the Order	10-8
10.6.7	Consignee (Requestor) Acceptance	10-8

Contents (continued)

10.6.8	Termination or Cancellation of Purchase Orders	10-9
10.7	Other Simplified Acquisition Methods	10-9
10.7.1	Blanket Purchase Agreements (BPAs)	10-9
10.7.2	GSA Federal Schedule Contracts	10-10
10.7.3	Required Sources of Supply	10-11
Flowchart		
10-1:	Procurement Procedures Decision Tree (for purchases not exceeding \$100,000)	10-12
Part 11 Contract Administration		
11.1	Post-Award Kickoff Meeting	11-2
11.2	Monitoring Contractor Performance	11-3
11.2.1	Technical Direction	11-3
11.2.2	Modify Tasks	11-4
11.2.3	Subcontract Approvals	11-4
11.3	Task Orders	11-5
11.3.1	Procedures for Placement of a Task Order	11-5
11.3.2	Task Order Proposal	11-6
11.3.3	Issuance of Task Order	11-6
11.4	Administration of Government Property	11-7
11.5	Review of Contractor Invoice or Voucher	11-8
11.5.1	Contract Requirements	11-8
11.5.2	Payment Procedures for Contract Invoices	11-9
11.5.3	Payment Procedures for Purchase Orders	11-11
11.6	Modifying the Contract	11-12
11.7	Need for Time Extension Resulting in Contract to Exceed Five Years	11-13
11.8	Spending Controls	11-14
11.8.1	Indirect Cost Rate Adjustments	11-14
11.8.2	Annual Audits	11-14
11.8.3	Cost Overruns	11-14

Contents (continued)

11.8.4 Deobligation of Excess Funds	11-15
11.9 Fee Recoverable Costs	11-15
11.10 Performance Problems and Remedies	11-16
11.10.1 Failure To Progress Satisfactorily	11-16
11.10.2 Unsatisfactory Subcontractor Performance	11-16
11.10.3 Disputes	11-16
11.10.4 Remedies	11-17
11.11 Unauthorized Commitments	11-18
11.12 Contractor Differing Professional View (DPV)	11-19
11.13 Final Past-Performance Evaluation	11-21
11.14 Contract Closeout	11-22
Flowchart	
11-1: Invoice Workflow	11-23
Abbreviations	A-1
Exhibits	
1 Advance Procurement Plan (APP)	E-1
2 NRC Form 400, "Request for Procurement Action (RFPA)"	E-5
3 NRC Form 554, "Independent Government Cost Estimate (IGCE) for Contracts"	E-7
4 Individual Evaluation Worksheet	E-10
5 Final Evaluation Report	E-15
6 Milestone Schedule	E-23
7 Optional Form 333, "Procurement Integrity Certification for Procurement Officials"	E-27
8 Justification for Other Than Full and Open Competition	E-29
9 Personal Services and Inherently Governmental Function Determination ...	E-40
10 The Generic A-76 Cost Comparison (GCCF) In-House Vs. Contract or ISSA Performance	E-44
11 Chairman Paper	E-48

Contents (continued)

12	SEP Certification Statement	E-51
13	Competitive Range Report	E-53
14	Summary of Procurement Integrity Certification Requirements of Optional Form 333	E-61
15	Standard Form (SF) 129, "Solicitation Mailing List Application"	E-63
16	Oversight of Service Contracting	E-65
17	Overview of Competitive Acquisition Process	E-69
18	NRC Form 30, "Request for Administrative Services"	E-71
19	NRC Form 103, "Purchase/Delivery Order"	E-73
20	NRC Form 104, "Blanket Purchase Agreement (BPA) Ordering/Receiving Report"	E-75
21	Standard Form 30 (SF), "Amendment of Solicitation/Modification of Contract"	E-76
22	NRC Form 292, "Voucher Transmittal for Review and Approval Prior to Payment"	E-77
23	Example of Ratification of Unauthorized Action	E-78
Index		I-1

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 in the NRC libraries or through the Internet World Wide Web at "<http://www-far.npr.gov>". Staff from the Division of Contracts (DC), Office of Administration (ADM), also can provide a copy of specific sections of the FAR as needed for discussions and review. The NRC Acquisition Regulation (NRCAR) implements the FAR. In the event that a topic discussed in this handbook appears to conflict with the FAR or NRCAR, the requirements of the NRCAR will prevail, followed by the requirements of the FAR.

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, Division of Budget and Analysis, allocates these funds to the individual allowance holders of each office through an advice of allowances and financial plan, the contracting process is funded. 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 (RFPA).

Each NRC office contributes to the process of timely commitment and obligation of funds when a fiscal year procurement plan is developed and updated semiannually and sent to DC. These procurement plans 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 offices a prospective of when funds are to be committed. The plan 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 intercommunicate to further develop advance procurement plans. A

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 1

contract specialist (CS) will be assigned to the procurement at the time the office submits their annual advance procurement plan, or when the procurement is first brought to the attention of the contracting officer.

When DC receives a RFPA for a specific procurement (see Exhibit 2), the appropriate project officer (PO) and the responsible CS discuss and mutually agree on the acquisition strategy for a particular procurement request, if this has not been done during earlier planning meetings. 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 and increase the efficiency of the acquisition process.

For recurring contract needs, offices should submit RFPAs 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. Aggressive project management 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 through the NRC Home Page on the World Wide Web at "Contracting with NRC" (Location: <http://www.nrc.gov/NRC/contract.html>). A user may access information about NRC's approach to procurement, forecast of small business opportunities, the solicitation mailing list and other Federal documents, acquisition regulations and acquisition materials.

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 NRC employees involved in the Federal commercial procurement process. Specifically, the law, the Procurement Integrity Act, defines the procurement process and the responsibilities of procurement officials. 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, promotes electronic commerce, establishes a procedure for multiple awards from one solicitation, promotes contracting for commercial items, as well as affecting the procurement process in many other areas. 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, Office of Management and Budget, and initiated new approaches to purchasing information technology.

2.2 Contract Law

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.

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.

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. 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 must complete the agency-sponsored acquisition training courses and become familiar with any agency and office guidance on acquisition procedures. As procurement officials, POs need to understand procurement procedures and take the responsibility for performing the PO's duties. Assurance that POs can meet their responsibilities is provided through the required acquisition training courses.

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. Contract administration duties can be reassigned only with the written approval of the CO.

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 others 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) 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. Any justification or background information that DC staff may need also is prepared.
- (3) Prepares any documentation for Federal information processing (FIP) acquisitions that is required by Federal Information Resources Management Regulation (FIRMR) 201-20, in accordance with office procedures and Management Directive (MD) 2.4.

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 3

- (4) Prepares an independent Government cost estimate (NRC Form 554, Exhibit 3 of this handbook) 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 and retains in the technical files an estimate in detail commensurate with the complexity of the procurement.
- (5) Develops a Government Furnished Equipment (GFE) List with the Property Branch of the Division of Facilities and Property Management, ADM.
- (6) 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 for further information (e.g., Part I(C),(D), and (E) of Handbook 12.3; also see Section 5.5 of this handbook).
- (7) 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 their contract with the government.
- (8) Develops the RFPA (see Exhibit 2), including any supporting documentation, to send to DC. For new competitive procurements, the PO will include source evaluation criteria and source evaluation panel (SEP) nominations.
- (9) Evaluates responses to a sources-sought notice, when used, and determines the qualification of the organization(s) to perform the work (see Section 5.2.1.3 (2) of this handbook for more information on use of a sources-sought notice).
- (10) 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 conflicts 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 competitive-range report (see Exhibit 4 of this handbook).
- (11) Develops, for negotiation purposes and on the basis of the proposal evaluation, technical questions or requests for clarification that address the technical approach, understanding of the effort, and specific weaknesses.
- (12) Develops cost questions that address concerns regarding the proposed level of effort, skill mix, travel, and equipment needed for the project.
- (13) Provides technical evaluation and documentation for the final evaluation report (see Exhibit 5 of this handbook) recommending 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) Reviews all contractor costs reported on the voucher against performance and the costs reported in the monthly technical progress reports (often called monthly business letters) 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 and 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 minimize 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 Government-furnished equipment
- (2) 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 expeditiously and that the contractor's expenditures remain within the estimated cost, and recommends modification(s) to the contract, as necessary.
- (3) Provides technical direction and guidance to the contractor in accordance with delegation memorandum from the CO at the time of award, and confirms verbal direction and guidance to the contractor in writing, with a copy of the confirmation to the contract specialist (CS) for review and retention in the official contract file retained by DC.
- (4) 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.
- (5) Provides interim evaluations of contractor performance during the contract (see Section 11.2 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 to the nuclear documents system (NUDOCS), 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.

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, DC, ADM, 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) Approves individuals nominated by the designating official (DO) to serve as a technical evaluator, as appropriate.
- (4) Determines the competitive range after consultation with the DO and a review of the SEP's competitive-range report.
- (5) Selects the successful offeror after reviewing the SEP's written analysis contained in the final evaluation report (see Exhibit 5 of this handbook).
- (6) 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.

- (7) Approves ratification actions of \$2500 or less.
- (8) Ensures an orderly closeout of the contract.

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 RFPA. Specifically, the CS—

- (1) Assists the PO with the office acquisition plan.
- (2) Develops a realistic milestone schedule (see Exhibit 6 of this handbook), with input from the SEP and PO.
- (3) Prepares the solicitation package.
- (4) Ensures that all procurement officials have signed the Optional Form 333, certifying procurement integrity (Exhibit 7 of this handbook), before having access to source selection information and before executing contracts and modifications for new work that are expected to exceed \$100,000.
- (5) Acts as the SEP secretary (see Section 5.9.5 of this handbook).
- (6) Conducts cost analysis of cost proposals submitted by offerors with input from the PO and SEP.
- (7) Conducts negotiations with potential offerors; reviews and approves offerors' procurement and property systems; 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 (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 [e.g., project approvals, coordinations]) have been met and the Federal Information Resources Management Regulations requirements placed on DC staff have been obtained.
- (9) Prepares and provides the Office of the General Counsel (OGC) with documentation in support of the agency's position when a protest is lodged against an agency action (e.g., specification, solicitation, or evaluation protest issue).

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 3

- (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 and bilateral modifications 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 [Exhibit 8 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.
- (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) Monitors the submission of annual cost audits by contractors having cost reimbursement contracts in excess of \$500,000, and monitors the contractors' responsibility to have annual indirect rate audits performed on cost reimbursement contracts.
- (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 claims, overtime, travel, and equipment.
- (11) Coordinates the procedures for control of Government property provided to contractors with appropriate members of the Property Management Branch, Division of Facilities and Property Management (DFPM), 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, correspondence, contact with the PO, conferences, visits to the contractor's site, and so forth and ensures that through its administration the contract does not become a de facto personal services contract.
- (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, and advises him or her of situations that indicate fraud.
- (17) 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 formally requests the closeout and performance documentation required by Section 3.1.3 of this part.

3.4 Procurement Specialist

A procurement specialist* is an administrative staff member within DC or a regional office who performs all required actions to obtain a wide variety of supplies, service, materials, and equipment through the use of simplified acquisitions not exceeding \$100,000 and interagency agreements. This person—

- (1) Prepares award and modification documents for the signature of the CO.
- (2) Modifies simplified acquisitions and assists the PO, when notified, with performance issues and prepares necessary procurement actions to ensure that acquisitions support the agency needs.
- (3) Coordinates the procedures for control of Government property with appropriate members of the Property Management Branch, DFPM, recommending action to be

*Regional officials who serve as procurement specialists act within their contracting officer authority as delegated by the Director, DC.

taken in case of loss, damage, or destruction of Government property, as well as delay in delivery or completion of performance.

- (4) Advises the CO of situations that indicate fraud.
- (5) Processes terminations for convenience or default.
- (6) Performs all required actions to administratively close out purchase orders and other awards and orders.

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. The DO appoints representatives to serve on a SEP and monitors its progress in developing the solicitation package. The DO approves the solicitation package jointly with the CO. The DO 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 Procurement Integrity

All procurement officials are responsible for ensuring that the procurement process is carried out with integrity and in an ethical manner.

A “procurement official” is any agency employee personally and substantially involved in preparing or approving an APP or SOW or participating in the source evaluation process. These persons include the DO, members or advisors of a SEP, the PO, CS, and CO.

The term “procurement official” also applies to—

- any attorney in OGC who reviews or provides advice concerning a contract
- any employee who prepares or reviews specifications, SOWs, or other documents related to specific contracts
- any employee who has approval authority for those documents or a procurement action
- contractors who perform any of these duties

Additional guidance on this subject is provided by training conducted by OGC.

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) 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, Office of Administration (ADM), and updated 6 months after each annual submission. The APP identifies—

- all projects that must be accomplished through the contract mechanism
- all task orders and planned modifications to contracts
- all Department of Energy projects

Before developing an APP, the office should consider if there is a valid need for contracting as discussed in Section 4.2 below.

4.2 Ensure a Valid Need for Contracting

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 advance procurement plans among the technical staff and with the procurement staff can often avoid duplicate efforts.

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 as

“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 NRC Form 400, (Exhibit 2 of this handbook). 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 9 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.

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 (SOW) so that the contractor does not perform, even inadvertently, inherently governmental functions. (See Exhibit 9 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,” August 16, 1983 (amended February 28, 1991), and FAR 73, its supplemental handbook (revised March 1996), 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 that a cost analysis and review be done on activities proposed to be contracted (see Exhibit 10 of this handbook for generic and streamlined sample worksheets), unless such activities are exempt from the purview of the circular. 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.

Commercial activities involving 10 or fewer full time employees (FTEs) may be contracted without conducting cost comparisons if fair and reasonable prices can be obtained from

qualified commercial sources. In keeping with the policy of obtaining products and services at the best value to the Government and ensuring equitable treatment of all parties, the NRC policy is to perform some level of cost analysis for each potential conversion.

The Director, DC, is the official responsible for implementation of OMB Circular A-76 and its handbook. Most participants in the A-76 process are considered procurement officials under the Procurement Integrity Act. The Office of Personnel will verify personnel information provided for Circular A-76 studies.

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. The requesting office completes the in-house cost analysis, through a cost comparison study team approved by the Competition Advocate (Director, DC). The study team must include a representative from the Office of the Controller. Certification of the cost analysis and review by an A-76 independent review officer designated by the Director, ADM, is required. After the A-76 review is completed, the DC will ensure that all affected parties receive notice of the results of the cost study. Appeals may be made to the Director, ADM, or his or her designee.

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.

Other factors to be considered are—

- estimated length of time the equipment is to be used
- financial and operating advantages of alternative types and makes of equipment
- cumulative rental payments for the estimated period of use
- net purchase price
- transportation and installation costs
- maintenance and other service costs
- potential obsolescence of the equipment
- purchase options, trade-in value, present value discount factor

Acquisitions of reproduction equipment (copiers) are subject to the provisions of the Federal Property Management Regulation in addition to provisions of the FAR. Guidance for

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 4

purchase or lease determinations for acquisitions of telephone, telegraph, or facsimile equipment are provided in the Federal Information Resources Management Regulations (FIRMR) (41 CFR 201-24). These regulations provide specific guidance on lease-versus-purchase determinations applicable to specific types of equipment and apply to both the initial acquisition of equipment and the renewal or extension of existing equipment leases.

The CO will perform the lease-versus-purchase analysis in accordance with the FIRMR. The results of the analysis will provide a basis for determining the appropriate method of acquisition. A description of three methods follows:

- (1) The purchase method will be used when the equipment under consideration can be used beyond the point at which it begins to provide a cost advantage. After installation and acceptance of equipment, title passes from the seller to the Government.
- (2) Lease with option to purchase (LWOP) is used when it is necessary or advantageous to acquire equipment that meets program or system requirements and it is determined that purchase should be deferred because circumstances do not fully satisfy the requirements of the purchase method. An option to purchase may be exercised at predetermined intervals, and the purchase price is reduced by subtracting lease credits.
- (3) The straight lease method is normally used for short-term requirements when it is necessary or advantageous to acquire equipment that meets all program or system requirements, but the conditions for purchase cannot be satisfied and an LWOP is not attainable. The contractor retains title to the equipment throughout the system's life.

When purchase is the lowest overall cost alternative but funds for Federal information processing (FIP) resources are not available, the CO, with the concurrence of the requesting office, shall contact the General Services Administration to determine if the information technology fund may be used for the acquisition. In those cases in which purchase funds are not available, either within the agency or from the information technology fund, the method of acquisition that is most advantageous to the Government and for which funds are available will be selected. The CO reviews each lease-versus-purchase analysis before the purchase order is issued. Copies of the analysis and any other pertinent data used to support decisions to lease or purchase equipment must be retained in the purchase order file.

4.2.6 Acquisition of Commercial Items

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

In October 1995, new rules were published in the FAR that encourage the acquisition of commercial items and components. Under these new rules, before issuance of a solicitation,

market research must be conducted 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. This does 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 should contact DC as soon as possible if a planned procurement might result in the acquisition of a commercial item or service. 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, on-line 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 on-line
- 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 using the policies and procedures in FAR 12.

4.3 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, full and open competition socioeconomic considerations, 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, Exhibit 3)
- (5) availability of adequate funds
- (6) procurement approvals and clearances, discussed in Part 5 of this handbook
- (7) security requirements (discussed in Section 5.5 of this handbook)
- (8) discussion of potential conflict-of-interest concerns

4.4 Development of APP

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, B, and C) and the Office of Nuclear Regulatory Research developed the second format, the research information management system model. The completed APP will identify the project, estimate cost, identify proposed procurement methods, name the PO, and estimate the dates for submission of requests for procurement action to DC and requested dates for implementation of action.

The dates for submissions of requests for procurement action to DC must take into consideration the possible procurement administrative lead time (PALT). The average processing times for different types of procurements are shown below:

Estimated Dollar Value	PALT
\$25,000 or less	1 month
Over \$25,000 through \$100,000	2 months
Over \$100,000	
– Competitive	6 months
– Noncompetitive 8(a) set-aside	4 months
– Other noncompetitive	3 months
– Interagency agreements	1.5 months

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 and is controlled by a variety of factors, including—

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

DC will send a copy of the APP to the Office of Small Business and Civil Rights (SBCR). 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 MD 11.4.

Part 5 Considerations and Approvals Before Submitting a Request for Procurement Action

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 request for procurement action (RFPA, NRC Form 400, see Exhibit 2). The RFPA is forwarded to DC, at or before the time set forth in the APP. If not done during the development of 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
- contract type
- acquisition strategy (e.g., determining procurement method, such as full and open competition, sole source, 8(a) set-aside, small business set-aside, interagency agreement)
- proposal information and evaluation criteria
- suggestions to streamline the procurement
- procurement milestone schedule, including a schedule for interviewing 8(a) firms, if appropriate
- documentation and approvals that are required with the RFPA
- conflict-of-interest concerns

These subjects are further explained throughout this handbook.

Before initiating the RFPA, the requesting office and DC 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 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 9.5.5 of this handbook). The Government benefits from competitive prices and from bidders, offerors, and current contractors who exert their best effort to deliver high quality products and services. Although 8(a) set-aside contracts and small business set-aside contracts (see Sections 5.2.2 and 5.2.3 of this part) are encouraged by the FAR, when other noncompetitive acquisitions are determined justifiable, all possible actions must be taken to avoid the need for subsequent or continuing noncompetitive acquisitions.

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 Head of Agency (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 it is justified in writing by a justification for other than full and open competition (JOFOC). The designating official (DO) must provide the necessary data to support the CO's determination and certify it as accurate and complete on the JOFOC. (See Exhibit 8 for various examples of a JOFOC.)

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 before proceeding with a procurement that is greater than \$100,000.

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

Approval by the Competition Advocate also is required for exceptions to the requirement to place a notice in the *Commerce Business Daily* (CBD), made on the basis of unusual and compelling urgency.

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 5

The justification for other than full and open competition, including those for simplified acquisition procedures, must be approved as follows:

Value Certified	Agency Approving Authority
\$2500 to \$100,000	Designating official Contracting officer
Over \$100,000 to \$1 million	Designating official Contracting officer Competition Advocate (Director, DC)
Over \$1 million to \$10 million	Designating official Contracting officer Head of Contracting Activity (Director, DC)
Over \$10 million	Designating official Contracting officer Head of Contracting Activity (Director, DC) Procurement Executive (Director, ADM)

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, see Exhibit 2 of this handbook). 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 an other than full and open procurement is justified, a JOFOC should be prepared in draft and submitted with the RFPA. When the CO receives a JOFOC, the CO will make one of the following decisions:

(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 limited-source basis in the CBD (also see Section 9.2.1 of this handbook). FAR 5.203 requires that a notice of the contract action be published in the CBD at least 15 days before issuance of a solicitation and that 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 the CBD.

The CBD notice of intent to negotiate with one source must—

- 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 CBD 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 is further discussed in Section 9.2.1 of this handbook.

(3) Response to CBD Notice Results in Competitive Action

In the event responses to the CBD 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. The CO shall proceed in accordance with FAR 5.203 for publicizing and response times (see also Section 6.5.2 of this handbook).

(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 the CBD describing the procurement and can waive approval of the JOFOC until after award (see Section 5.2.1.2 of this part).

5.2.1.4 Federal Information Processing (FIP) Resources for Specific-Make and -Model Acquisitions

Contracting for a FIP specific-make and -model specification occurs when a description of the agency's requirement for FIP resources is so restrictive that only a particular

manufacturer's product will satisfy the Government's needs, thus limiting the number of suppliers that can compete. Once the FIP acquisition approvals are obtained (see Management Directive (MD) 2.4) and a JOFOC is approved, this procurement will be handled in the same manner as other noncompetitive negotiated acquisitions (see Section 9.2 of this handbook).

5.2.2 Sole-Source Acquisitions Not Requiring A JOFOC (8(a) Set-Aside)

Section 8(a) of the Small Business Act established the 8(a) program, authorizing the Small Business Administration (SBA) to enter directly into contracts (as the prime contractor) with Federal agencies procuring goods and services. SBA then subcontracts the actual performance of the work to firms eligible for program participation. These subcontractors, whose firms must be small disadvantaged business concerns, are referred to as "8(a) contractors" (see FAR 19.000 and 19.801).

Serving as the prime contractor, SBA has an active role in the procurement process. It ensures 8(a) certification of the subcontractor, authorizes direct technical and cost negotiations, and conducts a management, legal, and contracting review of the procurement documentation before executing the prime contract with the procuring agency.

The requesting office must have a valid requirement expressed as a statement of work.

5.2.2.1 An 8(a) Designation on the APP and RFPA

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

When preparing the RFPA, 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.

5.2.3 Limited Competitions Not Requiring A JOFOC (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. The CO decides whether an acquisition should be set aside with input from the Office of Small Business and Civil Rights.

5.3 Contracts Between NRC and Former NRC Employees

NRC Acquisition Regulation 2.009.101 states that contracts normally will not be placed on a noncompetitive basis with an individual who was employed by the NRC within 2 years of the date of the request for procurement action. This policy also pertains to any firm in which a

former NRC employee is a partner, principal officer, majority stockholder, or which is otherwise controlled or predominantly staffed by former NRC employees for granting consent for subcontracts. This restriction also applies to a former NRC employee acting as a principal under a task-order-type contract or as a principal under a noncompetitively awarded 8(a) set-aside contract, or when reviewing subcontracts for the purpose of granting consent under an NRC prime contract.

An exception to this policy will be made if the agency Procurement Executive (Director, ADM) decides it is in the best interest of the Government to contract with a former NRC employee.

The term "NRC employee" includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, as well as visiting professors on a sabbatical from their universities, if any of the following apply:

- (1) The contract arises directly out of an individual's activity as a special employee.
- (2) The individual is in a position to influence the award of the contract.
- (3) The CO determines that another conflict of interest exists.

A justification, jointly prepared by the requesting office and the CS, explaining why it is in the Government's best interest to contract with such an individual or firm on a noncompetitive basis may be approved by the Procurement Executive after consulting with the EDO or his designee. This approval is in addition to any justification and approvals that may be required by the FAR for use of other than full and open competition. This policy statement does not relieve 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:

- (1) 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.
- (2) A former employee is foreclosed for 2 years from representing a party when the particular matter in question had been merely pending under his official responsibility.
- (3) A former senior-level employee is foreclosed for 1 year from representing any party before the department or agency in which he served regardless of his prior involvement in the matter.

5.4 Contracts That Will Exceed 5 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 telecommunications contracts may exceed 5 years. If a term of contract is required in excess of the provisions in FAR 17.204(e), a written justification must be approved by the Competition Advocate (Director, DC). Interagency agreements are not subject to the 5-year performance limitation.

5.5 Security Requirements

5.5.1 Types of Clearances

When preparing to submit the request for procurement action, the project officer (PO) needs to consider whether performance of the contract may require contractor employees to undergo personnel security screening for unescorted access to NRC site or buildings; access to sensitive automatic data processing (ADP) 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 Security (SEC), ADM, regarding the review of the security considerations for contractor personnel or facility clearances and from the Office of Information Resources Management (IRM) for determining the sensitivity of ADP systems and information.

If any type of clearance is needed for a procurement action, the requesting office will forward the original of NRC Form 187, Security/Classification Requirements (see MD 12.1), 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 ADP information, or power reactor access safeguards information. DC forwards the NRC Form 187 and a detailed statement of work (SOW) to the Director, SEC, 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, DC, approves an exception to this policy. SEC approval of NRC Form 187 does not constitute any security approval to begin work; it does, however, indicate the following:

- SEC anticipates no fundamental security or classification problems in the recommended procurement action, based on the information provided on NRC Form 187.
- SEC agrees with the basic classification levels and guidance provided by the authorized classifier of the requesting office.

- SEC has included the current estimated timeframes necessary for personnel security processing, along with approval of NRC Form 187. Timeframes begin when the Personnel Security Branch, SEC, receives a complete and acceptable security packet from the contractor.

5.5.1.1 Site Access Facility Clearance

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 otherwise requires an NRC photo identification badge or keycard or if the contractor requires unescorted access to a nuclear power facility in performance of the contract. Facility security approval is required if the contractor needs to store classified information at a facility. 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.

Within 10 working days after award of a contract, the firm so notified must furnish properly completed security applications for employees. Timely receipt of properly completed security applications is a contract requirement.

5.5.1.2 Automated Data Processing Access Clearance

SEC 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 ADP systems and data. The clearance is based on the same type of background investigation used for NRC employees with comparable access.

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

5.5.1.3 Classified Information Clearance

When a requirement 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 SEC, must establish the following:

- (1) the level and type of classified information the contractor requires
- (2) whether reports, including interim and final documents, will be classified
- (3) the restrictions that must be placed on the proposed dissemination of information developed under the contract
- (4) whether the proposed contract should contain special classification or security clauses

- (5) 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 12.2. The PO will forward the forms to SEC.

SEC notifies the contractor and the requesting office by letter of security facility approval and personnel access authorizations. A copy of the security approval letter is sent to DC.

5.5.2 Other Action

DC provides SEC with a copy of the final contract and all modifications involving classified information or security matters. When all work and services have been completed, DC advises SEC so that it may terminate facility and personnel access authorizations, as appropriate. If cleared contractor personnel are departing mid-contract, the PO will notify SEC so that access authorizations may be terminated.

Clearance of subcontractors requires completion of all the above-noted procedures, including initiation of a new NRC Form 187, a SOW, and copies of the proposed subcontracts.

All security matters regarding contracts are handled in accordance with MDs 12.1 and 12.3. All contractually related security questions must be coordinated with both SEC and DC.

5.6 Chairman Approval

Chairman approval is required for all commercial contracts of \$3 million or more (including base year and option years) and any procurement action that exceeds \$750,000 and involves a topic not covered by the NRC Five-Year Plan. The requesting office and DC jointly submit a Chairman paper through the EDO to request the Chairman's approval. A sample of the format for a Chairman paper may be found in Exhibit 11.

5.7 Intraoffice and Interoffice Concurrences

There are intraoffice and interoffice concurrences that are required apart from but prior to 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.

5.7.1 Federal Information Processing Resource Acquisitions

FIP 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. These resources include equipment, maintenance, software, services, support services, systems, and related supplies. FIP resources are classified as a special category

acquisition and subject to the requirements of both the Federal Information Resources Management Regulation and the FAR. Certain preacquisition approvals need to be obtained in accordance with MD 2.4 before procuring FIP resources. These requirements are applicable to all FIP acquisitions, including those awarded to obtain FIP resources from sources external to the agency through commercial contracts and interagency agreements, as well as through in-house sources or development. See Section 5.2.1.4 of this part for a discussion of unique approvals needed for procuring FIP resources for specific-make and -model acquisitions.

If a FIP resource purchase qualifies as needing a requirements analysis or analysis of alternatives in accordance with MD 2.4, it is the responsibility of the requesting office to develop these documents in conjunction with IRM. These documents remain in the technical file.

FIP resources also may be referred to as automatic data processing resources and information technology.

5.7.2 Coordination With Division of Facilities and Property Management

If NRC facilities will be used or if property will be procured or furnished under the proposed procurement, the requesting office should coordinate the effort with the Division of Facilities and Property Management, 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.

5.7.3 Justification for Use of Task Order Contracts

If a task order contract is requested on the RFPA, the designating official's (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. 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 investigation 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 this task is consistent with the justification. (As indicated in the instructions for NRC Form 400 (Exhibit 2), justifications must be retained in the requiring office files.)

5.8 Considerations of Year-End Procurement Actions

The following considerations should be taken before obligation of funds toward the close 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.

5.9 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. 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 a SEP for all competitive procurements over the simplified acquisition threshold. The DO initiating the procurement designates SEP members by memorandum. The names of the designees are included in the RFPA package. 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.

5.9.1 Membership of a SEP

A 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 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 total 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 conflicts of interest with their SEP duties, a SEP certification statement (Exhibit 12) 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 Controller, an expert from another Federal agency, or another source, to

assist the SEP as necessary. 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. A SEP certification statement (Exhibit 12 of this handbook) is included with the SEP memorandum of designation for this purpose.

5.9.2 Conduct of 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.

5.9.3 Responsibilities of SEP

The CS prepares the request for proposals (RFP) 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 it should be attached to their memorandum of designation. Duties of SEP members include—

- participating in the development of evaluation criteria
- finalizing SOW at initial meeting
- suggesting a list of firms (a source list) to be invited to submit proposals
- developing 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 13 and 5 of this handbook, respectively).
- assisting the CS in the negotiation of the contract, as necessary
- assisting the CO in any debriefing of the unsuccessful offerors
- assisting with response to protest(s)

5.9.4 Responsibilities of the SEP Chairperson

The SEP chairperson—

- ensures that all SEP members review procedures 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)

5.9.5 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 (Exhibit 12 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

5.9.6 Access to Information/Release of Information

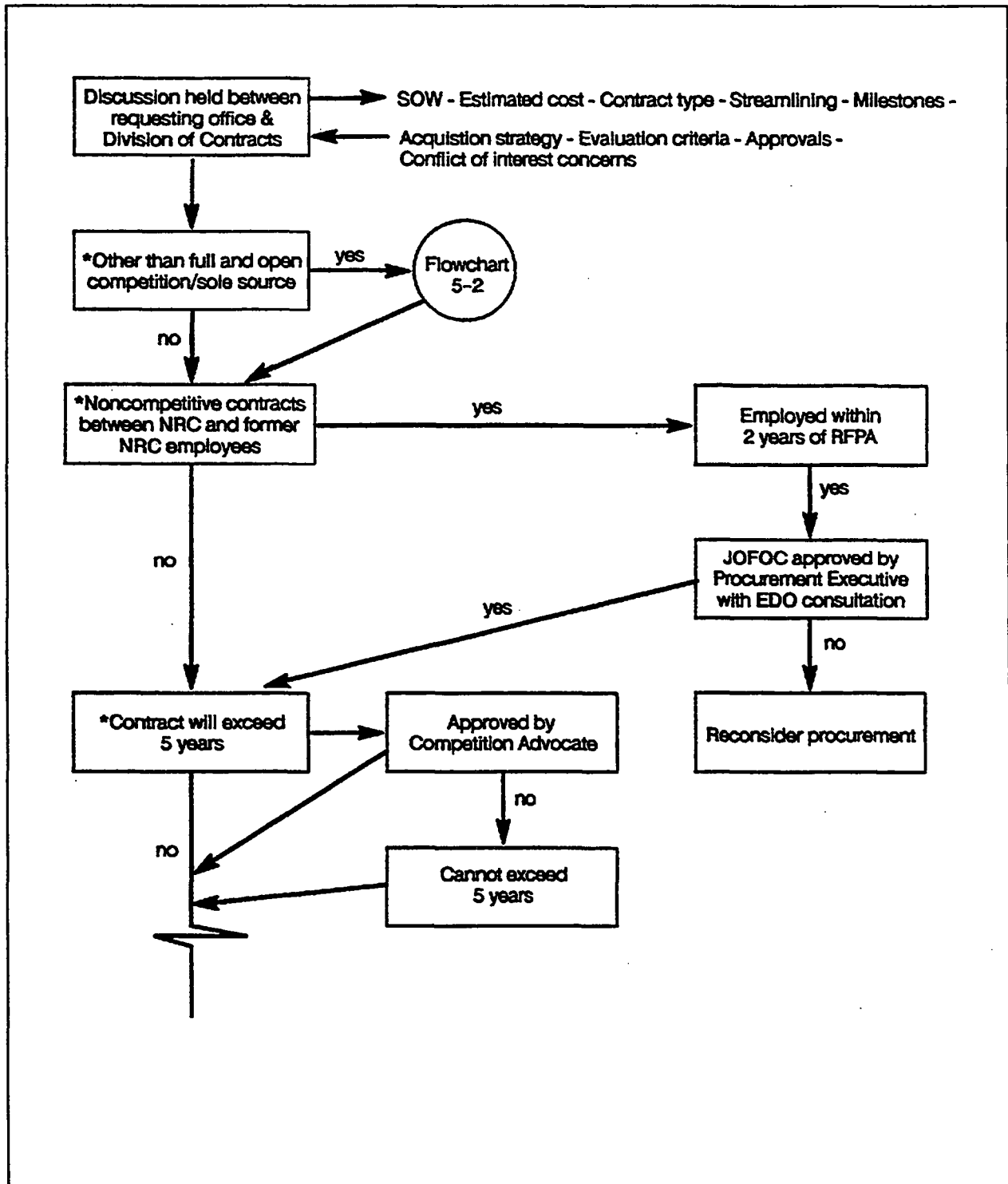
NRC managers responsible for programs or projects to be awarded through the competitive procurement process may request and have access to information concerning proposed changes to the SOW, proposed schedule changes, and the probable cost affect of these changes to the SOW and/or schedule. However, access to such acquisition information makes the manager a procurement official and subject to completion of Optional Form 333, "Procurement Integrity Certification" (see Exhibit 7 of this handbook).

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) CBD notices (FAR 5.201)
- (4) in "The Forecast of Contract Opportunities" issued by the NRC Office of Small Business and Civil Rights

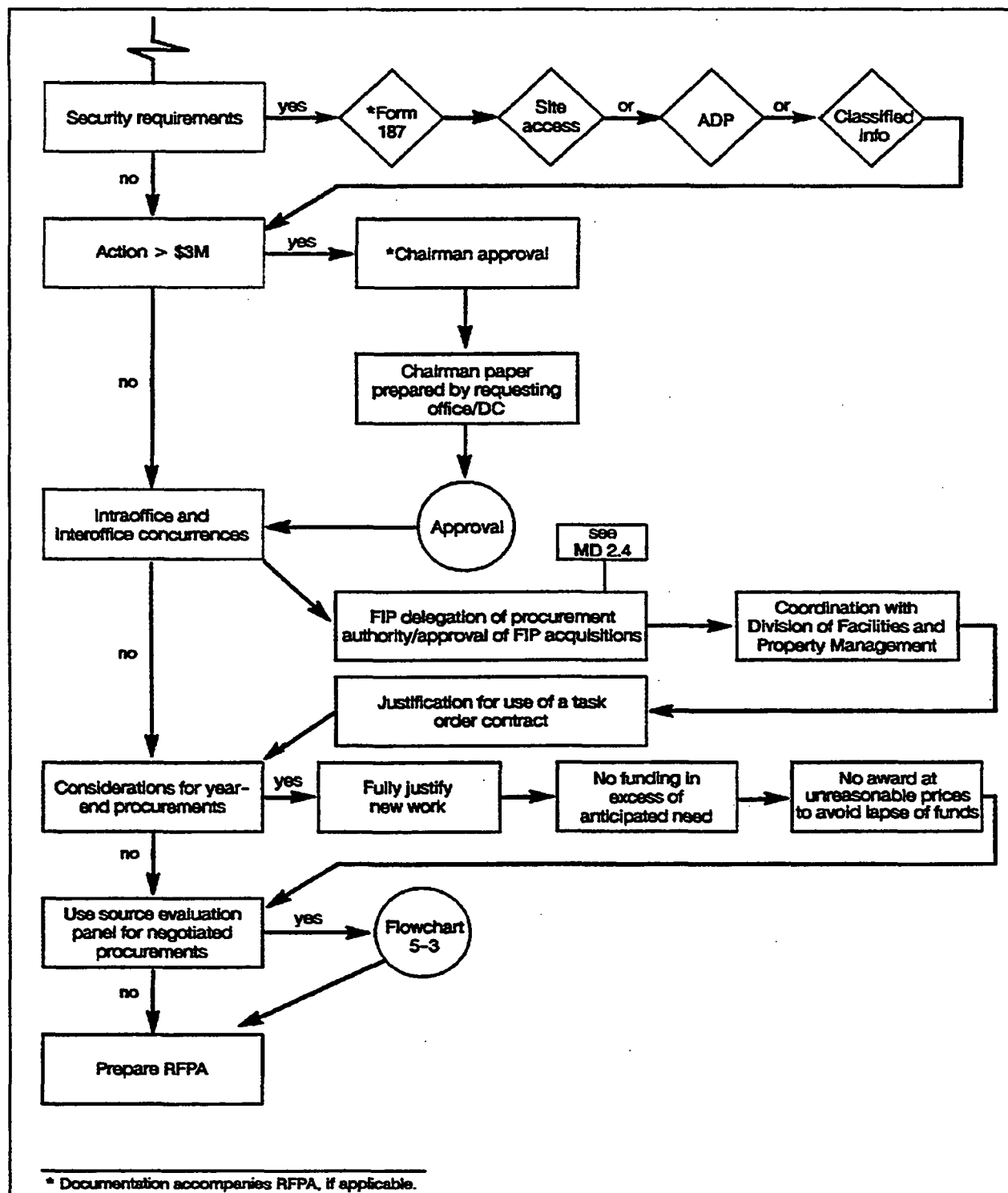
Any discussion of the procurement is not allowed outside of SEP and other procurement officials associated with the acquisition. A supplemental summary of procurement integrity certification requirements (see Exhibit 14 of this handbook) describes conditions related to the certification of Optional Form 333. The SEP certification statement explains requirements and restrictions dealing with proprietary and source selection information (see Exhibit 12 of this handbook).

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

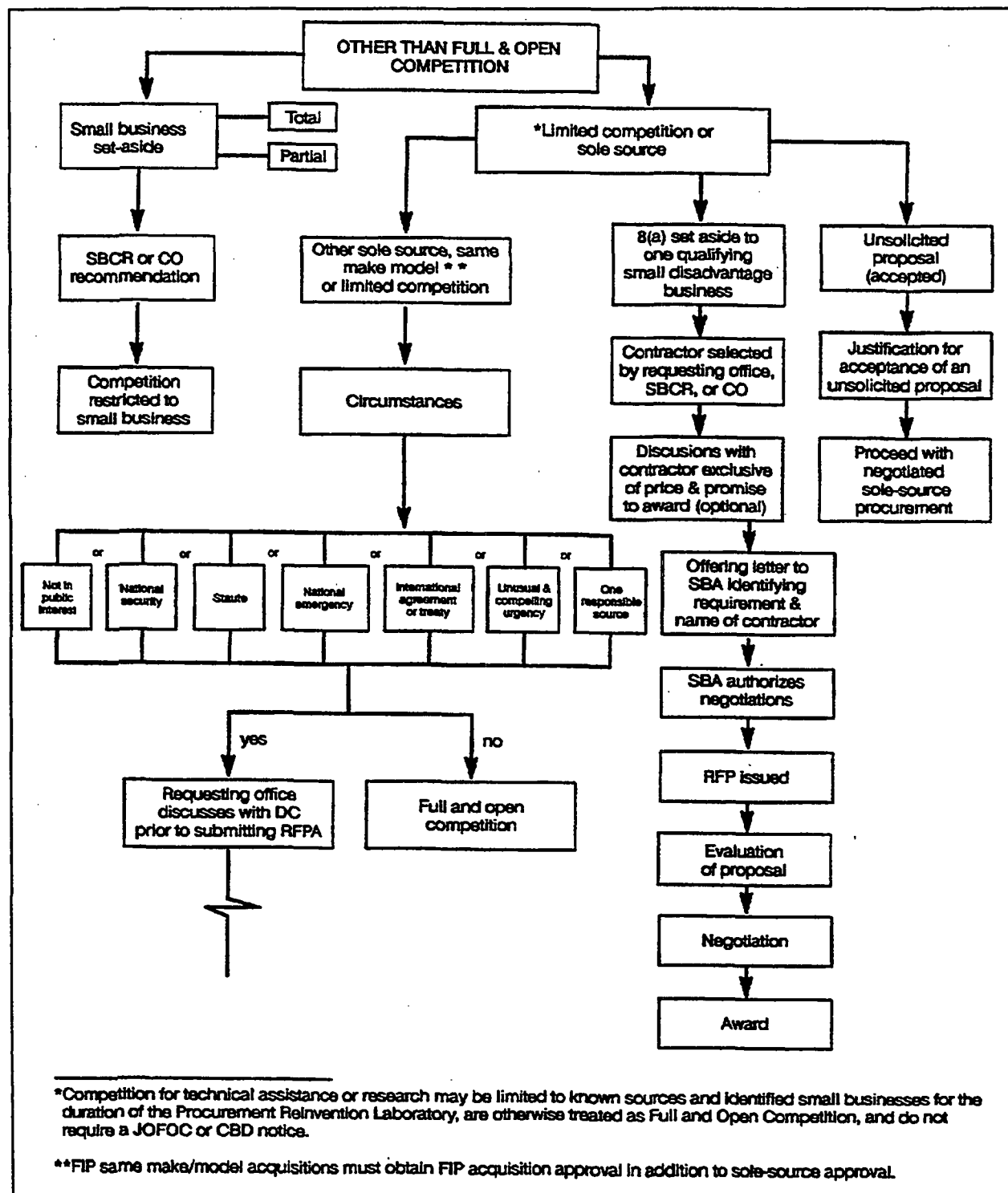


Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 5

Flowchart 5-1: (Continued)

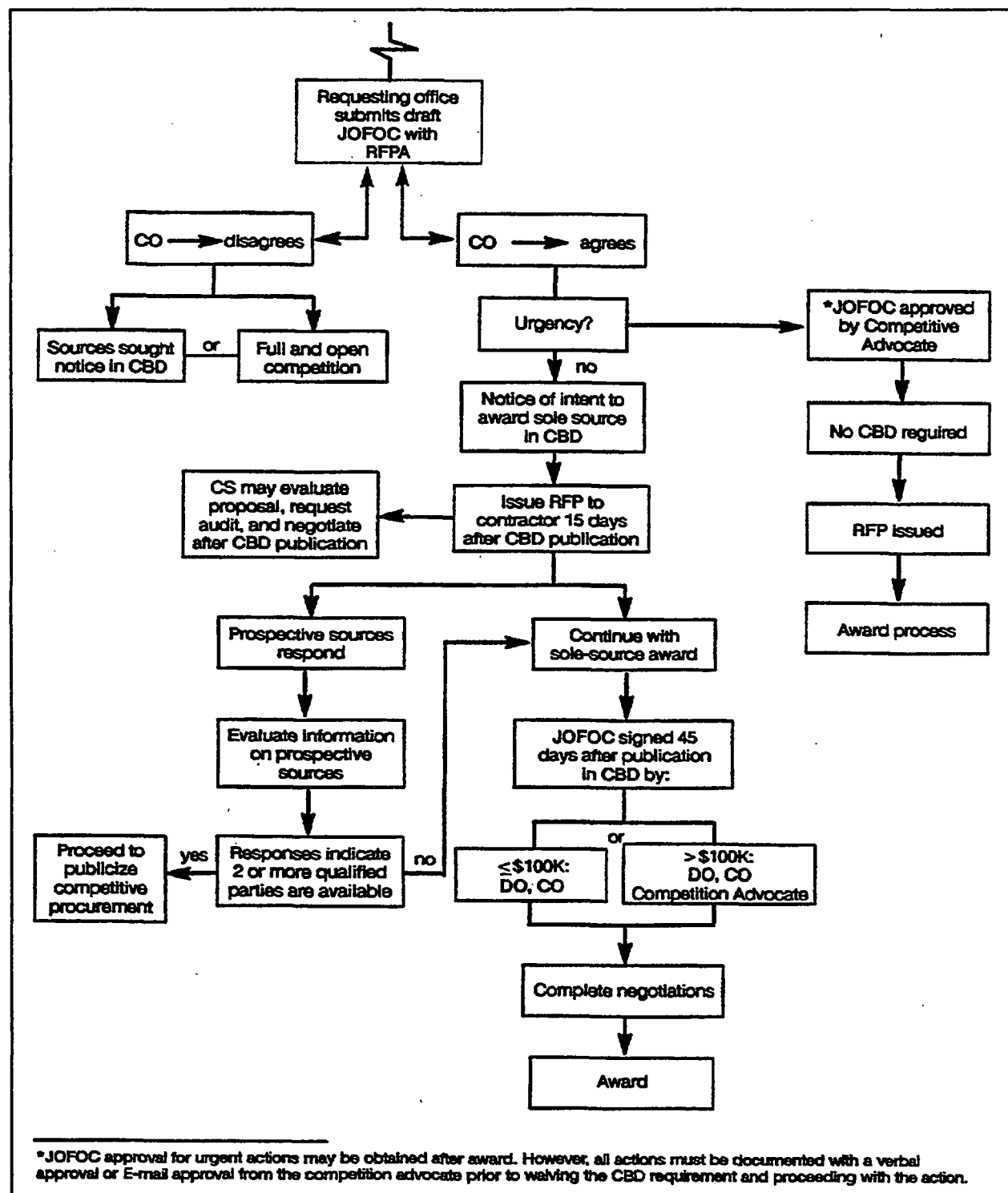


Flowchart 5-2: Procurements Using Other Than Full and Open Competition

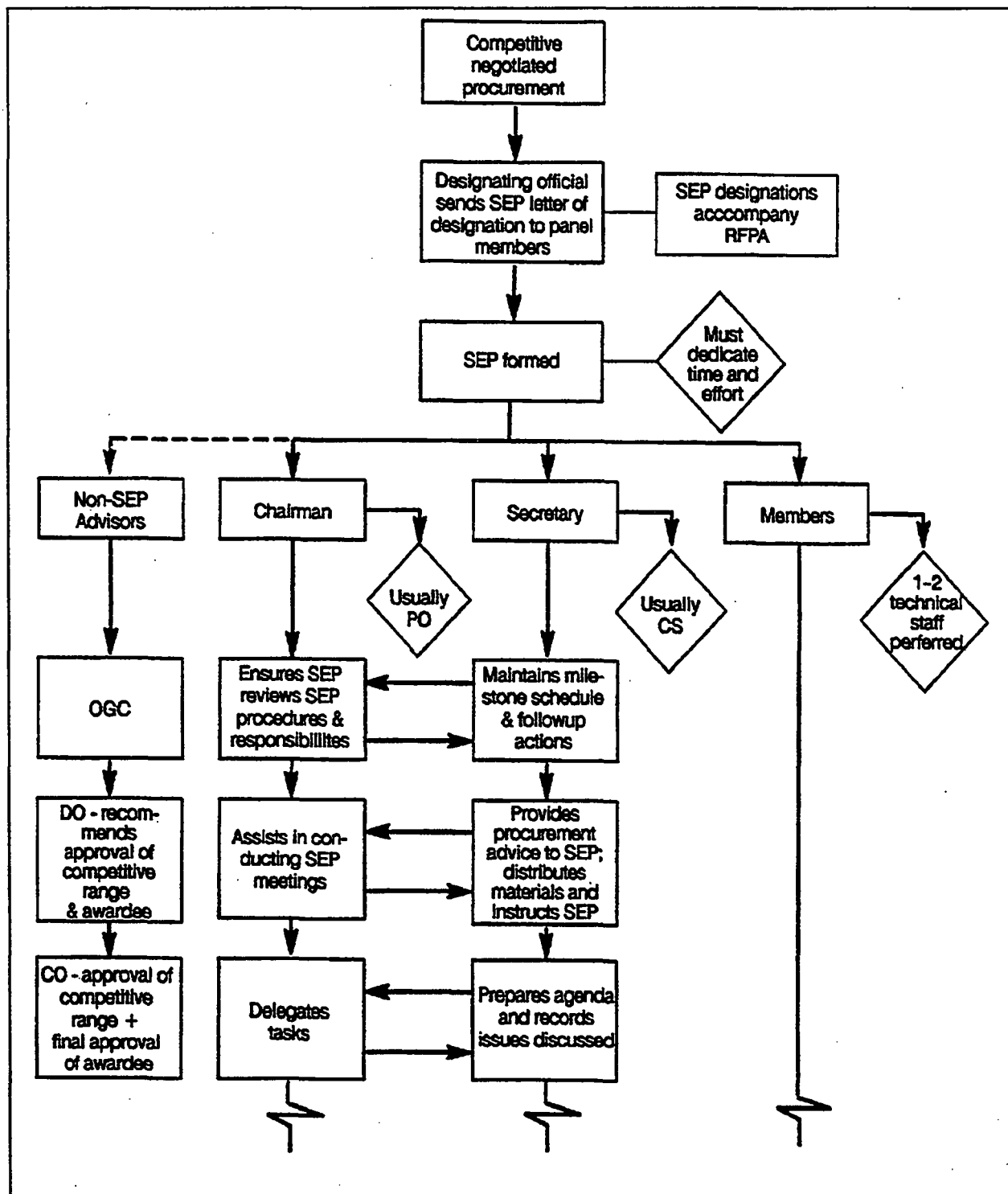


Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 5

Flowchart 5-2: (Continued)

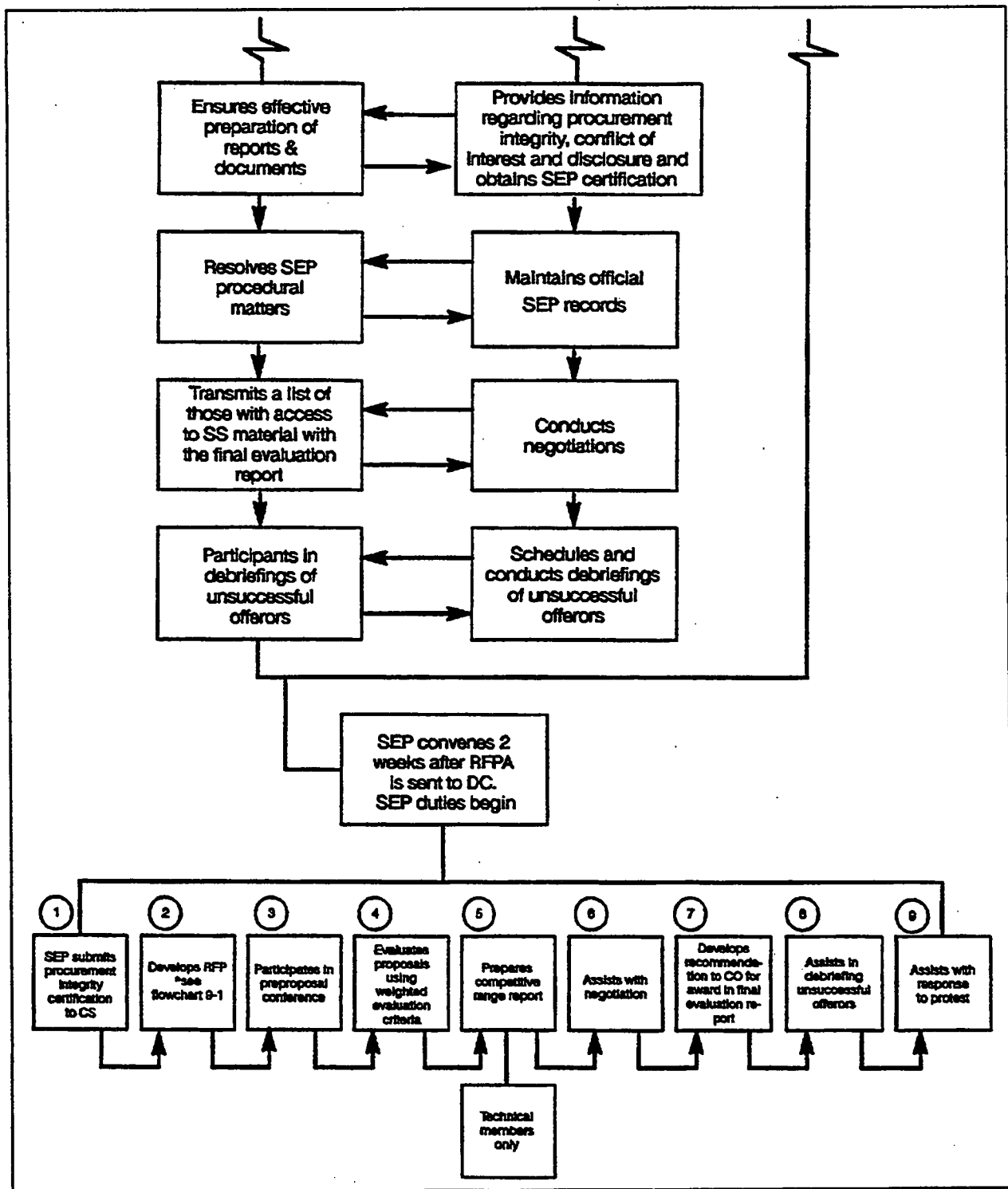


Flowchart 5-3: Use of Source Evaluation Panel (SEP) for Competitive Negotiated Procurements



Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 5

Flowchart 5-3: (Continued)



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

The requesting office prepares the RFPA 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 should be attached, if appropriate (see Sections 5.2.1.3, 5.3, and 5.4 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.

6.1 Statement of Work (SOW)

The SOW is the portion of the RFPA that describes the overall technical requirement 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 developed, NRC's criteria for determining that its requirements have been met, and the technical and management data to be delivered under the contract. The SOW may contain discussions of technical problems, technical guidelines, and suggested approaches and methodologies to problem solutions. 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, 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, suggested approaches, possible methodologies for problem solution, 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 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 this type of contract).

6.1.1.4 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, 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 3.8. The contractor also should 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 language such 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.

6.1.1.5 Acceptance Criteria

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

To verify compliance with the requirements for a FIP (Federal information processing) end product, Federal Information Resources Management Regulation (FIRMR) 201-20.304 recommends that Government agencies use capability validation and/or performance validation techniques when contracting for equipment systems, components, or software. FIRMR Bulletin C-4 and the General Services Administration issuance, "Guidance to Federal Agencies on the Preparation of Specification, Selection, and Procurement of FIP Equipment Systems," contain direction for selecting appropriate capability or performance validation techniques.

6.1.1.6 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.

6.1.1.7 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.

6.1.1.8 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 a 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 Federal Acquisition Regulation (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.

- **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.

- **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.
- **Performance 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.

Performance and functional specifications are generally preferred over 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.

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 catch-all for special terms and conditions under the contract. These requirements should be listed separately in the RFPA package.

The word "shall" is binding as opposed to "should" and "may." Use "shall" in the SOW to require the contractor to do something. 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 wording such 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.

6.2 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 (Exhibit 3) 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 contract specialist (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 (Exhibit 1).

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 offices 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 (see Exhibit 2), must contain assurance that the requesting office will make available funds adequate to cover the project's estimated cost. This 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 where funding is to be provided from a subsequent year's appropriation. Offices shall provide DC with the required funds certification following allotment 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 SEP is encouraged to attach a recommended list of sources (company name, address, and telephone number) to the RFPA for solicitation.

Recommendations should be 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 contract officer (CO) may add to the list of recommended sources on the RFPA.

6.5.2 Advertising in the *Commerce Business Daily* (CBD)

Advertising contracting opportunities provides industry with information concerning current Government contracting and subcontracting needs. The CBD is an effective method for adding to the competitive base in Federal procurement because it is a well-known, comprehensive, and timely publication of procurement information. Generally, an agency announces its requirement in the CBD as a notice that identifies the requirement and an anticipated issue date for the solicitation.

Unless the procurement is excepted, such as certain research and technical assistance requirements and certain FIP resources, as stated in FIRM 201-39 and 501-2, any proposed competitive procurement is required to be advertised in the CBD—and, when appropriate, in trade journals—if the open market procurement is greater than \$25,000 or if the Governmentwide Federal acquisition computer network (FACNET) is not used (see Section 6.5.4 of this part). Under the NRC Procurement Reinvention Laboratory, small businesses may be solicited for research or technical assistance without issuance of a CBD notice.

The CO does not need to announce requirements exceeding \$25,000 up to \$100,000 in the CBD if FACNET is used to accomplish the procurement. Otherwise, synopsis of the requirement is required.

The CS prepares the CBD notice with assistance from the requesting office. The CBD notice shall clearly describe the requirement and all important details, such as locations, options, timeframes, and desired areas of expertise. It should state the issue date for the solicitation RFP or invitation for bid (IFB) as a specific calendar date.

Information regarding preparation and transmittal of a CBD 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. Exceptions are permitted when the requirement is nonrecurring or may be made in the local trade area through small purchase procedures.

The NRC BML contains the names of all eligible qualified suppliers who have submitted a BML application (Standard Form 129, Exhibit 15) to NRC. This list is organized by classification and subclassification of supplies and services. It is particularly useful for obtaining a list of qualified small businesses for a set-aside. DC maintains and uses the BML to identify potential sources. If the requesting office has received no sources and if there is not sufficient response from the CBD, the CS may request a print out of sources from the BML.

6.5.4 Electronic Commerce/FACNET

In accordance with the Federal Acquisition Streamlining Act, Section 9001, FACNET has been established and certified. The FACNET allows agencies to electronically provide widespread public notice of their solicitations. Private sector users can access these notices, review the solicitations themselves, and in some cases, respond electronically. See FAR 4.5, 5.2, 13.1 and Part 10 of this handbook for additional information regarding FACNET.

6.5.5 Exploring for New Sources

If the CO or the requesting office wishes to learn whether other sources are available for a requirement, the requesting office and the CS jointly prepare a sources-sought notice, which is placed in the CBD. 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 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 (see Section 6.6 of this part).

The CO shall synopsise 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).

6.5.6 Public Document Room (PDR)

Staff may refer interested parties to the NRC PDR to view solicitations and other applicable documents.

6.6 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 these contractors. 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 use management control procedures that are in place to eliminate the potential for abuse. (See Exhibit 16 for the series of questions to assist in analyzing and reviewing requirements for service contracts.)

As of October 1995, the FAR provides new guidance on procuring advisory and assistance services. Before issuing a contract for advisory and assistance services, the CO must ensure that the Head of the Agency, or designee, makes a determination that sufficient personnel with the requisite training and capabilities are available within the agency to evaluate or analyze proposals. FAR 37.203 defines advisory and assistance services as those acquired to support or improve agency decision-making and policy development or to support more efficient and effective operations. As a general matter, advisory and assistance services do not include the routine use of engineering, scientific, legal, accounting, and other professional services to support NRC's existing administrative and regulatory functions, as opposed to reviewing or improving those functions. Program personnel should seek guidance whenever there is doubt about the application of the FAR criteria defining advisory and assistance services.

6.7 Proposal Evaluation Criteria/Lowest Price vs. Best Value

An important factor in the development of the request for procurement (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 source evaluation panel (SEP) must determine whether award will be determined on the basis of the lowest price among all technically acceptable proposals or on best value (cost and merit tradeoffs for the best value for the Government). With the technically acceptable lowest-price approach, award is made to the offeror with the lowest price within the technically acceptable proposal. There is no extra consideration given for technical expertise. The best value approach 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. See Section 9.1.9 for more information on best value negotiated procurements.

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 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 (FAR 15.406–5(c)). 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.

6.7.1 Guidelines

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

- (1) Price or cost to the NRC Government 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 6.7.3 of this part.

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

- (1) significantly more important than the cost or price
- (2) approximately equal in importance to cost or price
- (3) significantly less important than cost or price

Numerical weights (see Section 6.7.4 of this part), employed in the evaluation of proposals, are disclosed in NRC solicitations. The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors.

6.7.2 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.

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.

6.7.3 Establishing Weights and Scoring for Technical Criteria

The RFP must clearly state the relative importance of each technical criterion and subcriterion that NRC will use to evaluate offers by assigning a numerical weight to each criterion (FAR 15.406–5(c) and 15.605), when applicable. 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 non-cost 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 merely 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. This 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 may be rated in place of company experience if there is no information available on the company's past performance.

6.7.4 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. 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. For example, the evaluation criteria may state that technical merit is more significant than cost. In hardware and facility procurements, certain features may be mandatory and therefore not weighted.

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.

Cost or business evaluation are conducted separately from technical and project management evaluations.

6.7.5 Oral Presentations

When discussing the use of evaluation criteria, the CS and PO may consider receiving oral presentations as a means of evaluating an offeror. Oral presentations may be appropriate where a technical proposal would primarily restate the SOW. Oral presentations are an expedient method to conduct a procurement when used in place of a written proposal. In most cases, some handouts (usually copies of presentation slides and resumes of limited key personnel) are desirable. However, to maximize the benefits of using oral proposals, written documentation should be limited to the minimum necessary. Past performance references and cost information are submitted separately.

6.8 SEP Nominations/List of Procurement Officials

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

6.9 Transmittal of RFPA Package to DC

The requesting office completes the RFPA, NRC Form 400, and appropriate documents and approvals discussed in this part and transmits it to DC. If possible, the package should include a computer diskette that contains documents useful to the CS (e.g., SOW, evaluation criteria, and justification) and formatted to be compatible with DC's contract writing system. If an incomplete RFPA package is received by DC, the CO will determine if 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.

6.10 DC Receipt and Review of RFPA Package

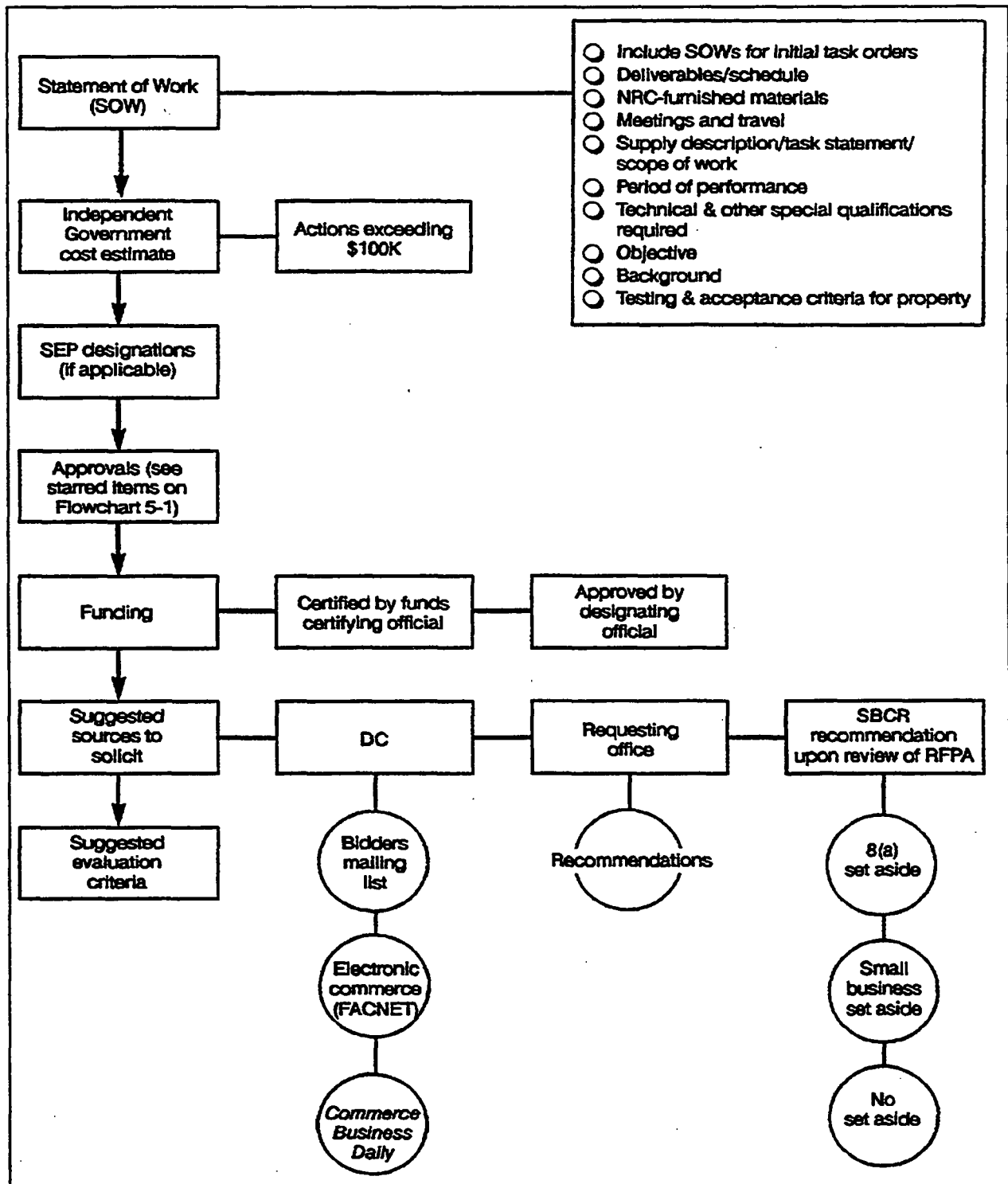
Upon receipt of the RFPA package, DC will transmit a copy of the RFPA and SOW to the Office of Small Business and Civil Rights (SBCR). On the basis of its review, SBCR will make set-aside recommendations and identify qualified potential small business firms.

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 IGCE). The CS resolves any questions or problems with the PO or others responsible for the SOW.

Within 2 weeks after DC's receipt of 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, SOW, evaluation criteria, independent cost estimate, and proposal presentation and format.

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 6

Flowchart 6-1: Preparing Request for Procurement Action (RFP)



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 contract specialist (CS) will determine and finalize—

- the 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, small business)
- 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, statement of work (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.

In general, the solicitation should—

- (1) advise offerors of the time and place of any preproposal conference 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 the *Commerce Business Daily* (CBD) (e.g., research and technical assistance, in accordance with the NRC Procurement Reinvention Laboratory). The closing date will be decided by the staff of the requiring office in consultation with the DC staff.

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 (see Exhibit 6). The schedule lists each step that must be accomplished in order to award a contract. The SEP and 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. In the EDO's memorandum of August 17, 1993, to the office directors and regional administrators, the EDO set forth criteria whereby office directors will be notified of late procurements.

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

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

After the CS has released the CBD 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 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 CBD notice is reviewed by the project officer (PO), CS, and the CO and issued by the CS. The CS finalizes 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 CBD notice is reviewed by the PO, 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, how many copies to submit, and which parts of the solicitation package to submit separately. Other instructions, some of which are streamlining initiatives, to the offeror include—

- (1) limiting the number of pages in proposal to 100 or less, including attachments; prohibiting videos and foldouts, discouraging glossy or elaborate materials
- (2) using the Standard Form 1411, "Contract Pricing Proposal Cover Sheet," or a similar format
- (3) 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
- (4) submitting necessary 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
- (5) providing resumes for all professional personnel, as requested
- (6) setting a deadline for offerers' questions

Other instructions may include a request for graphs, charts, and tables when they will facilitate evaluation of proposals. The instructions inform all prospective contractors that NRC will solicit from available sources data concerning an offeror's past performance and will consider such 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 is issued to potential sources only, including sources identified by the requesting office, from the bidders list, and others requesting the solicitation.

7.5 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, 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.

7.6 Issuance of the Solicitation

After the CO has approved the release of the unclassified solicitation, it should be mailed or delivered to sources obtained from the NRC Bidders' Mailing List (BML), which includes firms requesting copies for solicitation, or from other source lists.

In accordance with DC's public responsiveness policy, the solicitation should be issued within 1 working day of the issue date stated in the CBD notice, if possible. Copies of the solicitation

may be mailed to other Government agencies, if requested, or a brief announcement of proposed purchases may be made in newspapers and trade journals in compliance with FAR 5.101(b). A copy of the solicitation also is sent to the Public Document Room.

7.6.1 Supplementary Distribution

A reasonable number of copies of unclassified solicitations which are synopsisized in the CBD 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, the General Accounting Office, or the General Services Board of Contract Appeals, and after award of the contract, to respond to requests submitted under the Freedom of Information Act.

7.6.2 Cancellation of the Solicitation

The majority of 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 an RFPA for any reason during the procurement process, the DO cited on the RFPA shall submit a written request for cancellation to the Director, DC. The request shall cite the reasons for such action. The CS will prepare a cancellation notice to be published in the CBD.

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 (CO'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, 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.

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 (SOW) 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 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—

- (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

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

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. An 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 (DC), Office of Administration, at least 45 days in advance of the start date. In the event of urgency a justification shall be attached to the RFPA to ensure the action will be accomplished within the required time period.

The Federal Acquisition Streamlining Act of 1994 authorizes a uniform approach to competitively awarding multiple task-order contracts as a result of a single solicitation. Task orders are competed among the contractors. This approach allows NRC to maintain more than one source and helps to ensure that a reasonable price is paid for the completion of each task order. 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.

8.5 Grants and Cooperative Agreements

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

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 9.2 of this part.

To supplement the discussion below, an overview of the competitive negotiation acquisition process may be found in the Flowchart 9-1 and in Exhibit 17 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 contract officer (CO) to all recipients of the RFP.

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 9

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 (ADM), 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 pre-proposal 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 DC's public responsiveness policy, a response to written questions from potential offerors or bidders regarding the solicitation shall be provided 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

The offeror's proposal 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], SEP, CO, and 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.

9.1.3 Technical 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 CS will hold a meeting with all members of SEP to distribute copies of only the technical part of the proposals.

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 reconfirm the anticipated completion date. SEP certifications should be signed and returned to the CS at this time (see Section 5.9.1 of this handbook and Exhibit 12).

Each technical member of the SEP will independently evaluate each proposal. The proposals should not be compared one to another. The member will rate the proposal against the established evaluation criteria, using the agreed-upon scoring system, and independently prepare a separate written evaluation for each proposal. The evaluation, in both its initial and final stages, must include the following:

- (1) individual evaluation worksheets showing scores and supporting detailed comments
- (2) a summary score sheet keyed to the basic criteria (see Exhibit 3)
- (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 which require further study
- questions for negotiations with those technically acceptable offerors

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

9.1.4 SEP Discussion of Technical Proposals, Evaluation, and Review of 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. After discussion, initial technical scores and ranking will be assigned for each proposal. SEP scores may be adjusted if there is a wide variance between members.

The CS will then provide the panel members with cost proposals for each firm. The cost evaluation is performed after determination of technical scores or rankings to avoid any possible prejudice on the SEP's part. The SEP will review the cost proposals, both overall cost estimate and cost and price elements, for reasonableness and document its findings on the evaluation forms provided.

In conjunction with audit findings (see Section 9.1.7(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.

9.1.5 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 and cost and pricing review for each proposal. 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 13.

The SEP will make a competitive-range recommendation, considering technical merit and cost. The range determination is established on the basis of an offeror's reasonable chance of receiving contract award.

The consideration of “reasonable chance,” a term with broad meaning, must involve both technical and cost factors. An offeror will be included within the competitive range if there is a reasonable chance of award 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 should 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 all members of the SEP concur on the report, it is submitted through the DO to the CO through the CS. Unless managers and supervisors are officially designated members of or advisors to the SEP, they do not read or concur on the report. The CS forwards the report to the CO with a recommendation to approve. The CO reviews the competitive-range report before approval.

9.1.6 Notification to All Offerors of Competitive-Range Results

After CO approval of the competitive-range report, the CS notifies all offerors of the results. Notification may be written, electronically transmitted, or oral. If oral, FAR 15.609 requires written notification to be made as soon as practicable, normally within 5 working days from the date of the oral notification. An exception would be if the number of notifications is excessive, in which case, the CO must set a reasonable completion date by the 5th working day from the date of the oral notification. The CS shall 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.

Letters to offerors in the competitive range should include a date and time to meet for discussions and a list of the questions to be discussed at the meeting.

Written notification to unsuccessful offerors should include an informal written debriefing. 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 feels may be protested.

When the CO excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration before the final source selection decision), the excluded offeror may request a debriefing before award. The request must be made in writing within 3 days after the date on which the excluded offeror receives notice of his or her exclusion. The CO 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. (Guidelines for conducting a debriefing may be found in Section 9.1.12 of this part.)

9.1.7 Written or Oral Discussions and Negotiations

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.

(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) Preaward 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 offerors that will be included in the competitive range. This may be done 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 30–45 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, if necessary, for discussions and negotiations.

(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 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 problems were uncovered when references were contacted, the CS may need to inform the offeror.

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 assistance from 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.

9.1.8 Best and Final Offers (BAFOs)

The CO shall give each offeror within the competitive range a reasonable opportunity to submit any cost and price, technical, or other revisions to his or her proposal as a result of discussions. Letters requesting BAFOs cannot be sent until cost and technical discussions are completed with each offeror found to be within the competitive range. The CO must establish a common closing date for receipt of the revised proposals or BAFOs.

(1) SEP Evaluation of BAFOs

The CS will forward the BAFOs 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 BAFOs and a technical assessment of those changes. The SEP will re-score 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 BAFOs

The SEP will meet to review BAFO worksheets and discuss the recommendation for award. The SEP score sheets should be provided 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.

9.1.9 SEP Final Evaluation Report

The SEP will document its findings and consensus on the apparent successful offeror in the final evaluation report (Exhibit 5) shortly after the date the SEP technical members and CS

meet to form a consensus on the award recommendation. After all members of the SEP concur on the report, the report will be forwarded through the DO to the CO 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 best value procurements, when selecting the technically superior, high cost proposal, the SEP will include, in the section for "Recommendation for Award," a comparison of the proposals to each other and a cost and technical tradeoff analysis. "Best value procurements" are 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, high-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.

The CS will forward the final evaluation report to the CO with a recommendation to approve the report.

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

9.1.10 Preaward Approval and Award Notification Letter

Following receipt of the final evaluation report, the CO shall review the analysis and all supporting data before approval to ensure that his or her award decision is in accordance with sound procurement principles and practices. Specifically, the CO must ensure that the award decision is consistent with and directly related to the evaluation criteria set forth in the solicitation. Before award, the CO ensures that all required documents are included in the permanent contract file.

An equal employment opportunity clearance is required if the procurement value is \$1 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.

9.1.11 Contract Award and Notification to Unsuccessful Offerors

DC mails the contract to the successful offeror for signature and sends the notice of award to the *Commerce Business Daily* (CBD) 1 day after contract award.

DC sends the notification to unsuccessful offerors within 3 calendar days of contract award. 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 offeror received the written notification.

9.1.12 Debriefings

A debriefing conference provides an opportunity for an offeror to learn the reasons why the proposal was unsuccessful. FAR 15.1003 requires that when a contract is awarded on a basis other than price and price-related factors alone, an unsuccessful offeror, upon written request, must be debriefed and furnished the basis for the selection decision and contract award. Through the debriefing conference, 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. The debriefing conference is chaired by the CS and is attended by all members of the SEP. A debriefing should be conducted with only one offeror at a time.

All unsuccessful offerors who notify the CO within 3 days of receiving the notification are entitled to a comprehensive debriefing. 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 receiving of request. Debriefings may be given orally, in writing, or by electronic means. 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

9.1.13 Protests

Actual or prospective offerors whose direct economic interest would be affected by the award or failure to award a particular contract 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 with the General Accounting Office, or the General Services Board of Contract Appeals (for acquisition of FIP resources) in accordance with FAR 33.102 and 33.104. The procedures the NRC uses to handle protests, whether the requirement involves sealed bidding or negotiated procurements, are set forth in FAR 33.1 and supplemented by NRCAR 2033.1.

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 a SEP and its associated activities and reports (see Sections 5.11 and 9.1). While a SEP may be used for a small business set-aside, the PO and CS usually evaluate the technical and cost and price proposals in lieu of a 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 sole-source basis in the CBD. A CBD 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 CBD notice should be reviewed upon receipt, when possible, rather than at the end of the 45-day period. The CO may employ members of a 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 CBD 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 in the CBD 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 may 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 CBD 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 CBD Results in Competitive Action

In the event responses to the CBD 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 (RFPA, 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, Exhibit 3) 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 CBD 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 the CBD 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

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 9

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 SOWs under cost type contracts are not based on firm 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.

In accordance with the Federal Information Resources Management Regulation 201-39.1401, when the contracting officer uses sealed bid to acquire Federal information processing (FIP) resources, the bid selected shall be that which is most advantageous to the agency considering options, acquisition methods, present value discount factors, and other price-related factors. Therefore, the CO contracting officers should consider the factors associated with each acquisition of FIP resources in order to select the method of contracting that will best accommodate this requirement.

Once the CBD 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 the 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 EEO clearance is required if the procurement value is \$1 million or greater. If the award is to a large business and the procurement value is \$500,000, the CS sends the subcontracting plan of the apparent successful offeror to SBCR for review.
- (7) DC will process award notification (see Section 9.1.11 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 (see Section 8.1 of this handbook) 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 CBD. 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, CO, and 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 the CBD 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 the CBD 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 procuring 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 the CBD. 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 the CBD BAA notice. The CBD 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 will 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 agency's scientific and/or engineering staff and the principal investigator 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 15.501 and NRCAR 2001.602).

(1) Processing Unsolicited Proposals

The Director, 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, 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. The DC policy staff 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 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. The DC policy staff will retain one copy of the proposal for its records.

If a proposal otherwise conforms to the criteria which the FAR has established, but is missing some information, 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.

The DC policy staff will assume responsibility for tracking the proposal after receipt. This 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, correspondence to the proposer notifying him or her of the actions being taken with regard to the proposal, and correspondence from the technical evaluators to DC concerning the merits of the proposal. In addition, the DC policy staff 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, all copies shall be returned to DC to be destroyed or returned to the proposer.

(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 which 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. This 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, a justification, including consideration of the evaluation criteria discussed above, shall be prepared and forwarded to DC with a RFP form (see Exhibit 2). 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 feels that other NRC offices or Government agencies would find the proposal of value, the DC policy staff should be notified. The DC policy staff will forward the proposal to the other NRC offices or Government agencies and recommend that the proposer contact them. The DC policy staff also should be notified when evaluators from outside the agency or Government are required so that policy staff 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 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 DC policy staff 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 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.

This freedom of discussion between the PO and the candidate firms is an important advantage of the 8(a) procurement method. The requesting office, in consultation with DC, may decide to discuss the requirement with one or several candidate firms. Although 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 to have a representative from SBCR present during these discussions. 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 sends an offering letter to SBA that identifies the requirement, submits the name of the potential contractor, and requests authority to negotiate the contract. In urgent circumstances, SBCR will assist DC in obtaining the authorization letter. The RFP should not be mailed before the SBA authorization letter is received. (See Parts 6 and 7 of this handbook for the RFP and proposal evaluation and negotiation.)

The SBA's decision whether to accept the requirement will usually be transmitted within 15 to 30 working days after receipt of the offer.

(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.

The 8(a) contract award involves three parties: the NRC, the SBA, and the firm. Contract execution by all three parties is referred to as a "tripartite agreement." 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 and sent to SBA. SBA may take 15 to 30 working days to sign the contract and send it to the firm. Only after the firm, SBA, and the CO have signed the contract may work begin.

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 the CBD; there is no requirement for approval by the Competition Advocate; there is only one proposal to evaluate. Once a contract is awarded to an 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 5.2.4 of this handbook), is awarded using the competitive negotiated or sealed bid processes discussed in Sections 9.1 and 9.3 of this handbook.

9.5.5 Interagency Agreements/Use of the Economy Act

The NRC may obtain supplies or services from or through another Government agency, using interagency agreements (IAs) under the authority of the Economy Act, when the other agency is better able to provide services or supplies or has obtained services or supplies by contract. The Head of Agency (EDO) has delegated to certain office directors and regional administrators the authority to enter into, modify, or terminate interagency agreements. Therefore, IAs are handled either by those delegated the authority or by DC.

Before entering into an IA, the CO, or other official designated by the Head of Agency, must make a written determination and finding (D&F). The intent of the D&F requirement is to ensure that transfers of funds between agencies for the purpose of utilizing other agencies' contracts is carefully controlled and that the Economy Act is not misused to avoid the requirement to compete agency procurements.

For agreements to use a servicing agency's capabilities, the D&F should state that use of an interagency acquisition is in the best interest of the Government and that the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

If the Economy Act agreement requires use of a servicing agency's contract, the D&F also should include a statement in which at least one of the following circumstances is applicable:

- (1) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order to meet the requirements of the servicing agency for the same or similar supplies or services.
- (2) The servicing agency has capabilities or expertise to enter into a contract for such supplies or services that are not available within the requesting agency.
- (3) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

Once the D&F is approved, some NRC offices have authority to directly enter into an interagency agreement for commercial services or products. DC is often requested to enter into an interagency agreement on behalf of an office to ensure that NRC's needs are met through a complete agreement and meaningful administration.

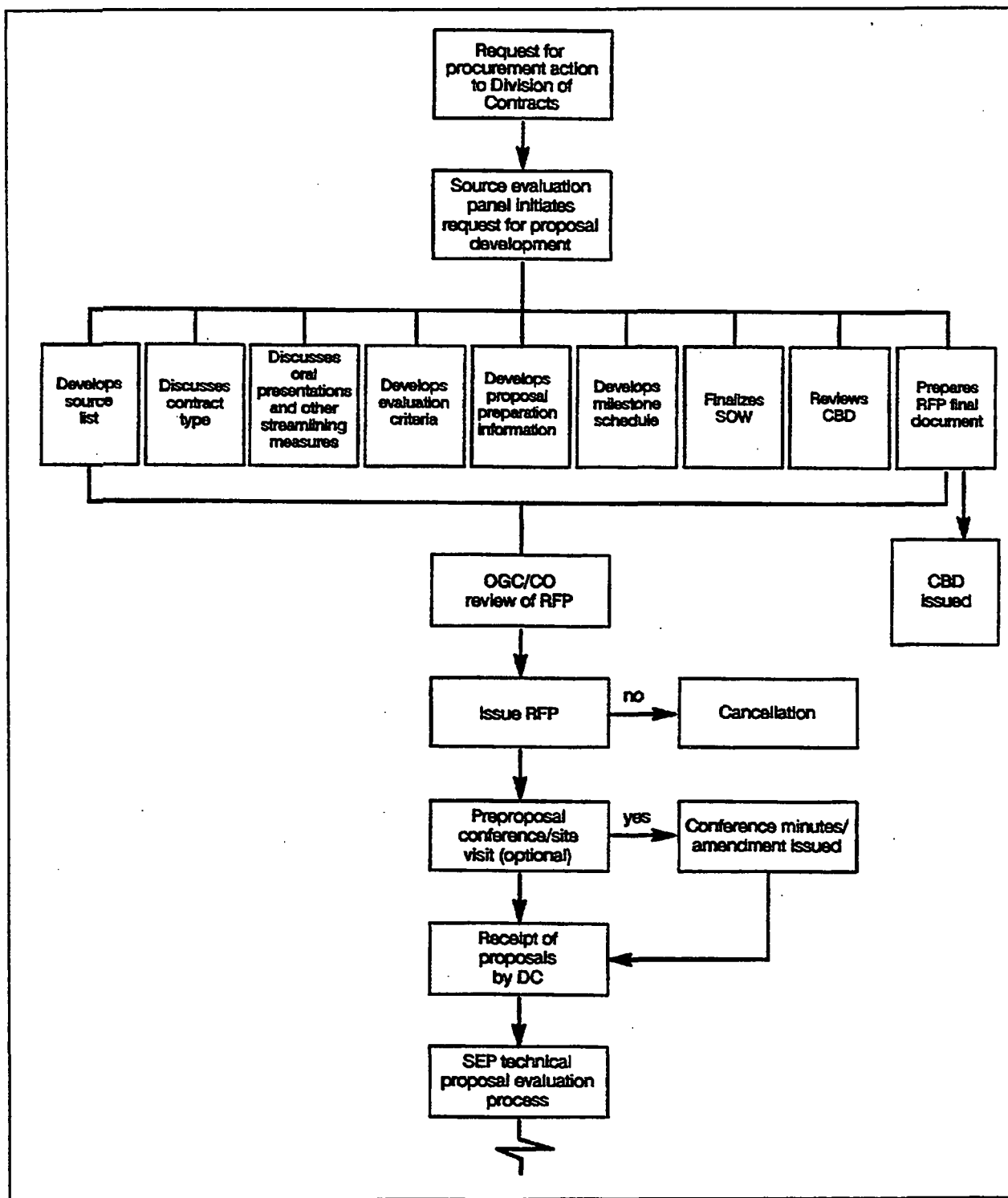
Department of Energy National Laboratory agreements are placed by offices in accordance with Management Directive 11.7 under the authority of the Energy Reorganization Act; office directors also may enter into IAs under the authority of the act.

9.6 Delivery Orders

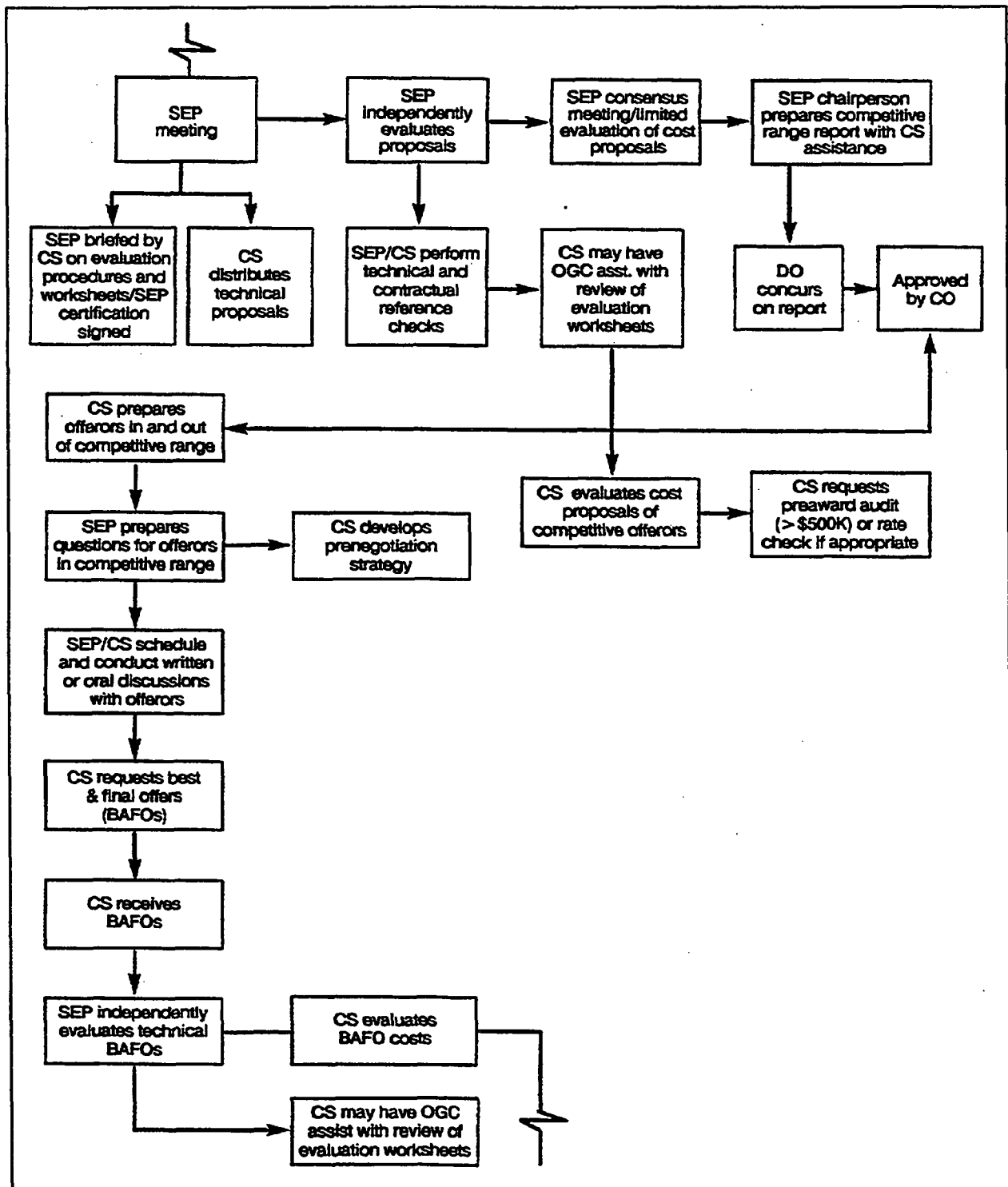
For delivery-order contracts, the contract terms and conditions will specify which agency official(s) may place orders. Normally, orders will be placed through the CO. If there is any question about ordering authority, the CS should be consulted. Unauthorized ordering can be costly to the project, in 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.

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 9

Flowchart 9-1: Competitive Negotiated Procurements

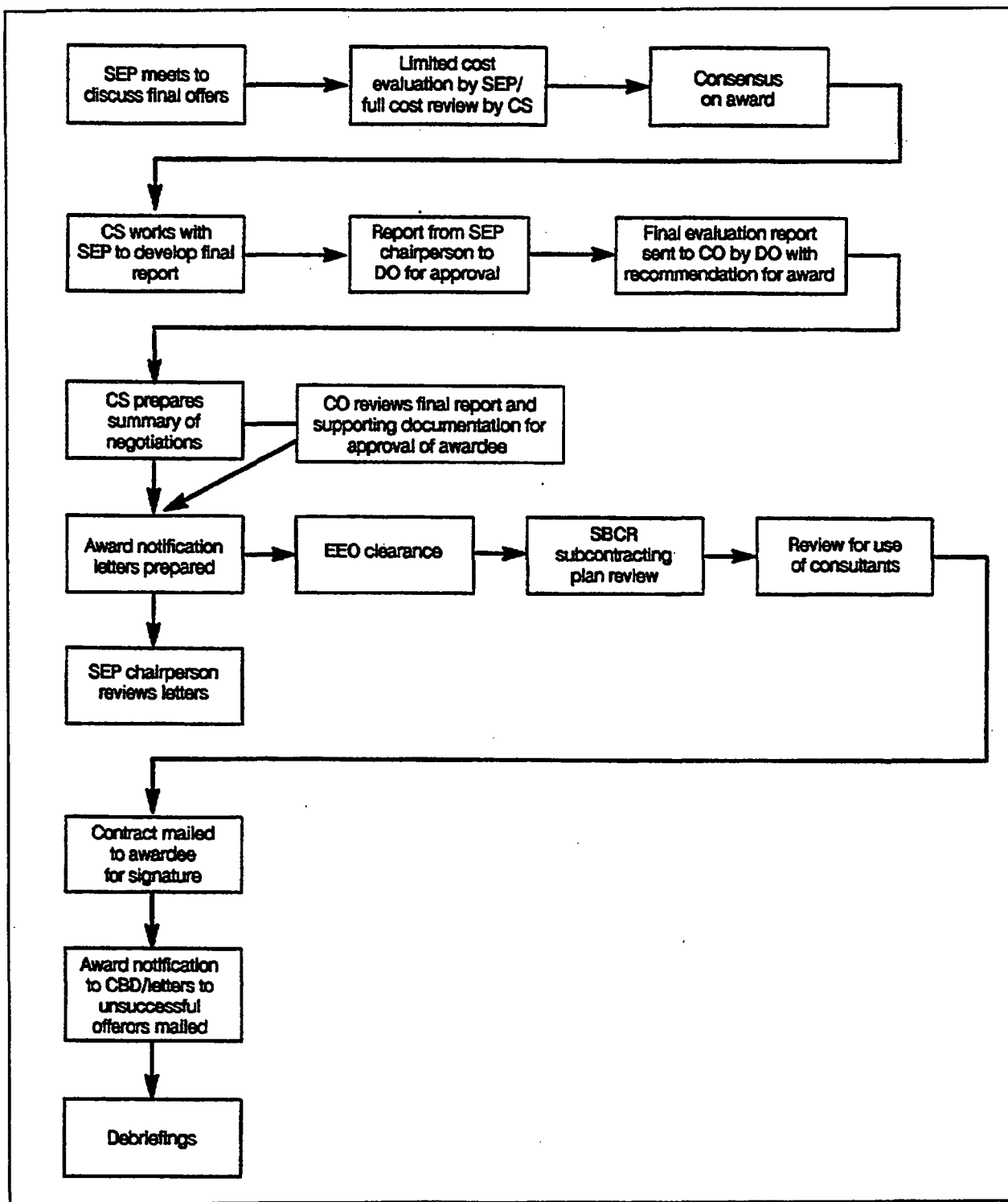


Flowchart 9-1: (Continued)

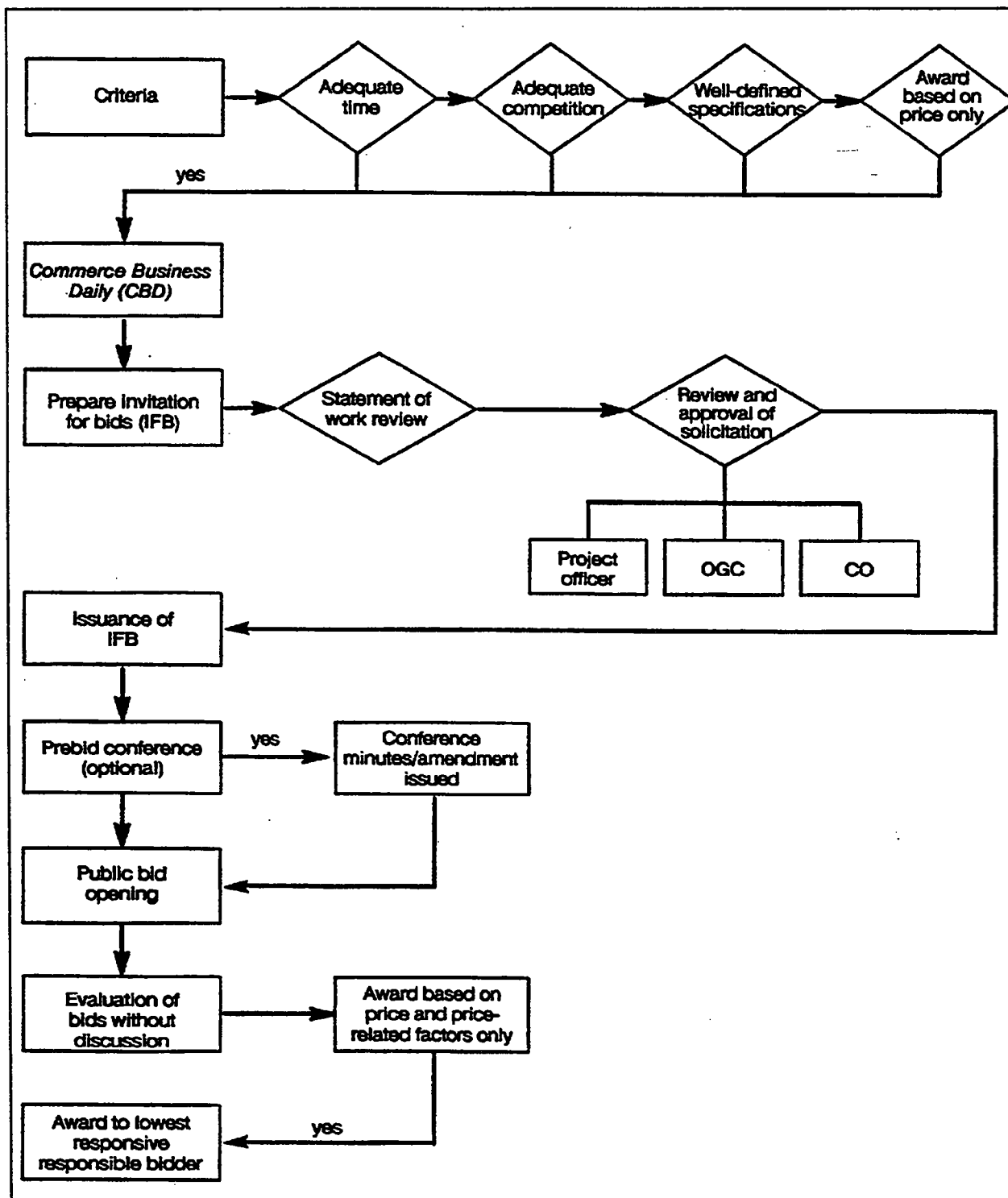


Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 9

Flowchart 9-1: (Continued)



Flowchart 9-2: Sealed Bid



Part 10 Simplified Acquisitions

10.1 Simplified Acquisition and FACNET

The terms “simplified acquisitions” and “Federal acquisition computer network (FACNET)” are defined by the Federal Acquisition Streamlining Act of 1994. The act defines the simplified acquisition maximum threshold as \$100,000 (see Sections 10.5.1 and 10.5.2 of this part for more information about FACNET). 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. 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 contracting officer (CO) will recommend these methods.

For an overview of procurement procedures for purchases not exceeding \$100,000, see the Decision Tree at the end of this part.

10.2 Micropurchases

“Micropurchase” means an acquisition of supplies or services (except construction) for which the aggregate amount does not exceed \$2500. 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 in addition to

other exemptions applicable to all simplified acquisitions (see 10.5.1.1 of this part). The definition of "micro-purchase" under Federal Acquisition Regulation 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 BankCards

The NRC fully participates in the Governmentwide BankCard 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. Authorized procurement personnel staff, Division of Contracts (DC), Office of Administration (ADM) may make purchases up to the single purchase limitation of \$25,000. BankCard 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 reducing imprest funds)

At NRC, the BankCard can be used for a wide variety of supplies and services. Program offices are encouraged to review the BankCard procedures (available from the BankCard Project Officer) and to nominate those permanent employees who can use the BankCard.

10.4 Imprest Fund Purchases

Generally, imprest funds (petty cash) are used for direct cash payments for micropurchases of personal property or services to meet occasional requirements for emergency interim or special supplies or services when a normal procurement action is not feasible.

Imprest funds may be used for micropurchases of \$500 or less for any one transaction. The use of imprest funds must be advantageous to the agency. The imprest fund must not be used for the purchase of accountable equipment or furniture unless the purchase is approved by the Chief, Property Management Branch (PMB), Division of Facilities and Property Management (DFPM), ADM, or a designee.

The Chief, Travel Management Branch, Division of Accounting and Finance (DAF), Office of Controller, or in a region, the appropriate regional Director, Division of Resource Management and Administration, can approve a cashier payment of up to \$500 (\$1,000 on a case-by-case basis if sufficient justification is provided). These officials also are authorized to make emergency one-time exceptions to the \$500 limit when an advance of less than \$500 was received for the purchase and the actual cost exceeded \$500.

(1) Request for Imprest Fund Purchases

The NRC Form 30, "Request for Administrative Services" (Exhibit 18), is used to request imprest fund purchases. The form must identify the item or service, the reason(s) for procuring the item or service through petty cash, the estimated or known cost, and the name and address of the supplier.

The requester shall submit the completed NRC Form 30 to the Administrative Service Center (ASC), PMB, DFPM, (or other approving official authorized by the Director, DC), who may approve it for payment by the appropriate cashier or subcashier.

The individual authorized to make a purchase using imprest funds shall, within 5 working days, furnish the cashier with a receipt or invoice containing the supplier's name and address, the date on which the purchase was made, and the unit prices and extensions. At that time, monies will be adjusted, if necessary, and the transaction closed. The requester shall forward a copy of the completed NRC Form 30 to the ASC, PMB, DFPM, to record closure of the imprest fund action.

(2) Unauthorized Procurement

Where money has been expended before approval, an unauthorized procurement exists and must be ratified by DC before reimbursement can be made. The procurement specialist sends an unauthorized commitment letter to the requesting office to obtain information concerning the circumstances, and the DO signs the response.

Ratification is accomplished by preparing an NRC Form 30, as above, and providing a justification of the circumstances for the unauthorized procurement.

Headquarters staff will submit the NRC Form 30 to DC for review and approval. Staff in the regional offices will submit the form to the regional administrator.

After review of the circumstances of the unauthorized procurement, the CO may authorize the reimbursement of expended funds. If not authorized, the individual may be held personally liable.

10.5 Procedures for All 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 simplified acquisition threshold (\$50,000 to \$100,000 depending on the agency's FACNET certification), 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.

10.5.1 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 is true whether or not FACNET is used to advertise the procurement.

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, and 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 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 \$50,000 (\$100,000 when FACNET has been implemented) under the 8(a) program, emerging small business set-asides, or a small disadvantaged business set-aside.

10.5.2 Soliciting Competition (Use of FACNET), Evaluation of Quotes, and Award

(1) Soliciting Competition

The CO shall solicit a reasonable number of sources to promote competition to the maximum extent practicable and ensure that 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.

FACNET is the preferred method of soliciting and awarding simplified acquisitions. In limited cases for which FACNET will not be used for simplified acquisitions in excess of \$25,000, a notice in the *Commerce Business Daily* is required for 15 days. Requests for quotations should be solicited orally to the maximum extent practicable for contract actions not to exceed \$25,000 when FACNET is not used. Solicitations for construction contracts over \$2000 shall be issued only electronically or in writing.

When not soliciting quotations electronically for actions that do not exceed \$25,000, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the trade area in which the contracting office is located. 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. If practicable, 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 (see Section 10.6.3 of this part for justification requirements). 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.

(2) 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). 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. Methods to accomplish this may include, but are not limited to, simplified solicitations, streamlined evaluation methods, and award with simplified documentation. Formal evaluation plans, conduct of discussions and scoring of quotes or offers are not required. Other factors may be evaluated on such information as the CO's knowledge, the contractor's previous experience, or customer surveys and does not require the creation or existence of a formal database.

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.

(3) Award

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.

Notification to unsuccessful suppliers shall be given only if requested. When a supplier requests information on an award which was based on other than price alone, the notification shall include a brief explanation of the basis for the contract award decision.

10.5.3 Agency Use of Indefinite Delivery 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.

10.6 Purchase Orders

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.

10.6.1 Negotiation Requirement

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 would not be 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.

10.6.2 Justifications

A sole-source justification must be furnished with the requesting documents (i.e., NRC Form 30, "Request for Administrative Services" (Exhibit 18), and any other required documents) if the requesting office requires that a purchase exceeding \$2,500, be made from a single source, be limited to a specific make or model, or has other restrictive specifications. For purchases of FIP resources (automatic data processing equipment), all restrictive requirements, such as specific make or model and only new equipment, must be justified.

10.6.3 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.** Technical specifications described in terms of functions to be performed, supplemented, as necessary by chemical properties; 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, identification 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, the oral or written request for prices should indicate that other brands or types of products offering comparable utility are acceptable.

10.6.4 Property

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/designee and approved by the Chief, PMB, DFPM.

10.6.5 Certification of Available Funds

NRC Form 30 must be submitted to DC to request procurement of all property, supplies, or non-personal services in the amount at or below the simplified acquisition threshold (see Exhibit 18).

For headquarters and regional offices, the funds certifying official for the requesting office normally assigns a requisition number to the NRC Form 30 and certifies funds on the basis of the estimated cost of the item to be procured. One copy of the requisition is returned to the requester, and the original or a reasonable facsimile is forwarded to DC for procurement action. Requests for furniture and office equipment (Federal Supply Groups 71 and 74) should be submitted to PMB, ADM, for concurrence. After concurrence, PMB will submit the requisition to the ADM funds certifying official for funds certification. For some FIP purchases, IRM will certify funds availability.

For headquarters offices, some requisitions for administrative supplies and services, or for Federal information processing (FIP) resources, may require certification of funds by ADM or the Office of Information Resources Management. 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, without recertification by the appropriate funds certifying official. However, the additional amount obligated without funds certification may not exceed \$2,500. 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.

10.6.6 Placing the Order

When DC or a regional office procurement specialist receives the NRC Form 30 with certification that funds are available, he or she completes the necessary purchase procedures and issues a purchase order (NRC Form 103 (Exhibit 19) or other approved form), or other form of simplified acquisition. Partial fulfillment of a requisition is shown by use of the letter "P" (for partial) after the requisition number on each purchase order. Complete fulfillment of a requisition that has been partially awarded is shown by use of the letter "C" (for complete) after the requisition number on the final purchase order.

10.6.7 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 PMB, DFPM, 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 DAF, Office of the Controller, and the other two copies to PMB, DFPM, 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.

10.6.8 Termination or Cancellation of Purchase Orders

If a purchase order 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 purchase order 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.

10.7 Other Simplified Acquisition Methods

10.7.1 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 BankCard is impracticable (see Section 10.3 of this part).

The BPA method of buying was established before the BankCard program and was designed to meet all legal requirements in effect at that time. Because the BankCard may now offer a better alternative, the requesting office should consult early with the CS to determine if the BankCard method of procuring would be more appropriate for the anticipated purchase.

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, Exhibit 20), shall be used by the ordering official to record orders. Further procedures may be obtained from DC when a BPA is contemplated.

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

It is NRC's practice that the sum of all orders placed under any BPA for purchases on the open market not exceed the simplified acquisition threshold per fiscal year. Any exceptions to this ceiling must be approved by the Director, DC. BPAs established with General Services Administration (GSA) Federal Supply Schedule contractors and FIP Schedule contractors must not exceed the ceilings established in the GSA contracts and must be consistent with the terms of the applicable schedule contract. 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 (Exhibit 18), 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 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.

(4) 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 (Exhibit 18), which is submitted to the procurement office to request a decommitment of funds or commitment of additional funds or to request other administrative changes.

10.7.2 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. Some schedules designate "mandatory use," and require some agencies to order from the schedule, while other agencies may use 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.

The Federal Supply Schedule system also contains prices for comparable supplies or services being offered by more than one supplier. These contracts cover items at either the same or different prices for delivery to a single geographic area. Because agencies may select from among several contractors, contractors do not know what volume of sales to expect; consequently, although the agencies have the benefit of selection, the sources suffer because of the possibility that few, if any, orders might be placed with them.

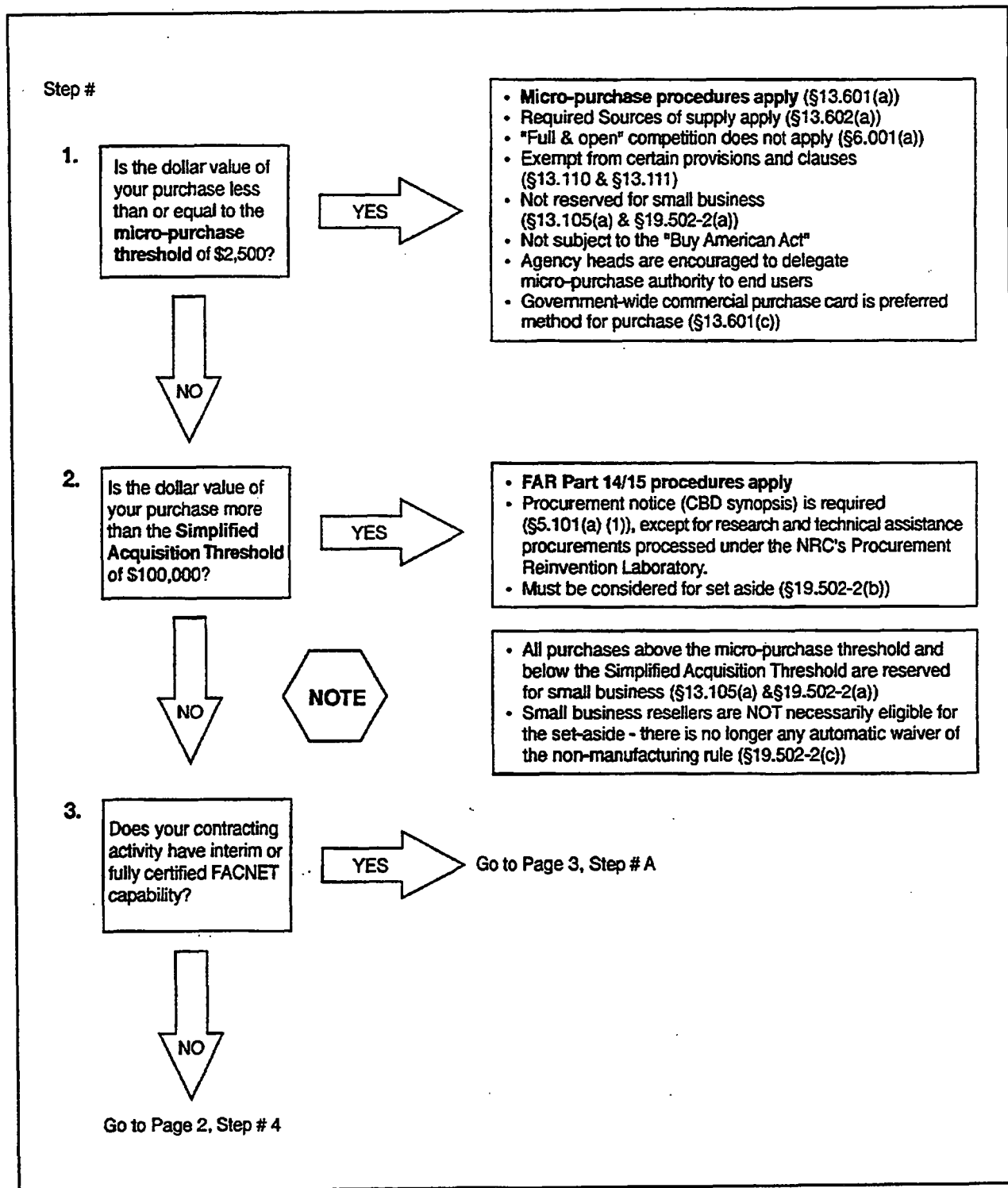
The contractor must sell to any authorized user of the multiple-award schedule at the prices and in accordance with the terms and conditions provided in the contract. The Government, however, incurs no obligation to buy anything.

10.7.3 Required Sources of Supply

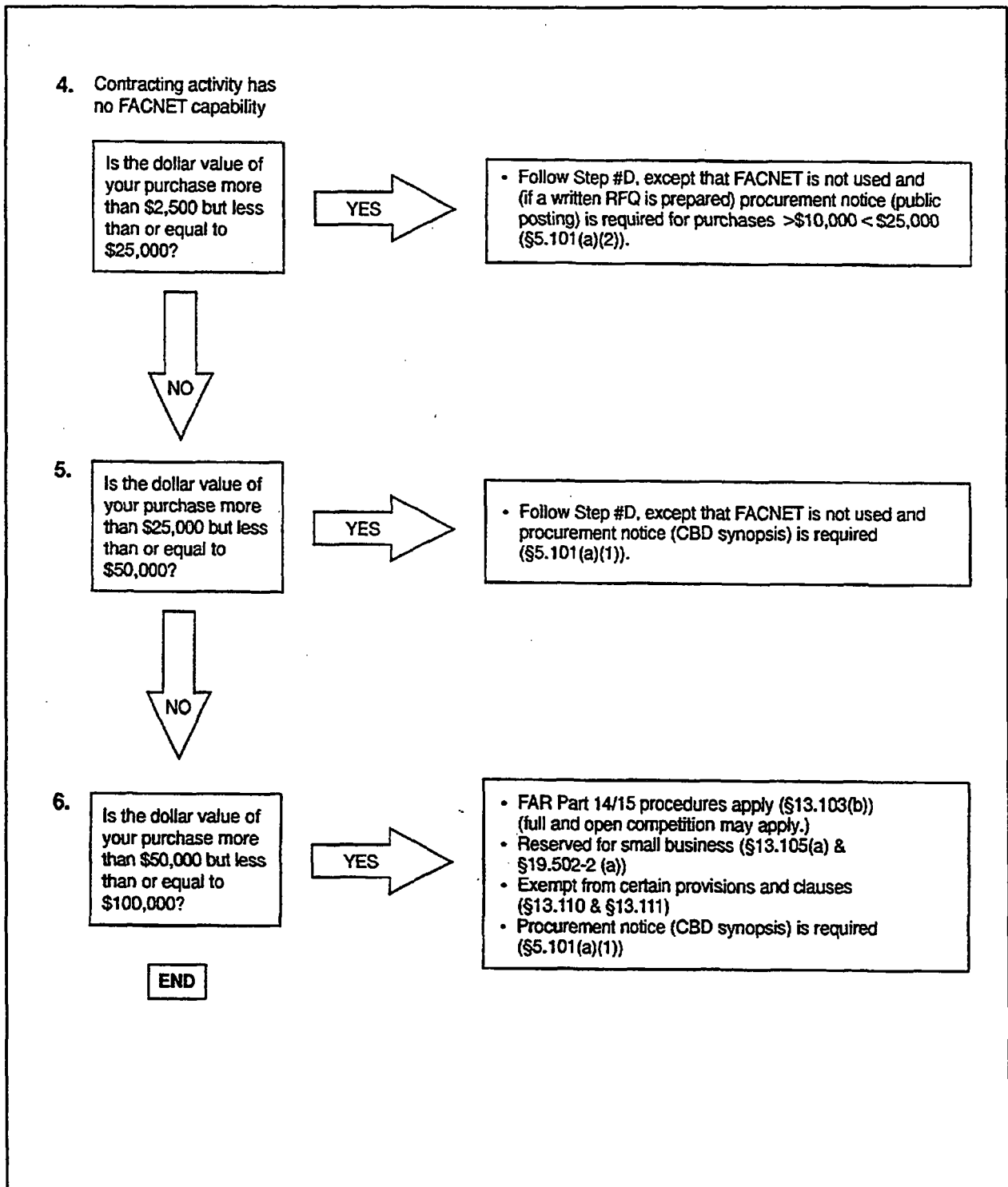
Required sources of supply are sources from which or through which the Government must buy specific products or services. These mandatory sources are listed in FAR 8.001 and cover a wide range of supplies and services available from the Committee for Purchase From the Blind and Other Severely Handicapped and the Federal Prison Industries, supplies and services from contracts already awarded to commercial sources, as well as other sources.

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 10

Flowchart 10-1: Procurement Procedures Decision Tree (for purchases not exceeding \$100,000)

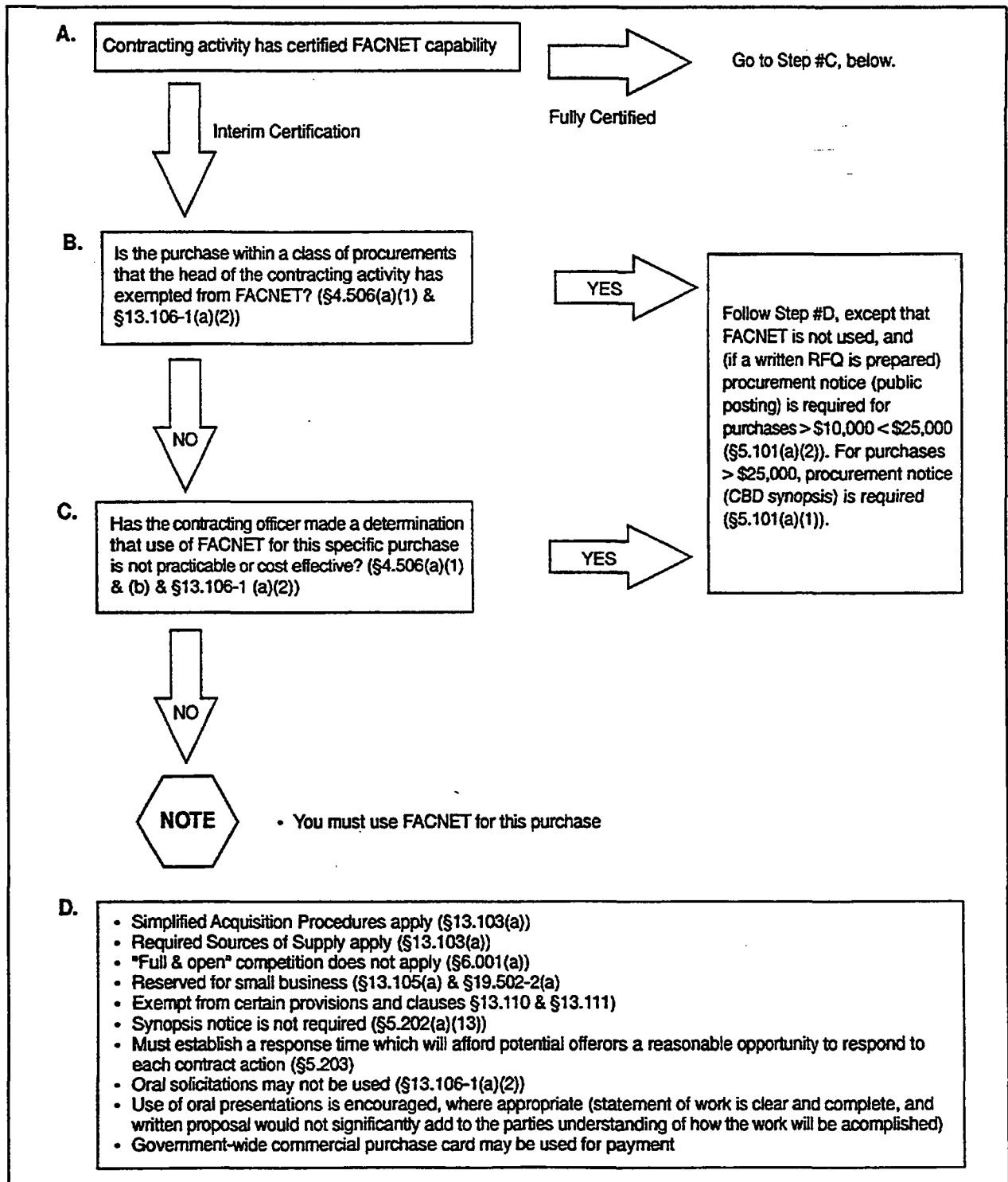


Flowchart 10-1: (Continued)



Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 9

Flowchart 10-1: (Continued)



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. Many agency contracts are awarded for a period of several months and, in some cases, several years. 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
- 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 correspondence incoming 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 Post-Award Kickoff Meeting

An extremely important first step in the administration of most contracts is the post-award 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, CS, 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 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 interim evaluations be prepared for active contracts (except those awarded to the Federal Prison Industries and non-profit agencies employing people who are blind or severely handicapped) in excess of \$1,000,000 beginning July 1, 1995, \$500,000 by July 1, 1996, and \$100,000 by January 1, 1998. Such evaluations, normally, must be prepared annually, for multi-year contracts. 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.

Frequent communication with the contractor may help to avert potential problems.

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, 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 Modify Tasks

Contractor tasks 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.

11.3 Task Orders

When the requesting office prepares the request for procurement action (NRC Form 400, Exhibit 2), for issuance of a task order, the designating official (DO) will certify to the following:

“I have reviewed the justification for use of a task-order contract that was prepared for the basic contract and certify that acquiring contractor support for this task is consistent with that justification.”

(See Section 5.7.3 of this handbook justification of a basic contract.)

11.3.1 Procedures for Placement of a Task Order

Task orders and modifications to task orders are to be issued on “Amendment of Solicitation/Modification of Contract” form (a Standard Form 30, Exhibit 21) or other DC-approved format. Requesting offices should ensure that funds for the estimated task order amount have been certified on the request for procurement action (RFP) (NRC Form 400, Exhibit 2) 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, funds will be committed and obligated on the basic contract, up to the stated minimum amount. The minimum amount obligated must be applied against each task order as it is exhausted and thereafter, funding is obligated under the individual task order. Funds will not be added to the minimum amounts, once exhausted. (See Section 4.2 of this handbook for further guidance on commitment and obligation of funds for task order contracts.)

The RFP should include a statement of work (SOW) for the proposed task order (or modification thereof). In addition, the RFP should be signed by the DO (the office director or a designee) and include an independent government cost estimate (see Exhibit 3 and Section 6.2 of this handbook), if the proposed action exceeds \$100,000, and it also should include an appropriate certification of funds.

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.

11.3.2 Task Order Proposal

The contractor shall respond to the CO with a task order proposal that provides the technical and cost information discussed below.

(1) Technical Proposal

The technical proposal may include a discussion of the scope of work requirements 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

The technical proposal also must identify—

- administrative support personnel and/or facilities needed to assist professional personnel in completing work on the task order
- key personnel and the number of staff hours that will be committed to complete work on the task order

(2) Cost Proposal

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. 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).

11.3.3 Issuance of Task Order

Upon completion of successful negotiations with the contractor, the CO will issue the task order, which will include—

- statement of work/meetings/travel/deliverables
- reporting requirements
- period of performance
- key personnel
- any applicable special provisions
- total task order amount

- obligated amount

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.

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 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.

Procedures covering the loss, theft, damage, or destruction of NRC property are set forth in Management Directive (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 Section 11.7 of this part.

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. 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, apportionment, reappropriation, or 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.

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.

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 in spite of 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 DAF, OC.

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, Exhibit 22) and forwards the original form with two copies of unpaid invoice to the PO for return within 7 calendar days. The data entry clerk also provides a copy of the invoice and NRC Form 292 to the CS for review. The CS provides contractor timely notification of any deficiency precluding payment.

The CS maintains necessary followup with the PO to ensure that timely input is received.

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 11

(2) Project Officer

The PO, upon receipt of NRC Form 292 and 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 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, see also first paragraph of 11.5.2(3) below) 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 signed NRC Form 292 package to the CS (within 7 calendar days) for final determination of amount to be paid. The PO retains the suspense copy of NRC Form 292 and a copy of the unpaid invoice as a record.

(3) Contract Specialist

If there is suspension or disallowance, the CS prepares a letter to the contractor advising the contractor of the amount withheld and reasons, within 7 calendar days of the agency's receipt; attaches a copy of the suspension or disallowance letter to 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 amount to be paid
- recommends amount to be retained (for expiration invoice only), pending final audit
- completes NRC Form 292, signs, and sends the package to DAF, OC, with original and one copy of invoice, through internal mailing procedures (From receipt of invoice to payment, no more than 30 calendar days may elapse. This means that the CS shall forward a completed NRC Form 292 package (original invoice and one copy) to DAF within 17 calendar days from date of receipt of invoice.)

On all invoices received that involve prompt payment of discounts, the CS ensures that approval documentation is returned to DAF, OC, 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, OC, upon receipt of NRC Form 292 package (the original and one copy of invoice), with approval signatures from the PO and CO, reviews and processes the invoice for payment.

The 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
- 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, these 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 or within 30 calendar days of official agency receipt date, whichever is earlier. 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 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 original NRC Form 292 and forwards copies of the signed NRC Form to the CO. The CO maintains 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, Exhibit 19) 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 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 completed receiving report.

DAF, upon receipt of the original invoice and two copies from vendor, should date stamp the receipt and review the invoice to ensure compliance with the terms of the purchase order.

In those cases where DAF has received a signed receiving report for supplies or services and 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 the invoice to the requestor for approval on NRC Form 370.

DAF maintains necessary followup and ensures that prompt payment discounts are timely noted.

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 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 of 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 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, Exhibit 2), must be signed by the DO or a designee, and must include certification of funds by a funds certifying official.

11.7 Need for Time Extension Resulting in Contract to Exceed Five Years

The CO may approve all extensions under \$100,000 to 5-year contracts for up to a total of an additional 6 months for the purpose of completing the competitive process for a follow-on contract, provided that the competitive requirement 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. 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 helps to project funding, avoid overpayment, and expedite closeout.

11.8.3 Cost Overruns

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.

If an increase to 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 statement of work, 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 to 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 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.

Before litigation is initiated in front of a Board of Contract Appeals or the U.S. Court of Claims, the dispute must become the subject of a decision of the CO. Alternative means of dispute resolution is preferred over litigation in resolving a dispute. 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, fact finding, mini-trials, and arbitration. 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 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 42.212-15) or a stop-work order clause (see FAR 52.212-13, 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 Director, DC, must be notified by the CO before issuance of a stop-work order. 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 12 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 both 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.

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 SOW, delivery schedule, or an increase or decrease to 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 the CO. For any such action, all other terms of NRCAR 2001.6 are applicable and a copy of all documentation must be submitted within 2 working days to the Competition Advocate (Director, DC). The Competition Advocate shall approve all ratification actions exceeding \$2500.

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 statement as to why the contracting office was not used, including the name of the employee who made the commitment
 - a statement as to why the proposed contractor was selected
 - a list of other sources considered
 - a description of work 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, 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 statement of whether the contractor has commenced performance
 - a description of how unauthorized commitments in similar circumstances will be avoided in the future
- (2) If additional funds are required, the DO shall submit to the CO an RFP, including certified funds.
- (3) The CO 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 with any comments or information that should be considered in evaluating the request for ratification.
- (4) 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 23.

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 establishes procedure 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
- disagree with an NRC decision or policy position
- 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

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 11

document such concerns on matters directly associated with its performance of the contract. The contractor DPV procedure 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 contractors or subcontractor's personnel, to document a DPV in writing. 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. 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.

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:

- 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 regional administrator and to the CO.

The office director or 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 after 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 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 or 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 \$1 million beginning July 1, 1995; \$500,000 by July 1, 1996; and \$100,000 by January 1, 1998. 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

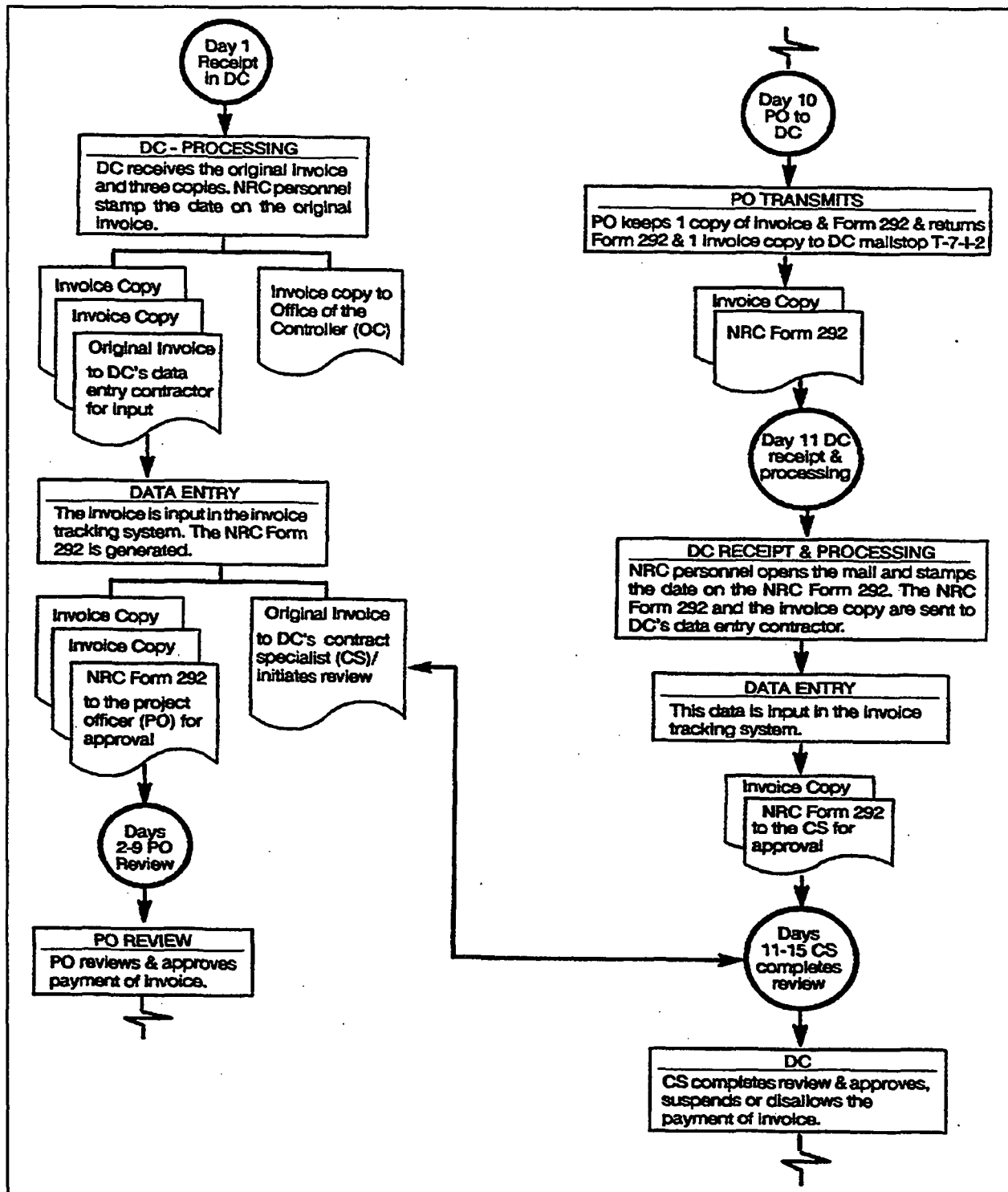
Although physical completion fulfills the agency's objective in awarding the contract, a contract is not closed until it has been administratively completed, that is, all activities leading to and final payment have been made.

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
- 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

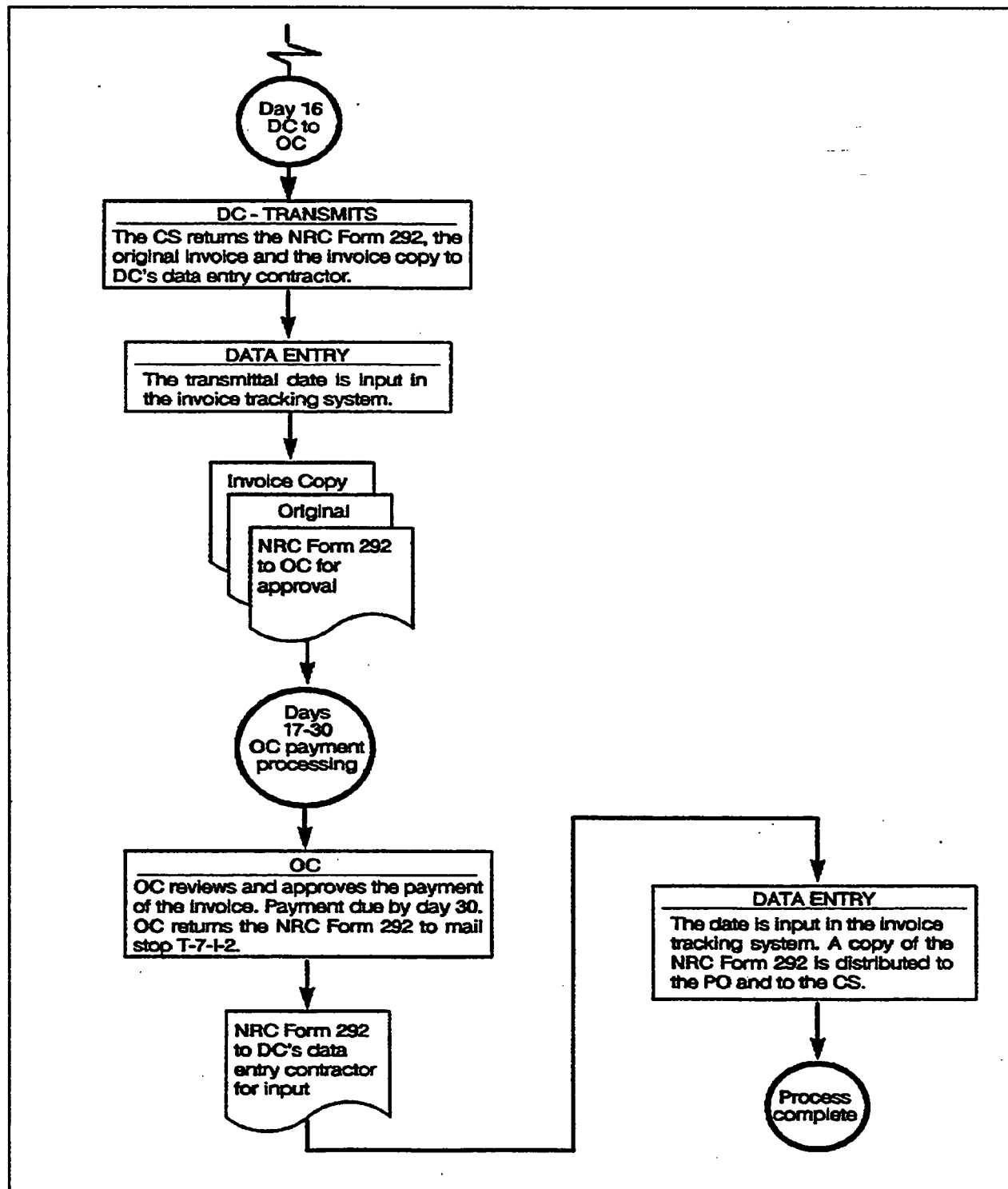
Review by audit personnel normally is accomplished by the Defense Contract Audit Agency and, in some cases, the legal staff and other NRC offices also may be required to review the contract before the Division of Accounting and Finance, Office of the Controller, can make final payment. (See Part VII of Handbook 4.2 for additional information on funds control policy for contract closeout.)

Flowchart 11-1: Invoice Workflow



Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Part 11

Flowchart 11-1: (Continued)



Abbreviations

ADM	Administration, Office of
ADP	access to sensitive automatic data processing
APP	advance procurement plan
ASC	Administrative Service Center
BAA	broad agency announcement
BAFO	best and final offer
BPA	blanket purchase agreement
BML	bidder mailing list
CBD	<i>Commerce Business Daily</i>
CICA	Competition in Contracting Act
CO	contracting officer
COI	conflict of interest
CPFF	cost plus fixed fee
CS	contract specialist
D&F	determination and finding
DAF	Division of Accounting and Finance
DC	Division of Contracts
DCAA	Defense Contract Audit Agency
DEDS	Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support
DFPM	Division of Facilities and Property Management
DO	designating official
DOE	Department of Energy
DPA	delegation of procurement authority
DPV	differing professional view
DSO	Designated Senior Official
EDO	Executive Director for Operations
EEO	Equal Employee Opportunity, Office of

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Abbreviations

FACNET	Federal acquisition computer network
FAR	Federal Acquisition Regulation
FASA	Federal Acquisition Streamlining Act
FCO	funds certifying official
FIP	Federal information processing
FIRMR	Federal Information Resources Management Regulations
FOB	free on board
FTEs	full-time employees
GSA	General Services Administration
IFB	invitation for bid
IGCE	independent Government cost estimate
IRM	Information Resources Management, Office of
JOFOC	justification for other than full and open competition
LWOP	lease with option to purchase
MD	management directive
NRC	Nuclear Regulatory Commission
NRCAR	Nuclear Regulatory Commission Acquisition Regulation
OC	Office of the Controller
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OFPPA	Office of Federal Procurement Policy Act
OMB	Office of Management and Budget
OP	Office of Personnel
PIA	Procurement Integrity Act
PMB	Property Management Branch
PO	project officer
RFP	request for proposal
RFPA	request for procurement action
RES	Nuclear Regulatory Research, Office of

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Abbreviations

SBA	Small Business Administration
SBCR	Small Business and Civil Rights, Office of
SBIR	small business innovative research
SEC	Security, Division of
SEP	source evaluation panel
SIRMOs	senior information resources management officials
SOW	statement of work

Exhibit 1

Advance Procurement Plan (APP)

FORM A

Advance Procurement Plan for
NEW PROCUREMENTS OVER \$25,000

Period: 4/1/95 - 3/31/96

RFFA 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	FY 95	FY 96	FY 97	FY 98	FY 99	Total
Dollars						
Job Code						

Type of Procurement (check one box only):

- ☐ 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 Draft Start-Up Package to ADM/DC: _____

Date the RFFA will be submitted to ADM/DC: _____

Desired Date for Award of Contract: _____

Has Project Officer completed Acquisition for Project Officers course?

☐ Yes ☐ No

Exhibit 1 (continued)

FORM B

**Advance Procurement Plan for
MODIFICATIONS TO EXISTING CONTRACTS**

Period: 4/1/95 - 3/31/96

Contract Number: _____
Office/Division/Branch: _____
Project Officer: _____ **Phone:** _____
Contractor: _____
Title of Procurement: _____

Current expiration date: _____

Will an Option Clause be Exercised ? Yes / No

Procurement Actions Planned During the Next 12 Months

Date the RFPA will be submitted to ADM/DC	Description of Action	Job Code	Amount of Funds to be Certified

Has Project Officer completed Acquisition for Project Officers Course?

☐ **Yes** ☐ **No**

Exhibit 1 (continued)

FORM C

**Advance Procurement Plan for
TASK ORDER ACTIONS**

Period: 4/1/95 - 3/31/96

Contract Number: _____
Office/Division/Branch: _____
Project Officer: _____ **Phone:** _____
Contractor: _____
Title of Contract: _____

Current expiration date: _____

Procurement Actions Planned During the Next 12 Months

Date the RFPA will be submitted to ADM/DC	Description of Action (New Task Order or Task Order Mod)	Job Code	Amount of Funds to be Certified

Has Project Officer completed Acquisition for Project Officers course?

☐ **Yes** ☐ **No**

**Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Exhibits**

Exhibit 1 (continued)

RMS Format						
Advance Procurement Plan						
Office of _____						
Period: 4/1/95 - 3/31/96						
JOB CODE:		TITLE:				
OBJECTIVE:						
REGULATORY USE:						
WORK SCOPE:						
FUNDING (\$1000):	<u>FY95</u>	<u>FY96</u>	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>	<u>Total</u> <u>Project</u> <u>Cost</u>
PROCUREMENT METHOD:						
THIS ACTION:						
RFPA NUMBER:						
CONTRACTOR:						
PERIOD OF PERFORMANCE:						
PROCUREMENT MILESTONES						
Send Startup Package						
Send RFPA to DC						
Issue Competitive Range Report						
Issue Final Evaluation Report						
Award Contract						

Exhibit 2

NRC Form 400, "Request for Procurement Action (RFPA)"

NRC FORM 400 (5-90) NRCMD 11.1 Send completed form to: Division of Contracts, T-7 12		U.S. NUCLEAR REGULATORY COMMISSION REQUEST FOR PROCUREMENT ACTION (RFPA)		1. A. RFPA NUMBER 1. B. FFS COMMITMENT NUMBER																	
2. PERFORMANCE PERIOD (Express in months)			3. PROCUREMENT HISTORY																		
A. BASE PERIOD		B. OPTION PERIOD(S)		C. REQUESTED START DATE																	
				A. PREVIOUS CONTRACT NUMBER																	
				B. EXPIRATION DATE																	
4. A. TITLE					B. WAS ACTION IDENTIFIED ON ADVANCE PROCUREMENT PLAN? <input type="checkbox"/> YES <input type="checkbox"/> NO																
5A. PROJECT OFFICER		B. OFFICE/DIVISION/BRANCH		C. TELEPHONE (include area code)	D. MAIL STOP																
6. TYPE OF ACTION REQUESTED (Check one)																					
<input type="checkbox"/> A. AWARD A COMPETITIVE CONTRACT			<input type="checkbox"/> F. ISSUE A BROAD AGENCY ANNOUNCEMENT																		
<input type="checkbox"/> B. AWARD A NONCOMPETITIVE CONTRACT TO:			<input type="checkbox"/> G. ISSUE A MODIFICATION TO A: <input type="checkbox"/> GRANT <input type="checkbox"/> COOPERATIVE AGREEMENT																		
<input type="checkbox"/> C. AWARD A CONTRACT UNDER A SOCIO-ECONOMIC SET-ASIDE (Specify):			<input type="checkbox"/> H. AWARD A CONTRACT BASED ON ACCEPTANCE OF AN UNSOLICITED PROPOSAL TO:																		
<input type="checkbox"/> D. ISSUE A: <input type="checkbox"/> GRANT <input type="checkbox"/> COOPERATIVE AGREEMENT TO:			<input type="checkbox"/> I. EXECUTE A MODIFICATION TO BASIC CONTRACT NUMBER:																		
<input type="checkbox"/> E. ISSUE AN INTERAGENCY AGREEMENT TO:			<input type="checkbox"/> J. EXECUTE A TASK ORDER UNDER CONTRACT NUMBER:																		
			<input type="checkbox"/> K. EXECUTE A MODIFICATION TO TASK ORDER NUMBER:																		
L. SPECIAL INSTRUCTIONS OR REMARKS																					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">7. FEE RECOVERABLE WORK</td> <td style="width: 10%;">3. ESTIMATED COST</td> <td style="width: 10%;">FIRST FY:</td> <td style="width: 10%;">SECOND FY:</td> <td style="width: 10%;">THIRD FY:</td> <td style="width: 10%;">FOURTH FY:</td> <td style="width: 10%;">FIFTH FY:</td> <td style="width: 10%;">TOTAL</td> </tr> <tr> <td>8. NON-FEE RECOVERABLE WORK</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>						7. FEE RECOVERABLE WORK	3. ESTIMATED COST	FIRST FY:	SECOND FY:	THIRD FY:	FOURTH FY:	FIFTH FY:	TOTAL	8. NON-FEE RECOVERABLE WORK							
7. FEE RECOVERABLE WORK	3. ESTIMATED COST	FIRST FY:	SECOND FY:	THIRD FY:	FOURTH FY:	FIFTH FY:	TOTAL														
8. NON-FEE RECOVERABLE WORK																					
10. CERTIFICATION OF FUNDS																					
A. AMOUNT CERTIFIED		B. B & R NUMBER		C. JOB CODE	D. SOC																
					E. APPROPRIATION NUMBER																
F. CERTIFICATION: This certifies that funds in the amount shown in Block 10.A. are available in the current allowance for the proposed procurement.																					
TOTAL AMOUNT CERTIFIED		FUNDS CERTIFYING OFFICIAL - Typed Name and Title			DATE																
11. LIST OF ATTACHMENTS (Check as appropriate)																					
<input type="checkbox"/> A. STATEMENT OF WORK (SOW)		<input type="checkbox"/> H. DESIGNATION OF MEMBERS TO SOURCE EVALUATION PANEL (SEP)		12. PERSONAL SERVICES AND INHERENTLY GOVERNMENTAL FUNCTIONS See NRC Management Directive 11.1, Part IV (Check box if the response is "YES" for the corresponding statement)																	
<input type="checkbox"/> B. INDEPENDENT GOVERNMENT COST ESTIMATE		<input type="checkbox"/> I. LIST OF FIRMS TO BE SOLICITED																			
<input type="checkbox"/> C. EVALUATION CRITERIA WITH NUMERICAL WEIGHTS ASSIGNED (if appropriate)		<input type="checkbox"/> J. NRC FORM 157, "SECURITY/CLASSIFICATION REQUIREMENTS"																			
<input type="checkbox"/> D. JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION		<input type="checkbox"/> K. LIST OF PROCUREMENT OFFICIALS																			
<input type="checkbox"/> E. DOCUMENTATION FOR OVERSIGHT OF SERVICE CONTRACTING		<input type="checkbox"/> L. LIST OF GOVERNMENT-FURNISHED PROPERTY/MATERIALS/FACILITIES (May be part of SOW—Provide separate page)																			
<input type="checkbox"/> F. JUSTIFICATION FOR ACCEPTANCE OF UNSOLICITED PROPOSAL		<input type="checkbox"/> M. OTHER REMARKS (Specify)																			
<input type="checkbox"/> G. JUSTIFICATION FOR URGENT PROCESSING																					
13. APPROVAL OF DESIGNATING OFFICIAL (Office Director or Designee) (See instructions)																					
TYPED NAME AND TITLE		OFFICE		14. FOR DC USE ONLY (Do not write in this space)																	
SIGNATURE		DATE																			

NRC FORM 400 (5-90)

Volume 11, Procurement

NRC Acquisition of Supplies and Services

Handbook 11.1 Exhibits

Exhibit 2 (continued)

INSTRUCTIONS FOR COMPLETING NRC FORM 400

Block 1 - RPPA Number and Federal Financial System (FFS) Commitment Number

The office RPPA/FFS Commitment number (consisting of the program office abbreviation, the fiscal year, and a number) is assigned sequentially during the fiscal year.

Block 3 - Procurement History

If this action is a follow-on effort, enter the contract number.

Block 6.C - Award a Contract under a Socio-Economic Set-Aside

The selection of sources is a critical step in the procurement process. Program offices should consult with the Office of Small and Disadvantaged Business Utilization/Civil Rights regarding contract set-asides and Small Business Administration 8(a) awards.

If applicable, specify the set-aside program:

- Set-asides for small business
- Small Business Administration 8(a) program
- Labor surplus set-aside

Block 6.H - Award a contract based on acceptance of an unsolicited proposal.

Unsolicited proposals must meet the criteria set forth in FAR 15.602. Unsolicited proposals are awarded as noncompetitive proposals and must be justified as other than full and open competition (See NRCMD 11.1, "NRC Acquisition of Supplies and Services," Part 9.

Block 6.L - Special Instructions or Remarks

Include description of action, if appropriate. For instance, no cost extensions, changes to PO/PI should be noted here.

Block 9 - Estimated Cost

Complete each block to ensure that the requesting office will make adequate funds available to cover the entire project's estimated cost. Develop the Independent Government Cost Estimate (IGCE) based upon this same period.

The RPPA will be returned if Block 9 is not completed.

Block 10 - Certification of Funds

If additional space is required, attach a separate sheet.

Block 11 - List of Attachments

This block contains a list of documents which must be attached to this request, if applicable. These documents are necessary to initiate and carry out the procurement process. In addition, other intra- and inter-office concurrences may be required apart from, but prior to, the procurement process. Examples include the justification for use of a task order contract (see NRCMD 11.1, Part 11), Division of Facilities and Property Management (ADM) concurrence for procurement of equipment or use of NRC facilities, and Senior Information Resources Management Official approval for acquisition of Federal Information Processing resources including telecommunications, and analyses of requirements and alternatives related to them. These concurrences, which are not part of the procurement process, should be kept in the requesting office's file.

- A detailed Statement of Work (SOW) is required for all new work. (See NRCMD 11.1, Part 6.) The RPPA will be returned if a complete SOW is not attached.
- A detailed IGCE must be developed in accordance with NRCMD 11.1, Part 6, when the procurement is expected to exceed \$100,000. A

separate IGCE must be developed for each option year of the procurement in order to reflect the total estimated cost. For procurements valued at \$100,000 or less, an estimate in a level of detail commensurate with the complexity of the procurement should be prepared and held in the requesting office file.

C. See NRCMD 11.1, Part 6, for guidance.

D. Other than full and open procurement (non-competitive) must be justified in writing. The Designating Official shall certify as to the accuracy and completeness of the justification. NRCMD 11.1, Part 5 provides guidance for the preparation of justifications.

E. Review NRC Management Directive 11.1, Part 6.7, "Oversight of Service Contracting and Advisory and Assistance Services," and Exhibit 16, and attach an explanation for any affirmative answer to any question in the exhibit.

F. See NRCMD 11.1, Part 8.

G. The Designating Official certifies that the justification to the Division of Contracts (ADM) for urgent processing represents the requesting office's priorities. It is expected that use of this justification would be rare.

H. A Source Evaluation Panel (SEP) will be established for a competitive procurement exceeding \$100,000. (See NRCMD 11.1, Part 5.)

The RPPA will be returned if no designation of members to the SEP is attached.

J. Attach a completed NRC Form 187: (1) if the performance of the contract may require access to, or the development of, classified or unclassified Safeguards Information, and/or (2) if the performance of the contract may require contractor unescorted access to protected and vital areas of nuclear facilities. (See NRCMD 12.1, "NRC Facility Security Program," Office of Administration).

K. Provide a list of procurement officials with each RPPA for all procurements to assure compliance with procurement official certification requirements. Also, provide a list of procurement officials for all modifications for new work over \$100,000. List the name and office of each person who acts in a procurement official capacity under the proposed procurement.

L. See NRCMDs 13.1, "Personal Property Management," and 13.3, "Space Management," Office of Administration.

M. Include any remarks/other documents pertinent to the procurement action (e.g., referenced documents that are to be attached to the solicitation).

Block 12 - Personal Services and Inherently Governmental functions

Personal services and inherently governmental functions cannot be procured by commercial contract, but rather should be obtained through personnel procedures. The questions in this block will help the Contracting Officer determine that a commercial contract is the appropriate instrument. Attach an explanation for any affirmative answer.

Block 13 - Approval of Designating Official

In addition to certifying that the contents of this form are complete and accurate, the designating official assures that the requirement has been reviewed, coordinated, justified, and approved. If this is a request to issue a task order, 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 this task is consistent with that justification.

NRC FORM 400 (12-95)

Exhibit 3

NRC Form 554, "Independent Government Cost Estimate (IGCE) for Contracts"

NRC FORM 554 (8-88) NRCMD 11.1		U. S. NUCLEAR REGULATORY COMMISSION		
INDEPENDENT GOVERNMENT COST ESTIMATE (IGCE) FOR CONTRACTS				
1. PROJECT TITLE				
2. PROJECT MANAGER		3. PERIOD OF PERFORMANCE		
		A. FROM		B. TO
DESCRIPTION OF COST ELEMENTS				
1. DIRECT LABOR (List Labor Categories)	ESTIMATED HOURS	RATE PER HOUR (\$)	ESTIMATED COST (\$)	TOTAL ESTIMATED COST (\$)
TOTAL DIRECT LABOR				
2. LABOR OVERHEAD INCLUDING FRINGE BENEFITS	RATE	TOTAL LABOR (\$)	ESTIMATED COSTS (\$)	TOTAL ESTIMATED COST (\$)
3. MATERIALS/SERVICES (Excluding ADP or FIP Resources)			ESTIMATED COSTS (\$)	TOTAL ESTIMATED COST (\$)
TOTAL MATERIALS/SERVICES				
4. FIP SUPPORT				
TOTAL FIP SUPPORT				
5. TRAVEL			ESTIMATED COSTS (\$)	TOTAL ESTIMATED COST (\$)
6. SUBCONTRACTOR(S)/CONSULTANT(S)			ESTIMATED COSTS (\$)	TOTAL ESTIMATED COST (\$)
TOTAL SUBCONTRACTOR(S)/CONSULTANT(S)				
7. OTHER DIRECT COSTS				
8. TOTAL DIRECT COST AND OVERHEAD				
9. GENERAL AND ADMINISTRATIVE EXPENSE (RATE: % OF LINE 8)				
10. TOTAL ESTIMATED COST				
11. FEE OR PROFIT (% OF LINE 10)				
12. TOTAL ESTIMATED COST AND FEE OR PROFIT				
TYPED NAME AND TITLE		SIGNATURE		
OFFICE/DIVISION/BRANCH		DATE		

NRC FORM 554 (8-88)

PRINTED ON RECYCLED PAPER

Exhibit 3 (continued)

INSTRUCTIONS FOR COMPLETING NRC FORM 554, INDEPENDENT GOVERNMENT COST ESTIMATE (IGCE) FOR CONTRACTS

Block 1. Direct Labor

Enter all proposed labor categories for the project, e.g., Project Director, Senior Analyst, scientist, clerical, etc., and the estimated hours for each related Task/Subtask. The estimated cost for each labor category equals the estimated hours, times the hourly rate for the labor category. Total the estimated cost and place the sum in the column marked Total Estimated Cost.

For a current progressive annual salary and hourly rates schedule for federal employees in the GG 12 through GG 15/SES range, refer to NRCMD and Handbook 10.41, "Pay Administration," Office of Personnel. Use this table in establishing contractor direct labor rates. For example, journeyman engineers would be in the GG 12 range, senior engineers would be in the GG 13/14 range and supervisory personnel would be in the GG 15/SES range.

Block 2. Labor Overhead Including Fringe Benefits

Overhead percentages and fringe benefit amounts (vacations, insurance, etc.) will vary with each organization. When preparing the cost estimate, use known commercial contractor rates if available from recent proposals, otherwise, use a combined rate of 120% of total direct labor as the amount for labor overhead and fringe benefits. This is an average based on contracts with the commercial sector. If the actual labor overhead and fringe benefit rates are known, they should be used instead. This information may be obtained from review of a current proposal from a commercial contractor on another project. Place the result of the direct labor times the overhead and fringe rates in the total estimated cost column.

Block 3. Materials/Services (Excluding Federal Information Processing (FIP) [ADP])

List supplies, equipment and services, such as printing, necessary to complete the project. (List all equipment and services related to FIP support under Block 4, FIP Resources.)

Block 4. FIP Resources

List supplies, equipment, software services and support services necessary for performance of the project.

Block 5. Travel

Use an overall estimated cost for travel combining such elements as air fare, per diem and local travel. It may be useful to arrive at an average cost per trip and multiply this cost by the number of estimated trips. Current per diem rates are found in NRCMD and Handbook 14.1, "Official Temporary Duty Travel," Office of the Controller.

Block 6. Subcontractor(s)/Consultant(s)

List any items or services that might be subcontracted, if applicable. Drawing on past experience, you may deduce that a particular Task or Subtask may be subcontracted because of the highly specialized nature of the work or perhaps special equipment or facilities may be required that the prime commercial contractor may not have. (over)

Exhibit 3 (continued)

Block 6. (continued)

If consultants are likely to be utilized, itemize estimated costs for specific consultant services and place the sum in the total estimated cost column. A current range of consultant fees is \$500 - \$900 per day depending upon the level of expertise of the consultant.

Block 7. Other Direct Costs

Itemize any additional Other Direct Costs on a separate sheet. These costs may include items such as supplies, special test equipment, reproduction costs, telephone charges, etc. Enter the total in the total estimated cost column.

Block 8. Total Direct Cost and Overhead

Self explanatory.

Block 9. General and Administrative Expenses (G&A)

The rate is based on an estimated cost to support various departments, such as Accounting, Personnel, Contracts, Legal, etc. Use known commercial G&A rates, if available from recent proposals. Otherwise use a G&A rate of 20%. Multiply the rate times the amount shown in Block 8. Enter the amount in the total estimated cost column.

Block 10. Total Estimated Costs

Total the amounts in the total estimated cost column.

Block 11. Fee or Profit (% of Line 10)

Fee or profit is generally regarded as remuneration for the risk involved in undertaking the work. Profit or fee is expressed as a dollar amount which equates to a percentage of the estimated cost. Generally speaking, no more than 7% should be used for routine efforts under a cost reimbursement contract and not more than 13% for routine efforts under a fixed price contract. Add 1% for moderately complex work and 2% for highly complex work (e.g., state-of-the-art). Multiply the profit rate you estimate times the total estimated cost in block 10 and enter the amount in the total estimated cost column. (NRC work is predominately contracted on a cost-reimbursement basis. Cost-type contracts are appropriate where the effort is unique to NRC, complex, or performance uncertainties and the likelihood of changes make it difficult to estimate performance costs in advance. Fixed price type contracts are used primarily for commercial-type products or for services with reasonable definite functional or detailed specifications.)

Block 12. Total Estimated Cost and Fee or Profit

This block is the sum of the Total Estimated Costs (block 10) and the Fee or Profit (block 11), which is our independent government cost estimate.

Exhibit 4
Individual Evaluation Worksheet

INDIVIDUAL EVALUATION WORKSHEET

RFP NO. _____

OFFEROR: _____

EVALUATOR: _____
(typed name)

Total Initial Score: _____

Total Final Score: _____

Exhibit 4 (continued)

	Total Points	Initial Score	Final Score
Major Criteria: _____	_____	_____	_____
Subcriteria (if any): _____	()	()	()
			Page in Proposal
a. <u>Strengths</u> _____			

b. <u>Weaknesses</u> _____			

c. <u>Questions for Discussions</u> _____			

d. <u>Best and Final Evaluation (Comments)</u> _____			

	OFFICIAL USE ONLY		

Exhibit 4 (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

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:

Exhibit 4 (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:

Evaluator's Signature: _____ Date: _____
(Initial Evaluation)

Exhibit 4 (continued)

B. Best and Final Evaluation

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 accepted.

Evaluator's Signature _____ Date: _____

Exhibit 5

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 Best and Final proposals 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, Best and Final offers, and the SEP meeting to discuss the final evaluation of proposals.

Include the following information in this section:

1. The date of receipt of Best and Final offers.
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. thru
9. Enter each SEP member's score for each criterion.
10. Enter the SEP member's total score for the proposal.
11. Enter the SEP averaged score for the proposal.
12. Enter the offeror's proposed cost.

Exhibit 5 (continued)

(Continue with each proposal in the same manner.)

C. Final Evaluation

In this section, discuss the evaluation of Best and Final offers. 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:

- o Indicate the total final SEP technical score and proposed cost.
- o 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.
- o 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 Best and Final offers.
- 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 offeror's proposed employees are current or former NRC employees. If so, discuss the role the person would perform under the contract.

D. Contractor Selection

In this section, identify the offeror selected for award. Provide the final score and total amount of the award. Discuss the rationale for selecting the offeror, being specific as to why this selection is in the Government's best interests.

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. For example, if the SEP recommends award to other than the lowest cost offeror, discuss what the agency is receiving for the extra cost.

If a lower priced, lower scored offer meets the Government's needs, acceptance 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. Offers exceeding the Government's needs are not a basis for technical superiority.

Exhibit 5 (continued)

MEMORANDUM FOR: Elois J. Wiggins
Contracting Officer

FROM: 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 . Please have your office take the appropriate action to implement this finding.

Designating Official

Attachments:
1. Final Evaluation Recommendation Report
2. Individual Evaluation Worksheets

Exhibit 5 (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)

Exhibit 5 (continued)

FINAL EVALUATION RECOMMENDATION REPORT

RFP NO.

A. Background

- o Project Title:
- o Date Best and Finals Received:
- o Date SEP Met:

B. SEP Final Rating Summary

CRITERIA (100 POSSIBLE POINTS)

OFFEROR: () () () () () () TOTAL AVERAGE COST

(Company)

(member)

(member)

(member)

(Company)

(member)

(member)

(member)

(Company)

(member)

(member)

(member)

Exhibit 5 (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 5 (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 5 (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 6

Milestone Schedule

COMPETITIVE PROCUREMENT MILESTONE SCHEDULE for RFPA No. _____

TITLE: _____

Date of Original _____

Revision No. _____, dated _____

DC STATUS CODE	MILESTONES	PROJECTED DATE	ACTUAL DATE
	1. Initial DC contact with Program Office		
RR	2. Receipt of RFPA in DC		
MS	3. Milestone Chart Completion		
WF	4. SOW Agreed Upon		
LA CH	5. Special Approvals OGC Approval Chairman Approval		
PS/PP	6. CBD Synopsis Mailed		
SD	7. RFP Drafted by Contract Specialist		
SP	8. Panel Meeting on RFP Draft		
FI*/IF	9. RFP Issued		**
	10. Pre-Proposal Conference		
RP	11. RFP Closing Date		
TE	12. Individual Technical Evaluation Received		
CC	13. Cost Evaluation		
MG	14. Panel Meeting on Competitive Range		
	15. Competitive Range Recommendation Received		
CR*/CG	16. Competitive Range Determination		
NO	17. Notification of Offerors of Competitive Range		
AQ	18. Audit Report(s) Requested		
AC	19. Audit Information Received		
NI	20. Discussions Initiated		
NG	21. Discussions Completed		
BQ	22. Best and Final Offers Requested		

*If milestones slip 2 weeks past projected date, revise milestones.

**Issue date reflected in CBD Notice.

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Exhibits

Exhibit 6 (continued)

RFPA No. _____

Revision No. _____

DC STATUS CODE	MILESTONES	PROJECTED DATE	ACTUAL DATE
BC	23. Best and Final Offers Received		
TE	24. Technical Evaluation of Individual Panel Members		
BE	25. Panel Meeting to Evaluate Best and Final Offers		
	26. Final Evaluation Report Received		
ER*/FE	27. Final Evaluation Report Accepted		
	28. Pre-award Approvals/Notification: OSDBU/CR Subcontracting Plan EEO Approval Notification of Award to other Small Businesses (only if a Small Business Set-aside)		
CM*/MC	29. Contract Mailed for Contractor Signature		
EC	30. Contract Execution/Distribution		
	31. Award Notification to CBD and to Unsuccessful Offerors		
	32. Post-Award Orientation/Kick-Off Meeting		

PANEL CHAIRMAN: _____ Date _____

SEP MEMBERS: _____ Date _____

_____ Date _____

_____ Date _____

CONTRACT SPECIALIST: _____ Date _____

COMMENTS:

Exhibit 6 (continued)

COMPETITIVE PROCUREMENT MILESTONE SCHEDULE for RFPA No. _____ (INVITATION FOR BID PROCUREMENT)

TITLE: _____

Date of Original _____

Revision No. _____, dated _____

DCPM STATUS CODE	MILESTONES	PROJECTED DATE	ACTUAL DATE
	1. Initial DCPM contact with Program Office		
RR	2. Receipt of RFPA in DC		
MS	3. Milestone Chart Completion		
WF	4. SOW Agreed Upon		
PS/PP	5. CBD Synopsis Mailed		
LA CH	6. Special Approvals OGC Approval EDO Approval Comm Approval		
SD	7. IFB Drafted by Negotiator		
SP	8. Panel Meeting on IFB Draft		
FI*/IF	9. IFB Issued		**
	10. Prebid Conference		
RP	11. IFB Closing Date		
	12. Preaward Approvals: Site Visit/Responsibility Check		
CM*	13. Contract Mailed to Contractor for Signature (this step may not be needed if the Contractor's bid can be accepted as bid without corrections)		
EC	14. Contract Execution Distribution		
	15. CBD Award Notification		
	16. Post Award Orientation		

*If Milestones slip 2 weeks past projected date, revise milestones

**Issue date reflected in CBD notice

Project Officer: _____

Contract Specialist: _____

COMMENTS:

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Exhibits

Exhibit 6 (continued)

NONCOMPETITIVE OR 8(a) SET-ASIDE PROCUREMENT
MILESTONE SCHEDULE for RFPA No. _____

TITLE: _____

Date of Original _____

Revision No. _____, dated _____

DCPM STATUS CODE	MILESTONES	PROJECTED DATE	ACTUAL DATE
	1. Initial DCPM contact with Program Office		
RR	2. Receipt of RFPA in DC		
MS	3. Milestone Chart Completion		
WF	4. SOW Agreed Upon		
PS/PP	5. CBD Synopsis Mailed		
LA CH FD	6. Special Approvals DPA from SBA 5-year Contract Period OGC Approval EDO Approval Comm Approval JOFOC by Competition Advocate		
FI*/IF	7. RFP Issued		
RP	8. Receipt of Proposal		
ER*/FE	9. Initial Evaluation Report Received		
AQ	10. Audit Report Requested		
AC	11. Audit Information Received		
NG	12. Negotiations Completed		
BC	13. Revised Offer Received		
NE	14. Preaward Approvals EEO Approval		
FE*	15. Final Evaluation Rept. Received		
CM*	16. Contract Mailed to SBA for Signature by SBA and Contractor		
	17. Contract Execution Distribution		
	18. Post Award Orientation		

*If milestones slip 2 weeks past projected date, revise milestones.

Project Officer: _____

Contract Negotiator: _____

Exhibit 7

**Optional Form 333, "Procurement Integrity Certification
for Procurement Officials"**

53.302-333

FEDERAL ACQUISITION REGULATION (FAR)

**PROCUREMENT INTEGRITY CERTIFICATION
FOR PROCUREMENT OFFICIALS**

As a condition of serving as a procurement official, I _____
(typed or printed name)
hereby certify that I am familiar
with the provisions of subsections 27(b), (c), and (e) of the Office of Federal
Procurement Policy Act (41 USC 423) as amended by section 814 of Public
Law 101-189. I further certify that I will not engage in any conduct
prohibited by such subsections and will report immediately to the contracting
officer any information concerning a violation or possible violation of
subsections 27(a), (b), (d), or (f) of the Act and applicable implementing
regulations. A written explanation of subsections 27(a) through (f) has been
made available to me. I understand that, should I leave the Government during
the conduct of a procurement for which I have served as a procurement
official, I have a continuing obligation under section 27 not to disclose
proprietary or source selection information relating to that procurement and a
requirement to so certify.

SIGNATURE OF PROCUREMENT OFFICIAL

DATE

DEPARTMENT OR AGENCY

OFFICE TELEPHONE NUMBER

This form is authorized for use and local
reproduction through December 31, 1990.

OPTIONAL FORM 333 (8-80)
Prescribed by GSA - FAR 48 CFR 53.203(b)

(FAC 84-60) 53-202

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Exhibits

Exhibit 7 (continued)

FAC 90—1 OCTOBER 22, 1990

PART 53—FORMS

53.302-333

Name of Procurement Official

Social Security Number

PRIVACY ACT NOTICE TO EMPLOYEES AND OFFICIALS

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the following notice is provided:

AUTHORITY FOR COLLECTION OF INFORMATION; 41 U.S.C. 423 and Executive Order 9397.

Your signature on the Optional Form 333, Procurement Integrity Certification for Procurement Officials, and disclosure of your Social Security Number on this page, are voluntary, but possible effects upon you if the certification is not signed and the Social Security Number is not provided include the following:

Disqualification from particular work or duty assignments, or from the position for which you have applied or which you currently hold, or other appropriate action, or administrative delay in processing your certification.

Principal purpose for collection of this information:

To obtain and maintain a completed certification from any person designated as a "Procurement official," as defined by 41 U.S.C. 423 and applicable procurement regulations.

Routine uses which may be made of the collected information:

Transfers to Federal, state, local, or foreign agencies when relevant to civil, criminal, administrative, or regulatory investigations or proceedings, including transfer to the Office of Government Ethics in connection with its program oversight responsibilities, or pursuant to a request by any appropriate Federal agency in connection with hiring, retention, or grievance of an employee or applicant, the issuance of a security clearance, the award or administration of a contract, the issuance of a license, grant, or other benefit, to committees of the Congress, or any other use specified by the Office of Personnel Management (OPM) in the system of records entitled "OPM/GOVT-1, General Personnel Records," as published in the Federal Register periodically by OPM.

53-202.1

Exhibit 8

Justification for Other Than Full and Open Competition

Example 1

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 negotiate a noncompetitive modification with xxxxxxxxxxxx, Inc. (Manpower) to extend the term of Contract No. NRC- for "Private Sector Temporary Services" in support of the Commission. The proposed extension is to commence November 1, 1992, and continue through December 31, 1992. The estimated cost of this extension is \$100,000.00.
2. The statutory authority permitting other than full and open competition is 41 U.S.C. 253(c)(2), as implemented by Subpart 6.302-2 of the Federal Acquisition Regulation, which provides for limiting competition in those situations where there is an unusual and compelling urgency for the service and delay in continuing service would result in serious injury to the Government.
3. A Request for Procurement Action was received by the Division of Contracts and Property Management (DCPM) from the Office of Personnel (OP) on September 30, 1992, requesting an extension of the existing contract, which is due to expire October 31, 1992. A new follow-on competitive procurement to this contract is presently being processed by DCPM. Initially, award was to have been made on September 22, 1992. However, these dates have been extended and revised several times. The most recent revision of the milestone dates indicates an anticipated award date of December 22, 1992. Therefore, it is necessary to extend the current private sector temporary service contract with XXXXXX for the continuation of service through December 31, 1992.
4. Currently, XXXXXX provides the NRC with private sector temporary help services. Services include secretary/word processor, accounting technician and clerk typist. Prior to the award of the current contract, the NRC suffered from a severe shortage of personnel in certain skill categories. Consequently, it was difficult for many offices to meet short term work requirements. The most severe skill shortages were for secretary/word processors. These needs were filled through the use of secretaries assigned to the Central Support Unit. However, the size of that unit precluded the ability to satisfy all of the Agency's urgent, short-term needs. The authority to employ private sector temporary help services and award of the current contract became essential factors in meeting Agency needs and in alleviating the constant crisis shortages. Subsequent budgetary restrictions during the past fiscal year have required the elimination of the Central

Exhibit 8 (continued)

Contract No. NRC-
Page 2

Support Unit. This action resulted in an increased use of the private sector temporaries in order to satisfy NRC managers' requirements for meeting critical needs within their organizations.

Unanticipated increased workloads, annual leave, maternity leave, resignations and subsequent vacancies in FY 1992 alone resulted in the use of 22,544.25 hours of private sector temporary help services. At present, 17 temporaries are in place at headquarters in various offices such as the Office of the General Counsel, the Office of the Controller, the Office of Nuclear Reactor Regulation, and the Office of Nuclear Regulatory Research. These offices depend on the use of private sector temporaries for NRC mission-directed operations such as the preparation of the draft safety evaluation report for EPRI passive and evolution reactors, response to contentions at Diablo Canyon, requests for discovery in the "Safety Light" case, the petition to intervene at Comanche Peak and responses to Congressional and licensee queries concerning fee rules. Managers and supervisors throughout the agency have provided feedback indicating the critical role the temporaries have played in their organizations' ability to accomplish their mission. Many offices would be severely impacted in their ability to maintain their essential work effort if the temporary help services under the current contract were not extended pending award of the competitive contract.

5. In accordance with Subpart 5.202(a)(2) of the Federal Acquisition Regulation, this acquisition will not be synopsisized in the Commerce Business Daily, as the need for these services is of such compelling urgency that the Government would be seriously injured if this action were synopsisized in compliance with the required timeframe.
6. To ensure that the cost to the Government for these services will be fair and reasonable, a separate cost analysis will be performed by the Contract Specialist for the proposed work.

Technical Certification

As prescribed by Subpart 6.303-1(b) of the Federal Acquisition Regulation, the Justification for Other Than Full and Open Competition for the acquisition of this service from xxxxxxxx is hereby certified as complete and accurate.

(Date)

Paul E. Bird, Director
Office of Personnel (OP)

Exhibit 8 (continued)

Contract No. NRC-
Page 3

Contracting Officer's 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)

Mary Jo Mattia, Contracting Officer
Contract Administration Branch No. 2
Division of Contracts
and Property Management, ADM

Approval

Pursuant to Subpart 6.304(a)(1) of the Federal Acquisition Regulation, the above-described justification for Other Than Full and Open Competition has been reviewed and () approved () disapproved.

(Date)

Edward L. Halman, Competition Advocate

Exhibit 8 (continued)

Example 2

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

1. The U.S. Nuclear Regulatory Commission proposed to enter into a sole source Delivery Order with XXX, Inc. under their GSA nonmandatory FIP schedule contract GS000000, to support the proprietary operating system software of the NRC-owned SUN microcomputers. The period of performance is for approximately 8 months in FY94 through September 30, 1994, at a total estimated cost of \$20,528.00.
2. The proposed maintenance agreement offered by XXX provides upgrades, new releases, corrections, enhancements, and technical support related to the proprietary operating system software. XXX develops and maintains all new information and upgrades. The SUN software is proprietary, copyrighted and no other vendor can provide the required maintenance service for the agency. NRC owns a license to use the software and maintenance is necessary to ensure its integrity for continued use.
3. Based on the above justification, the proposed software maintenance may be acquired by means other than full and open competition pursuant to the Federal Information Resources Management Regulation (FIRMR) Subpart 201-39.803-3. The statutory authority permitting this sole source procurement is 41 U.S.C. 253(c)(1), as implemented by Federal Acquisition Regulation (FAR) Subpart 6.302-1(b)(1) which provides for limiting competition in situations where the services or supplies are available from only one source and no other product will satisfy NRC's requirements.
4. In accordance with FIRMR Subpart 201-39.501-2(a)(1), a synopsis in the Commerce Business Daily is not required for FIP equipment or services purchased from a GSA Nonmandatory FIP Schedule.
5. The proposed cost of these services are fair and reasonable to the government because the rates being charges are the standard prices in the XXX GSA nonmandatory FIP schedule contract.

Exhibit 8 (continued)

-2-

Technical Certification

As prescribed in FAR subpart 6.303-1(b), this Justification For Other Than Full and Open Competition for software maintenance services to support the SUN microcomputers proprietary operating system software is hereby certified to be accurate and complete.

Date Arnold E. Levin, Deputy Director
Office of Information Resources Management

Contracting Officer's Certification

In accordance with FAR subpart 6.303-1(a), this Justification for Other Than Full and Open Competition is hereby certified to be accurate and complete to the best of my knowledge and belief and in accordance with FAR subpart 6.304(a)(1) has been approved.

Date Mary Jo Mattia, Contracting Officer
Division of Contracts
Office of Administration

Exhibit 8 (continued)

Example 3

U.S. NUCLEAR REGULATORY COMMISSION

Division of Contracts and Property Management

Justification for Other Than Full and Open Competition

Based on the following justification, the proposed specific make and model software may be acquired by means of other than full and open competition pursuant to 40 USC 759(g) of the Federal Information Resources Management Regulation (FIRMR) which states that a specific make and model specification may be used when no other type of specification can satisfy the needs of the Government and is justified and approved in accordance with 41 USC 253(c)(1), as implemented by Federal Acquisition Regulation (FAR) Subpart 6.302-1. Following your approval, small purchase competition will be conducted using the specific make and model specification. In accordance with FAR 5.101, this requirement was not synopsized in the Commerce Business Daily because the anticipated cost does not exceed \$25,000.00.

To provide adequate Federal Information Processing (FIP) support to agency users, the Office of Information Resources Management (IRM) needs to acquire specific make and model software packages for use by NRC employees throughout the Commission.

Because the FIRMR gives preference to the use of commercially available, off-the-shelf software, the NRC has requested purchase of the following software to accommodate its needs; 100 copies of MS DOS Upgrade (version 6.0), 20 copies of PC Anywhere Host/Remote, 20 copies of Harvard Graphics and 50 copies of ProCom Plus. The estimated cost for all of the software is \$20,250.00.

The NRC has many MS DOS software packages installed on local area networks and stand alone personal computers. The upgraded MS DOS software is totally compatible with previous versions. The PC Anywhere is the only software that can be used for remote access to NRC's 2,500 workstation AUTOS LAN. The ProCom Plus is the standard communication software used for access and file transfer to and from all NRC facilities located throughout the country, DOE national laboratories, and other federal agencies providing services such as the Federal Financial System (FFS). Harvard Graphics is required to update and forward existing graphics files created in Harvard Graphics for incorporation into high level summary presentations.

The 100% compatibility to existing NRC software that each of these software packages provides is required because: (a) training classes have been developed and are taught by contractor personnel at the NRC's Training Laboratory for these software packages; (b) a large number of NRC employees have already been trained in the use of these software packages; and (c) the IRM staff, through the Information Technology Services Support Center (ITS), also provides user support and assistance to users of these software packages in Headquarters, the Regions, and at resident sites.

Exhibit 8 (continued)

-2-

The NRC requires these software packages to be compatible to insure an effective and efficient communication capability. Files created at the NRC are transmitted to and from all NRC facilities located throughout the country, including the NRC buildings in the Bethesda/Rockville area, using communications packages via a modem. Data must be shared between users both within the same section/branch/office and also between offices and regions and the various resident sites. Data must be converted, read, and incorporated into other documents.

There are no other software packages which would fully satisfy NRC requirements. Although there are other software packages which perform similar functions, their programming languages and formats are different. Use of any other packages would cause excessive delays in communication and internetwork operations between the NRC offices because the transfer and sharing of data would not be transparent to the user, i.e., data would not be stored in the same structure and it would be impossible to trade data without reformatting.

The programming codes (specifications) for these software packages are copyrighted by the manufacturer and, thus, are unavailable for use by the NRC in a competitive environment. The development of functional specifications for commercially available, off-the-shelf software packages such as these would be very time consuming and impractical due to the complexity of the specifications involved and limited staff available. These are general purpose software packages, i.e., they are not designed for one specific function but rather are multifunctional.

Because of this, it would be impossible for the IRM staff to develop specifications for these packages which would be complete enough to assure that the acquired software packages would function in all respects as required by NRC needs.

The acquisition of 100% compatible software is so essential in ensuring continuity of critical operations within the NRC that acquisition of software which is not 100% compatible is not a viable alternative. The NRC would experience delays and less than optimum utilization of skilled professionals (both NRC employees and those under contract to NRC) if conversion to new software packages were required.

Exhibit 8 (continued)

-3-

Technical Certification

As prescribed in FAR Subpart 6.303-1(b), this Justification for Other Than Full and Open Competition for acquisition of the specific make and model software listed herein is hereby certified as accurate and complete.

Date

Pamela G. Kruzic, Director
Division of computer & Telecommunication
Services
Office of Information Resources Management

Contracting Officer's Certification

In accordance with FAR Subpart 6.303-1(a)(2), this Justification for Other Than Full and Open Competition is hereby certified to be accurate and complete to the best of my knowledge and belief.

Date

Dennis M. Tarner, Contracting Officer

Competition Advocate's Approval

Pursuant to FAR Subpart 6.304(a)(1), I have reviewed and () approved () disapproved the above described acquisition for other than full and open competition.

Date

Edward L. Halman, Competition Advocate

Exhibit 8 (continued)

Example 4

U.S. NUCLEAR REGULATORY COMMISSION
Division of Contracts
Justification for Other Than Full and Open Competition

1. The U.S. Nuclear Regulatory Commission (NRC) proposes to enter into a sole source contract entitled "EarthVision Geologic Modeling-Extended (EV-GMX) with companion modules, Interactive Coordinate Transform (EV-ITC), Digital Data Import (EV-DDI), Seismic Line Data Capture (EV-SL/SA), Map Digitizing (EV-DO), and Well Display (EV-WD)" for the Division of High-Level Waste Management (DHLWM) in the Office of Nuclear Materials Safety and Safeguards (NMSS) with XXX, Inc. for software which will represent and model geographic and geophysical information. The period of performance is three years with two one year options. The total estimated cost for the five year period is \$150,000.
2. The statutory authority permitting Other Than Full and Open Competition is 41 U.S.S. 253 (c)(1), as implemented by FAR 6.302-1 which provides for limiting competition in those situations where the supplies or services are available from only one responsible source.
3. Under the Nuclear Waste Policy Act, the Department of Energy (DOE) is required to submit to the NRC a license application for the construction and operation of a mined geologic repository for the disposal of high-level waste. The repository program is a large Federal program that will span several decades. The DOE has been collecting site and geophysical information on the proposed repository site at Yucca Mountain, Nevada, since 1978 and plans another 10 years of data collection. In order for NRC to interface with and be able to use the DOE information and make independent regulatory and confirmatory analyses of the repository site data and information, the DHLWM staff needs the EarthVision Modeling software.

The capabilities of this software are needed to support the program requirements described in the License Review Capability of the "Functional Needs Update and Status Report on the DHLWM Advanced Computer Review System (CNWRA, May 1992). EarthVision is specifically written for the special Silicon Graphics computers, one of which was specified in the design report, has been ordered and delivery is expected by July 1993. This software is used by DOE in its analyses of repository site data and evaluations of performance. To interact with and to be able to use DOE information (DOE is the eventual licensee), the NRC/DHLWM staff needs the same compatibility, thus the need to have the EarthVision software.

Exhibit 8 (continued)

-2-

Justification for Other Than Full and Open Competition

4. EarthVision is a unique, completely developed and implemented software system for representing and modeling geographic and geophysical information. The software has the needed flexible import and export routines for interface with GIS programs and external data bases.
5. There are no other known sources that can meet this compatibility requirement. EarthVision proprietary software is currently being used by DOE (the licensee) for their data analyses and analytical evaluations. Accordingly, the NRC staff will need to use the same software during the prelicensing and licensing activity to analyze the data and information that will be provided by DOE. With the large amount of technical data already accumulated by DOE, with the enormous amounts of data to be obtained in the years ahead, and to use the special capabilities of the Silicon Graphics Workstation soon to be delivered to the DHLWM, it is imperative that the DHLWM acquire the XXXX, Inc. EarthVision software to develop appropriate license review capabilities and be able to review the DOE analyses.
6. The cost and time required to develop an additional source for this proprietary product and prohibitive. The DHLWM Advanced Computer Review System was selected as one of the pilot programs for early implementation of advanced computer technology in the NRC. In a 3/19/91 memorandum the Commissioners requested that the EDO revise the NRC Long-Range Computer Strategy in the 5-year Plan by "early 1992 to take full advantage of the evolving microcomputer, local area network, telecommunication, and distributed data base technologies.."
7. To ensure that the cost to the Government for this product is fair and reasonable, a separate cost analysis will be performed for this proposed contract by the Contract Specialist.
8. In accordance with Subpart 5.201 of the Federal Acquisition Regulation (FAR), this acquisition was synopsisized in the Commerce Business Daily. No responses were received in reply to the synopsis. This further supports that no other source can meet the Government's needs for this effort.

Exhibit 8 (continued)

Technical Certification

As prescribed in Subpart 6.303-1(b) of the FAR, this justification for other than full and open competition for the purchase of EarthVision Geologic Modeling-Extended software package is being certified as complete and accurate.

Date _____

Joe Taylor, Director
Division of High-Level Waste
Management
Office of Nuclear Materials
Safety and Safeguards

Contracting Officer's Certification

As prescribed in Subpart 6.303-1(a)(2) of the FAR, the accuracy and completeness of the jurisdiction of other than full and open competition is hereby certified.

Date _____

Elois J. Wiggins, Contracting Officer
Division of Contracts
Office of Administration

Pursuant to Subpart 6.304(a)(1) of the FAR, I have reviewed and () approved ()disapproved the above described acquisition for other than full and open competition.

Date _____

Edward L. Halman
Competition Advocate

Exhibit 9

Personal Services and Inherently Governmental Function Determination

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 nonselection 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;

Exhibit 9 (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 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 9 (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 9 (continued)

-4-

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 10

The Generic A-76 Cost Comparison (GCCF) In-House Vs. Contract or ISSA Performance

	Performance Periods					
	1st	2nd	3rd	Add'l	Total	Reference
In-House Performance						
1. Personnel						
2. Material and Supply						
3. Other Specifically Attributable						
4. Overhead						
5. Additional						
6. Total In-House						
Contract or ISSA Performance						
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						
Decision						
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 (-)						----- -----
19. In-House MEO Certified By:						
Date:						
Office and Title:						
<p>*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</p>						

Exhibit 10 (continued)

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 10 (continued)

**The Streamlined A-76 Cost Comparison Form (SCCF)
(Limited to 65 FTE or Less)
In-House Vs. Contract or ISSA Performance**

	Performance Periods					
	1st	2nd	3rd	Add'l	Total	Reference
In-House Performance						
1. Personnel						
2. Material						
3. Overhead						
4. Other						
5. Total In-House						
Contract or ISSA Performance						
6. Contract and ISSA Price Range						
7. Contract Administration						
8. Federal Taxes (-)						
9. Total Contract and ISSA Price Range						
Decision						
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 In-House						
Convert to Contract or ISSA						
15. In-House Cost Estimate Prepared By:						
Date:						
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.						

Exhibit 10 (continued)

- 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 11

Chairman Paper

MEMORANDUM TO: The Chairman

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: ACQUISITION OF TECHNICAL ASSISTANCE TO SUPPORT REGIONAL
OPERATOR LICENSING ACTIVITIES

You are requested to approve the project described in this paper and authorize the Contracting Officer to enter into a contract which exceeds \$3,000,000.

Background

The United States Nuclear Regulatory Commission's (NRC) Office of Nuclear Reactor Regulation (NRR) is responsible for administering examinations and issuing licenses under the Operator Licensing Program to those desiring to operate nuclear power plants under the authority of the Atomic Energy Act of 1954, as amended. Applicants who successfully pass these examinations are granted a license to operate a specific facility for a period of six years. Prior to the expiration of the six-year period, licensees must request a renewal of this license. Included in this renewal request must be a statement that during the effective term of the licensee's current license, the licensee has completed the requalification program for the facility for which the license renewal is sought. The requalification program is approved by the NRC and contains material as required by 10 CFR part 55.

The scope of this project will include preparing and conducting written and operating examinations at nuclear facilities, grading examinations, and making pass or fail recommendations to the NRC regarding issuance or denial of licenses to applicants. Examination work will be performed in accordance with the current Operator Licensing Examiner Standards as contained in NUREG-1021. Work will also include performing requalification training program evaluations using NRC inspection procedures.

CONTACTS:
Brian Hughes, NRR
504-1096

Susan Hopkins, ADM
492-4276

Source Selection Information
"Limited Internal Distribution Permitted"

Exhibit 11 (continued)

The Chairman

2

Discussion

The Division of Contracts and Property Management proposes to issue a competitive solicitation to provide technical assistance to the NRC Regional Offices in the administration of tests to applicants for commercial or power Reactor Operator (RO) and Senior Reactor Operator (SRO) licenses.

The proposed contract will replace the contract with Sonalysts, Inc. which expires in July 1994. The proposed contract will have a five year period of performance. The total estimated cost for the five year period of performance is \$7,722,000. It is anticipated that this procurement action will result in an indefinite quantity/indefinite delivery type contract with the actual work to be placed under task orders issued by the NRC Contracting Officer. The proposed Statement of Work is attached.

The NRR Five Year Plan estimates include FY 94 through FY 99 funding for this project. The estimated funding for this project is summarized below. No reallocation of resources is anticipated.

JCN No.	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
J-2073	\$514.8K	\$1,544.4K	\$1,544.4K	\$1,544.4K	\$1,544.4K	\$1,029.6K

This project does not duplicate other NRC work and has been reviewed and approved by the Senior Contract Review Board. Furthermore, this project is being funded to support the Operator Licensing activities consistent with the anticipated reduction in operator licensing program support as discussed in SECY-93-333 "FINAL AMENDMENTS TO 10 CFR PART 55 ON RENEWAL OF LICENSES AND REQUALIFICATION REQUIREMENTS FOR LICENSED OPERATORS."

The Source Evaluation Panel and the Contracting Officer will consider the question of organizational conflict of interest in accordance with NRC policy stated in Title 41, Code of Federal Regulations Subpart 10-1.54, and revisions to the policy as approved by the Commission on August 15, 1991, 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 which are directed toward safeguarding the acquisition process, it is requested that all budget information concerning this project be regarded as confidential until after the contract is awarded.

Source Selection Information
"Limited Internal Distribution Permitted"

Exhibit 11 (continued)

The Chairman

3

I recommend that you provide approval to enter into a contract for technical support in regional operator licensing activities.

Attachment:

Statement of Work

cc: Commissioner Rogers
Commissioner Remick
Commissioner de Planque
OGC
SECY
OCA
OPA

Source Selection Information
"Limited Internal Distribution Permitted"

Exhibit 12

SEP Certification Statement

MEMORANDUM FOR: Elois J. Wiggins, Contracting Officer

FROM: _____, Project Officer

SUBJECT: PROJECT OFFICER'S CERTIFICATION STATEMENT: RFP NO.

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 12 (continued)

MEMORANDUM FOR: Elois J. Wiggins, Contracting Officer

FROM: _____, SEP Member

SUBJECT: PANEL MEMBER'S CERTIFICATION STATEMENT: RFP NO.

PART I - To be completed upon appointment to 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 13

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 offerors with whom it is possible to conduct meaningful discussions without a major rewrite of the proposal. Only if a proposal is so technically inferior, or so unrealistically high or low in price, that there is no realistic chance of it being made acceptable for award even by discussion should it be excluded from the competitive range.

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, for those procurements exceeding \$100,000, the certifications required by Public Law 100-679, along with 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 averaged technical score, and the cost for all proposals received. For those

Exhibit 13 (continued)

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.
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. 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 averaged 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.

Exhibit 13 (continued)

- 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 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 could not be made acceptable for award through discussion without requiring a major rewrite of the proposal. The summary should be succinct and presented in a manner that would allow for verbatim extraction from the report by the Contract Negotiator 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 13 (continued)

Note: this memo is to be on NRC letterhead paper

MEMORANDUM FOR: Elois J. Wiggins
Contracting Officer

FROM: (The person who signed the RFPA, block #16)
Designating Official

SUBJECT: COMPETITIVE RANGE RECOMMENDATION FOR PROPOSALS SUBMITTED
UNDER RFP NO. RS- ENTITLED "

The Source Evaluation Panel has completed its evaluation of all proposals 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.

Designating Official

Attachments:
1. Competitive Range Recommendation Report
2. Individual Evaluation Worksheets

Exhibit 13 (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 13 (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 AVERAGE COST

(Company)

(member)

(member)

(member)

(Company)

(member)

(member)

(member)

(Company)

(member)

(member)

(member)

Exhibit 13 (continued)

C. OFFERORS IN THE COMPETITIVE RANGE

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:

Questions for Discussion:

Exhibit 13 (continued)

D. OFFERORS NOT IN THE COMPETITIVE RANGE

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:

Exhibit 14

Summary of Procurement Integrity Certification Requirements of Optional Form 333

NRC Procurement Officials

Section 27 of the Office of Federal Procurement Policy Act places certification requirements on nearly every NRC employee who is personally and substantially involved in the development of specifications for contracts or evaluating, approving or awarding contracts for NRC. Such individuals are considered "procurement officials." In NRC, procurement officials include (but are not limited to) (1) members of the Senior Contract Review Board ("SCRB") and any other agency employee personally and substantially involved in the SCRB process, (2) the project manager, (3) members and advisors of the Source Evaluation Panel, (4) the Designating Official, (5) any contract specialist performing contract negotiating functions, (6) the Contracting Officer, (7) any attorney in the Office of the General Counsel who reviews or provides advice concerning a contract, and (8) any employee who reviews specifications, statements of work, or other documents relating to specific contracts, or has approval authority for those documents or the procurement action. Contractors who perform any of the duties under the definition are also considered procurement officials. These requirements affect actions related to contracts, only. They do not apply to actions related to grants, cooperative agreements or interagency agreements, including those with DOE National Laboratories.

Certification Requirements - Subsections 27a through 27f of the Office of Federal Procurement Policy Act

Subsection 27(a) - forbids competing contractors from giving gratuities to or discussing future employment or business opportunities with a procurement official, and from soliciting or obtaining proprietary or source selection information.

Subsection 27(b) - prohibits procurement officials, during the conduct of an agency procurement, from participation in any activities or discussions associated with future employment or business opportunities with, or gratuities from competing contractors. This subsection also prohibits the disclosure of proprietary or source selection information.

Subsection 27(c) - establishes criteria for allowing procurement officials to withdraw from further participation in a procurement in order to discuss future employment with a competing contractor. Procurement officials must obtain written approval from the head of the procuring activity (Director, DCPM), prior to discussing future employment with a competing contractor.

Subsection 27(d) - prohibits anyone, whether or not he/she is a procurement official, from disclosing proprietary or source selection information.

Subsection 27(e) - imposes certification requirements applicable to contracts and modifications in excess of \$100,000. These certifications generally must be made by: procurement officials leaving the Government during the conduct of a specific procurement; competing contractors; and contracting officers.

Exhibit 14 (continued)

Subsection 27(f) - prohibits individuals who were procurement officials, with respect to a specific procurement, from participating on behalf of the contractor, (1) in negotiations leading to potential award, or (2) in performance of the contract. (This subsection has been suspended through May 31, 1991, to give Congress time to evaluate the need for this provision. The effect of the procurement official's certification regarding Subsection 27(f) is to promise to report information concerning violations or possible violations of that subsection that occur after it becomes effective.)

Because of changes in the law, all procurement officials must certify on the attached Optional Form 333, whether or not they previously certified. However, certification on the attached form is required only once under the current law for as long as the individual is an NRC employee.

Signed certifications should be submitted to the Policy staff, Mailstop T-7-12, Division of Contracts, Office of Administration.

List of Procurement Officials

A list of procurement officials should be provided with each Request for Procurement Action (NRC Form 400) to ensure compliance with procurement official certification requirements. Using the attached form entitled "List of Procurement Officials," you should list the name and office of each person who acts in a procurement official capacity under the proposed procurement.

Questions

If you have questions concerning implementation of these requirements, (e.g., whether you are a "procurement official" with regard to a particular procurement), you should call Mary Lynn Scott, Policy Staff, DC, on (301) 415-6179. Questions concerning conflict of interest provisions should be directed to Michael Rafky, Office of the General Counsel, on (301) 415-1974.

Return of Certification

Signed certifications should be submitted to Joanna Lilley, Division of Contracts, Mail Stop T-712.

Exhibit 15

Standard Form (SF) 129, "Solicitation Mailing List Application"

SOLICITATION MAILING LIST APPLICATION		1. TYPE OF APPLICATION <input type="checkbox"/> INITIAL <input type="checkbox"/> REVISION		2. DATE	FORM APPROVED OMB NO. 3090-0009
NOTE—Please complete all items on this form. Insert N/A in items not applicable. See reverse for instructions.					
3. NAME AND ADDRESS OF FEDERAL AGENCY TO WHICH FORM IS SUBMITTED (Include ZIP code)			4. NAME AND ADDRESS OF APPLICANT (Include county and ZIP code)		
5. TYPE OF ORGANIZATION (Check one) <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> NON-PROFIT ORGANIZATION <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION, INCORPORATED UNDER THE LAWS OF THE STATE OF:			6. ADDRESS TO WHICH SOLICITATIONS ARE TO BE MAILED (If different than Item 4)		
7. NAMES OF OFFICERS, OWNERS, OR PARTNERS					
A. PRESIDENT		B. VICE PRESIDENT		C. SECRETARY	
D. TREASURER		E. OWNERS OR PARTNERS			
8. AFFILIATES OF APPLICANT (Names, locations and nature of affiliation. See definition on reverse.)					
9. PERSONS AUTHORIZED TO SIGN OFFERS AND CONTRACTS IN YOUR NAME (Indicate if agent)					
NAME		OFFICIAL CAPACITY		TELE. NO. (Include area code)	
10. IDENTIFY EQUIPMENT, SUPPLIES, AND/OR SERVICES ON WHICH YOU DESIRE TO MAKE AN OFFER (See attached Federal agency's supplemental listing and instructions, if any)					
11A. SIZE OF BUSINESS (See definitions on reverse) <input type="checkbox"/> SMALL BUSINESS (If checked, complete items 11B and 11C) <input type="checkbox"/> OTHER THAN SMALL BUSINESS		11B. AVERAGE NUMBER OF EMPLOYEES (Including affiliates) FOR FOUR PRECEDING CALENDAR QUARTERS		11C. AVERAGE ANNUAL SALES OR RECEIPTS FOR PRECEDING THREE FISCAL YEARS	
12. TYPE OF OWNERSHIP (See definitions on reverse) (Not applicable for other than small businesses) <input type="checkbox"/> DISADVANTAGED BUSINESS <input type="checkbox"/> WOMAN-OWNED BUSINESS		13. TYPE OF BUSINESS (See definitions on reverse) <input type="checkbox"/> MANUFACTURER OR PRODUCER <input type="checkbox"/> REGULAR DEALER (Type 1) <input type="checkbox"/> CONSTRUCTION CONCERN <input type="checkbox"/> SURPLUS DEALER <input type="checkbox"/> SERVICE ESTABLISHMENT <input type="checkbox"/> REGULAR DEALER (Type 2) <input type="checkbox"/> RESEARCH AND DEVELOPMENT			
14. DUNS NO. (If available)		15. HOW LONG IN PRESENT BUSINESS?			
16. FLOOR SPACE (Square feet) A. MANUFACTURING		B. WAREHOUSE		17. NET WORTH A. DATE B. AMOUNT \$	
18. SECURITY CLEARANCE (If applicable, check highest clearance authorized)					
FOR		TOP SECRET		SECRET	
A. KEY PERSONNEL		CONFIDENTIAL		C. NAMES OF AGENCIES WHICH GRANTED SECURITY CLEARANCES (Include dates)	
B. PLANT ONLY					
CERTIFICATION — I certify that information supplied herein (including all pages attached) is correct and that neither the applicant nor any person (or concern) in any connection with the applicant as a principal or officer, so far as is known, is now debarred or otherwise declared ineligible by any agency of the Federal Government from making offers for furnishing materials, supplies, or services to the Government or any agency thereof.					
19. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN (Type or print)			20. SIGNATURE		21. DATE SIGNED

NSN 7540-01-152-8066 129-106 STANDARD FORM 129 (REV. 10-83)
PREVIOUS EDITIONS UNUSABLE Formulated by GSA

**Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Exhibits**

Exhibit 15 (continued)

INSTRUCTIONS

Persons or concerns wishing to be added to a particular agency's bidder's mailing list for supplies or services shall file this properly completed and certified Solicitation Mailing List Application, together with such other lists as may be attached to this application form, with each procurement office of the Federal agency with which they desire to do business. If a Federal agency has attached a Supplemental Commodity list with instructions, complete the application as instructed. Otherwise, identify in Item 10 the equipment supplies and/or services on which you desire to bid. (Provide Federal Supply Class or Standard Industrial Classification Codes if available.) The application shall be submitted and signed by the principal as distinguished from an agent, however constituted.

After placement on the bidder's mailing list of an agency, your failure to respond (submission of bid, or notice in writing, that you are unable to bid on that particular transaction but wish to remain on the active bidder's mailing list for that particular item) to solicitations will be understood by the agency to indicate lack of interest and concurrence in the removal of your name from the purchasing activity's solicitation mailing list for the items concerned.

**SIZE OF BUSINESS DEFINITIONS
(See Item 11A.)**

a. Small business concern—A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is competing for Government contracts and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.)

b. Affiliates—Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationship. (See Items 8 and 11A.)

c. Number of employees—(Item 11B) In connection with the determination of small business status, "number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months. If a concern has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business.

**TYPE OF OWNERSHIP DEFINITIONS
(See Item 12.)**

a. "Disadvantaged business concern"—means any business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is

owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals.

b. "Women-owned business"—means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

**TYPE OF BUSINESS DEFINITIONS
(See Item 13.)**

a. Manufacturer or producer—means a person (or concern) owning, operating, or maintaining a store, warehouse, or other establishment that produces, on the premises, the materials, supplies, articles, or equipment of the general character of those listed in Item 10, or in the Federal Agency's Supplemental Commodity List, if attached.

b. Service establishment—means a concern (or person) which owns, operates, or maintains any type of business which is principally engaged in the furnishing of nonpersonal services, such as (but not limited to) repairing, cleaning, redecorating, or rental of personal property, including the furnishing of necessary repair parts or other supplies as part of the services performed.

c. Regular dealer (Type 1)—means a person (or concern) who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character listed in Item 10, or in the Federal Agency's Supplemental Commodity List, if attached, are bought, kept in stock, and sold to the public in the usual course of business.

d. Regular dealer (Type 2)—In the case of supplies of particular kinds (at present, petroleum, lumber and timber products, machine tools, raw cotton, green coffee, hay, grain, feed, or straw, agricultural liming materials, tea, raw or unmanufactured cotton linters and used ADPE), Regular dealer means a person (or concern) satisfying the requirements of the regulations (Code of Federal Regulations, Title 41, 50-201.101(a)(2)) as amended from time to time, prescribed by the Secretary of Labor under the Walsh-Healey Public Contracts Act (Title 41 U.S. Code 35-45). For coal dealers see Code of Federal Regulations, Title 41, 50-201.604(a).

● **COMMERCE BUSINESS DAILY**—The Commerce Business Daily, published by the Department of Commerce, contains information concerning proposed procurements, sales, and contract awards. For further information concerning this publication, contact your local Commerce Field Office.

Exhibit 16

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 16 (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 16 (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 16 (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 17

Chart 1: Overview of the Competitive Acquisition Process

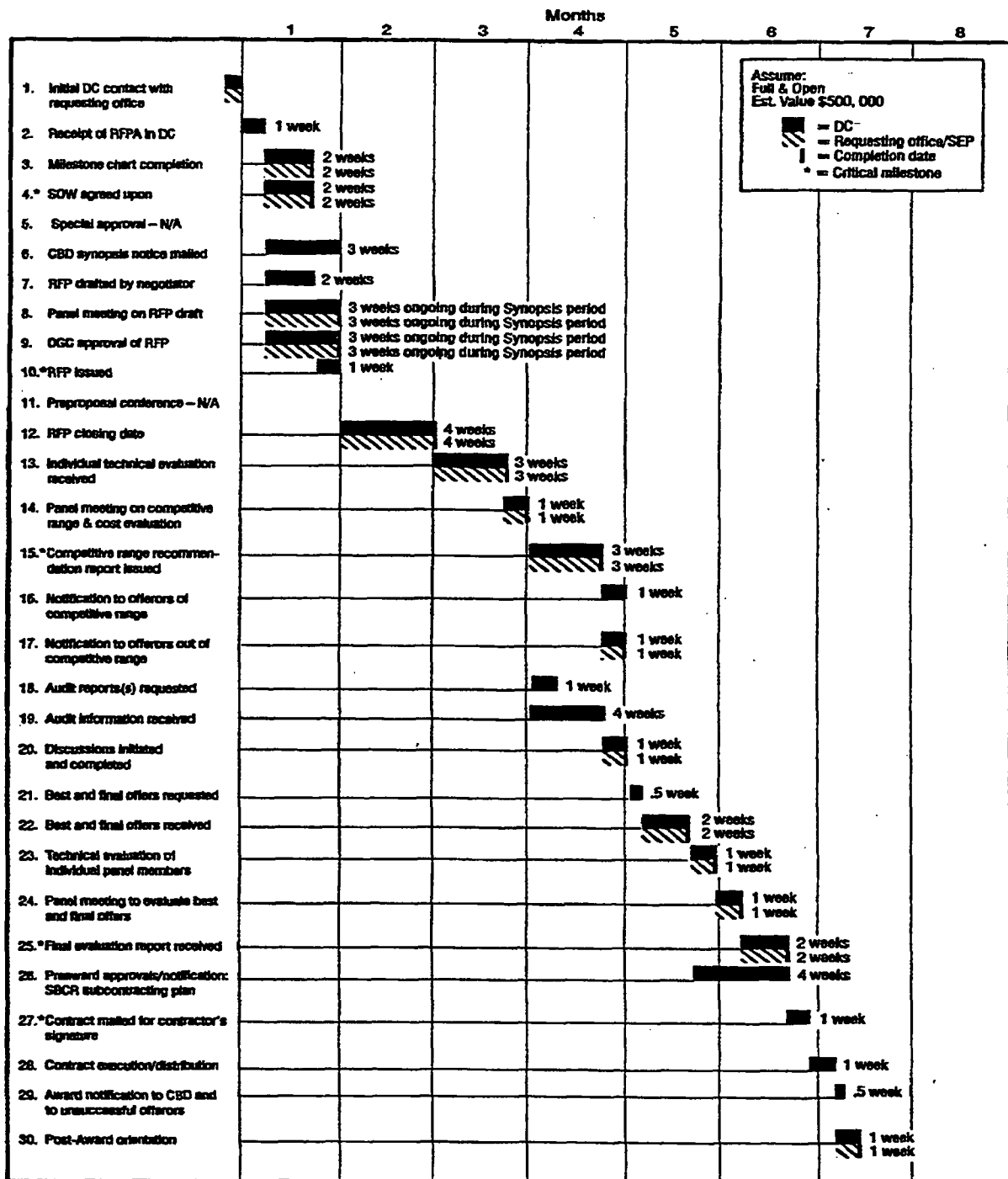


Exhibit 17 (continued)

Chart 2: Overview of the Competitive Acquisition Process

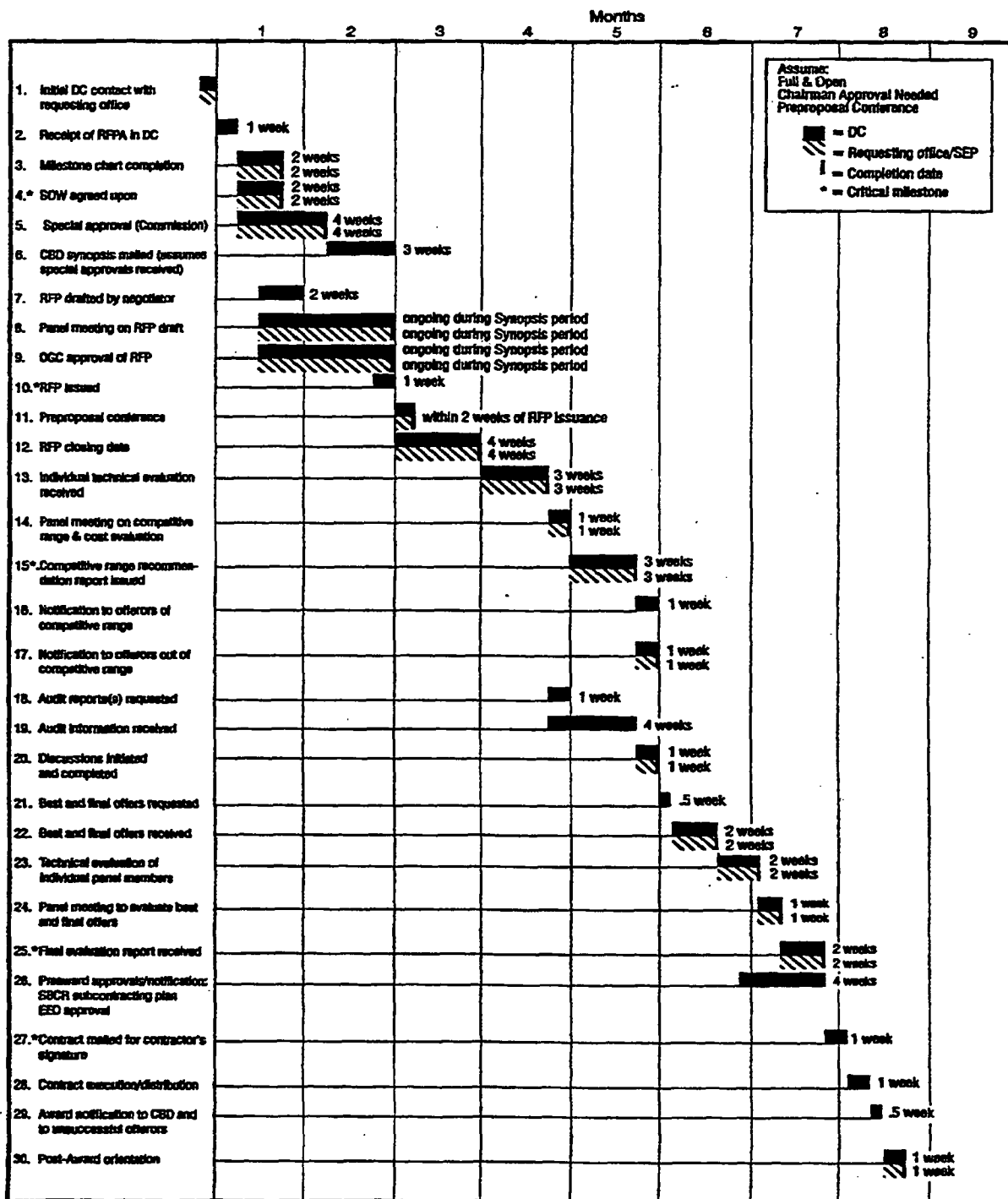


Exhibit 18

NRC Form 30, "Request for Administrative Services"

NRC FORM 30 <small>(6-94)</small>		U.S. NUCLEAR REGULATORY COMMISSION		1. DATE OF REQUEST		2. DATE DUE <small>(if applicable)</small>	
REQUEST FOR ADMINISTRATIVE SERVICES FOR HEADQUARTERS: MAIL TO THE APPROPRIATE MAIL STOP ON BACK				3. REQUEST NUMBER (LEAVE BLANK)			
4. TYPE OF SERVICE				5. PERSONAL PROPERTY APPROVAL			
<input type="checkbox"/> BUILDING ALTERATIONS AND SERVICES <input type="checkbox"/> COMPOSITION <input type="checkbox"/> COPYING <input type="checkbox"/> EDITING <input type="checkbox"/> PHOTOGRAPHY/AUDIOVISUAL <input type="checkbox"/> PRINTING AND DISTRIBUTION		<input type="checkbox"/> PUBLISHING NUREGS <input type="checkbox"/> SMALL PURCHASES, PROPERTY, AND LABOR SERVICES <input type="checkbox"/> SUPPLIES <input type="checkbox"/> WORD PROCESSING <input type="checkbox"/> OTHER <small>(Specify)</small>		I certify that personal property assets within the Office/Division have been carefully examined for access, are currently fully utilized, and the additional requested items are absolutely essential to work performance and will be used only for official purposes. 5a. PROPERTY CUSTODIAN - SIGNATURE 5b. DIVISION DIRECTOR/DEPUTY - SIGNATURE			
7. REQUESTER		8. OFFICE		<input type="checkbox"/> CLASSIFIED <input type="checkbox"/> SENSITIVE UNCLASSIFIED <input type="checkbox"/> COPYRIGHTED MATERIAL		6. SENSITIVITY For copyrighted material, sign below to indicate that you have received permission from the copyright owner to use the material. SIGNATURE - ADMINISTRATIVE OFFICER	
9. TELEPHONE NUMBER		10. FAX NUMBER		11. MAIL STOP		12. E-MAIL ID.	
13. SPECIAL INSTRUCTIONS <small>(INCLUDE TITLE, DISTRIBUTION, PRINTING SPECIFICATIONS, INSTRUCTIONS, STOCK NUMBERS, JUSTIFICATION, QUANTITIES, AND UNITS WHEN APPLICABLE)</small>							
14. FUNDING INFORMATION							
JOB CODE		B & R NUMBER		BOC		FUND SOURCE	
14a. FUNDS CERTIFIED AVAILABLE BY: SIGNATURE - CERTIFYING OFFICIAL						14b. DATE	
FOR PROCESSING USE ONLY (LEAVE THIS SECTION BLANK)							
15a. REQUIREMENT APPROVED - SIGNATURE				15b. DATE		15c. REQUISITIONING OFFICER - SIGNATURE	
17. OFFICE OF ADMINISTRATION PROCESSING							
ACTION		SIGNATURE		DATE		ACTION	
A. POSTED						C. DELIVERED	
B. FILLED						D. COMPLETED	
The material and/or services itemized above have been received in the quantity and quality specified, except as otherwise noted.						17a. SIGNATURE - RECIPIENT	
						17b. DATE	

Exhibit 18 (continued)

<u>TYPE OF SERVICE</u>	<u>MAIL STOP</u>	<u>TYPE OF SERVICE</u>	<u>MAIL STOP</u>
BUILDING ALTERATIONS AND SERVICES	T-7 D24	SMALL PURCHASES, PROPERTY, AND LABOR SERVICES	T-7 D27
COMPOSITION	T-6 E7	PUBLISHING NUREGs	T-6 E7
COPYING	O-P1 22	SUPPLIES	WHSE
EDITING	T-6 E7	WORD PROCESSING	T-6 E7
PHOTOGRAPHY/ AUDIOVISUAL	T-6 E7	OTHER	O-2 B7
PRINTING/DISTRIBUTION	O-P1 22		

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Exhibits

Exhibit 19
NRC Form 103, "Purchase/Delivery Order"

<div style="display: flex; justify-content: space-between;"><div><small>NRC FORM 103 (5-95) NRCM 5101</small></div><div>PURCHASE/DELIVERY ORDER POINT OF ISSUE: U.S. NUCLEAR REGULATORY COMMISSION</div><div style="text-align: right;"><small>THIS NUMBER MUST APPEAR ON ALL INVOICES AND/OR PACKAGES AND PAPERS RELATING TO THIS ORDER.</small> DATE</div></div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"><div><small>INSTRUCTIONS. See billing address, lower left corner of this form.</small></div><div>ORDER NUMBER</div><div>REQUISITION NUMBER</div></div>					
<div style="display: flex; justify-content: space-between;"><div>PURCHASE ORDER PER YOUR _____ OF _____</div><div>APPROPRIATION/ALLOTMENT JOB CODE B & R NUMBER BOC NUMBER</div></div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"><div>NEGOTIATED PURSUANT TO THE AUTHORITY OF 41 USC 252(C)(3).</div><div>CONSIGNEE AND DESTINATION (SHIP TO NRC WAREHOUSE UNLESS OTHERWISE SPECIFIED)</div></div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"><div>DELIVERY ORDER UNDER CONTRACT NUMBER:</div><div>DELIVERY F.O.B. PLACE OF INSPECTION AND ACCEPTANCE DATE</div></div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"><div>TO (Seller)</div><div>DELIVERY DATE DISCOUNT PAYMENT TERMS</div></div>					
PLEASE FURNISH THE FOLLOWING ON THE TERMS SPECIFIED ON BOTH SIDES OF THIS SHEET AND ON THE ATTACHED, IF ANY, EXCEPT THAT ANY SUCH TERMS WHICH MIGHT BE INCONSISTENT WITH THE TERMS OF ANY EXISTING FEDERAL CONTRACT OR AGREEMENT UNDER WHICH THIS ORDER IS PLACED WILL NOT APPLY.					
ITEM NO.	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
PERSON TO CONTACT REGARDING THIS ORDER		TELEPHONE AREA CODE NUMBER		TOTAL	
<small>SUBMIT INVOICE IN DUPLICATE IN ACCORDANCE WITH INSTRUCTIONS ON REVERSE. (P.O. NUMBER MUST BE INCLUDED ON ALL INVOICES) AND FORWARD TO:</small> DIVISION OF ACCOUNTING AND FINANCE OFFICE OF THE CONTROLLER T-9 E2 U.S. NUCLEAR REGULATORY COMMISSION WASHINGTON D.C. 20555-0001		SIGNATURE AND TYPED NAME CONTRACTING OFFICER			

NRC FORM 103 (5-95)

Exhibit 19 (continued)

TERMS AND CONDITIONS

52.252-2 Clauses Incorporated by Reference (APR 84). This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make the full text available. Clauses which are not applicable are self-deleting.

Federal Acquisition Regulation (48 CFR Chapter 1) Clauses

The Following Terms and Conditions Apply to All Purchase Orders:

- 52.202-1 Definitions-Alternate 1 (APR 84)
- 52.203-1 Officials Not to Benefit (APR 84)
- 52.203-3 Gratuities (APR 84)
- 52.203-5 Covenant Against Contingent Fees (APR 84)
- 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 85)
- 52.203-7 Anti-Kickback Procedures
- 52.212-8 Priorities, Allocations, and Allotments
- 52.212-9 Variation in Quantity (APR 84)
- 52.213-2 Invoices (APR 84)
- 52.213-3 Notice to Supplier (APR 84)
- 52.219-4 Notice of Small Business Small Purchase Set-Aside (AUG 85)
- 52.222-3 Convict Labor (APR 84)
(Unless precluded by FAR Subpart 22.2)
- 52.225-12 Notice of Restrictions on Contracting with Sanctioned Persons (MAY 89)
- 52.225-13 Restrictions on Contracting with Sanctioned Persons (MAY 89)
- 52.232-1 Payments (APR 84)
- 52.232-8 Discounts for Prompt Payment (JUL 85)
- 52.232-23 Assignment of Claims (JAN 86)
- 52.232-25 Prompt Payment (APR 89)
- 52.233-1 Disputes Alternate 1 (APR 84)
- 52.223-3 Protest after Award (JUN 85)
- 52.242-10 F.O.B. Origin—Government Bills of Lading or Prepaid Postage (APR 84)
- 52.246-1 Contractor Inspection Requirements (APR 84)
- 52.247-29 F.O.B. Origin
- 52.247-34 F.O.B. Destination (APR 84)
- 52.249-8 Default (Fixed Price Supply and Service) (APR 84)
ALT. 1 applies to transportation or transportation-related services

NRC Acquisition Clauses — 48 CFR 20:

- 2052.209-73 Contractor Organizational Conflict of Interest
- 2052.210-70 Brand Name Products or Equal

Additional Terms and Conditions Applicable to Purchase Orders Exceeding \$2,500:

- 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation (MAR 86)
- 52.222-36 Affirmative Action for Handicapped Workers (APR 84)

Additional Terms and Conditions Applicable for Purchase Orders with Individuals up to \$25,000:

- 52.223-6 Drug-Free Workplace (MAR 89)
- 52.223-5 Certification Regarding a Drug-Free Workplace (MAR 89)

NOTE: Section 5301 of the Anti-Drug Abuse Act of 1988 (P.L. 100-690) may be cause for denial of specific benefits to individuals convicted of drug trafficking or possession.

Additional Terms and Conditions Applicable for Purchase Orders for FIP Resources:

- 201-39.5202-6 Warranty Exclusion and Limitation of Damages
- 201-39.5202-5 Privacy or Security Safeguards
- 201-39.5202-4 Evaluation of Options—FIP Resources
- 201-39.5202-3 Procurement Authority
- 201-39.5202-2 Availability of the "Federal ADP and Telecommunications Standards Index"

SUPPLIES

Additional Terms and Conditions Applicable to All Purchase Orders for Supplies:

- 52.225-1 Buy American Certification
- 52.225-3 Buy American Act—Supplies
- 52.243-1 Changes—Fixed Price (AUG 87)
- 52.249-1 Termination for Convenience of the Government (Fixed Price) (Short Form) (APR 84)

Additional Terms and Conditions Applicable to Purchase Orders for Supplies over \$10,000:

- 52.222-20 Walsh-Healey Public Contracts Act (APR 84)
(Unless exempt by statute or regulation)

Additional Terms and Conditions Applicable to Purchase Orders Exceeding \$10,000:

- 52.222-21 Certification of Nonsegregated Facilities
- 52.222-25 Affirmative Action Compliance
- 52.222-26 Equal Opportunity (APR 84)
- 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 84)
- 52.222-37 Employment Records on Special Disabled Veterans and Veterans of the Vietnam Era

SERVICES

Additional Terms and Conditions Applicable to Purchase Orders for Services:

- 52.222-40 Service Contract Act of 1965, as Amended
(Applicable to Purchase Orders of \$2,500 or Less)
- 52.222-41 Service Contract Act of 1965, as Amended
(Applicable to Purchase Orders over \$2,500)
- 52.222-42 Statement of Equivalent Rates for Federal Hires
- 52.237-1 Site Visit
- 52.237-2 Protection of Government Buildings, Equipment and Vegetation
- 52.243-1 Changes—Fixed Price
(Alternate 1) (AUG 87)
(Alternate II & IV, whichever is applicable)
- 52.249-4 Termination for Convenience of the Government (Services)
(Short Form) (APR 84)

Additional Terms and Conditions Applicable to Construction Purchase Orders over \$2,000:

- 52.222-6 Davis-Bacon Act
- 52.222-7 Withholding of Funds
- 52.222-8 Payrolls and Basic Records
- 52.222-9 Apprentices and Trainees
- 52.222-10 Compliance with Copeland Act Requirements
- 52.222-11 Subcontracts (Labor Standards)
- 52.222-12 Contract Termination—Debarment
- 52.222-13 Compliance with Davis-Bacon and Related Act Regulations
- 52.222-14 Disputes Concerning Labor Standards
- 52.222-15 Certification of Eligibility

Exhibit 20

NRC Form 104, "Blanket Purchase Agreement (BPA) Ordering/Receiving Report"

NRC FORM 104 (11-83) NRC-104 11.1		U.S. NUCLEAR REGULATORY COMMISSION BPA NUMBER									
BLANKET PURCHASE AGREEMENT (BPA) ORDERING/RECEIVING REPORT											
A. CALL INFORMATION											
VENDOR		ACCOUNTING DATA				FINAL DELIVERY POINT					
		APPROPRIATION/ ALLOTMENT NUMBER	BAR NUMBER	JOB CODE	BOC CODE	NAME OF CONSIGNEE					
		DESCRIPTION OF PURCHASE(S) <small>(Include manufacturer name and part number, as appropriate)</small>				QTY	UNIT	UNIT PRICE	AMOUNT		
CALL NUMBER	ITEM NUMBER										
	A										
	B										
	C										
	D										
	E										
	F										
	G										
SIGNATURE - NRC ORDERING OFFICIAL						DATE		TOTAL FOR THIS CALL			
VARIANCE IN ORDER INFORMATION						PREVIOUS BPA BALANCE		REVISED BPA BALANCE			
B. RECEIVING REPORT						CALL NUMBER		AMENDMENT NUMBER			
RECEIVED BY (Signature)						DATE RECEIVED		EXPLANATION OF AMENDMENT			
OFFICE/DIVISION/BRANCH						TELEPHONE (Include Area Code)		ADJUSTED BPA BALANCE			
NRC FORM 104 (11-83)						REVISED CALL BALANCE		ADJUSTED BPA BALANCE			

Exhibit 21

Standard Form 30 (SF), "Amendment of Solicitation/Modification of Contract"

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1
2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY	CODE	7. ADMINISTERED BY (If other than Item 6)	CODE
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP code)		9A. AMENDMENT OF SOLICITATION NO.	
		9B. DATED (SEE ITEM 11)	
		10A. MODIFICATION OF CONTRACT/ORDER NO.	
		10B. DATED (SEE ITEM 13)	
CODE		FACILITY CODE	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS			
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.			
12. ACCOUNTING AND APPROPRIATION DATA (If required)			
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.			
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.			
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, ect.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).			
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:			
D. OTHER (Specify type of modification and authority)			
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.			
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)			
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.			
15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
(Signature of person authorized to sign)		BY (Signature of Contracting Officer)	
NSN 7540-01-152-8070 PREVIOUS EDITION UNUSABLE		30-105	
STANDARD FORM 30 (REV. 10-83) Prescribed by GSA FAR (48 CFR) 53.243			

Exhibit 22

NRC Form 292, "Voucher Transmittal for Review and Approval Prior to Payment"

NRC FORM 292 (1-92)		U.S. NUCLEAR REGULATORY COMMISSION	
VOUCHER TRANSMITTAL FOR REVIEW AND APPROVAL PRIOR TO PAYMENT			
The attached voucher/invoice which was received by the Division of Contracts and Property Management on _____ is forwarded (two copies) for your review and recommendation prior to payment.			
TO: PROJECT OFFICER	MAIL STOP	TELEPHONE	CONTRACTOR
FROM: CONTRACT ADMINISTRATOR	MAIL STOP P-902	TELEPHONE	CONTRACT NUMBER
VOUCHER/INVOICE	DATE	AMOUNT \$	BILLING PERIOD
PART I – To comply with the Prompt Payment Act, as amended, and avoid costly interest penalties, the Project Officer shall review the invoice and contact the Contract Administrator <u>WITHIN 2 CALENDAR DAYS</u> of receipt of the package if a problem or deficiency exists which may preclude payment of the invoice in full. Simultaneously, the Project Officer shall annotate the problem/deficiency in the Comments Section and transmit a facsimile copy to the Contract Administrator. The original NRC Form 292 shall be completed, signed, and returned with one copy of the invoice to the Contract Administrator by _____.			
IF YOU ANSWER "NO" TO QUESTIONS 1-5 OR "YES" TO QUESTION 6, PROVIDE EXPLANATION IN THE COMMENTS SECTION OR ON A SEPARATE ATTACHMENT.			
QUESTIONS			
		YES	NO
1. Did the contractor submit required deliverables and meet scheduled milestones during the billing period?			
2. Are the labor hours, travel, subcontract, equipment and other direct costs reasonable and commensurate for the type and nature of work completed during the billing period? (Not applicable to fixed price contracts)			
3. Is the contractor using personnel with required skills to ensure efficient and effective performance? (Not applicable to fixed price contracts)			
4. Is the quality of the deliverables and/or services acceptable and in compliance with the terms of the contract?			
5. Has the NRC met its contractual obligations during the billing period including provision of government furnished property and timely review and comments on reports/deliverables?			
6. Are you aware of any present or future problems that may adversely affect contractor performance and/or costs?			
7. COMMENTS			
I have examined the referenced voucher in relation to the contractor's progress and technical aspects of the items claimed and recommend the following:			
Payment in the amount of \$ _____		Withholding payment pending clarification of the above concerns.	
SIGNATURE – PROJECT OFFICER		DATE	SIGNATURE – DIVISION OR OTHER AUTHORIZED REPRESENTATIVE (if required)
PART II – Contracting Officer will complete. I have examined the referenced voucher, considered the recommendations of the reviewing Project Officer, and request the following action be taken (reasons for suspension and/or disallowances specified below):			
Payment in the amount of: \$ _____		REASONS FOR SUSPENSION/DISALLOWANCE	
Suspension in the amount of: \$ _____			
Disallowance in the amount of: \$ _____			
SIGNATURE – CONTRACTING OFFICER OR DESIGNEE		DATE	
PART III – Division of Accounting and Finance, Office of the Controller, will complete.			
Payment in the amount of \$ _____ has been made.			
A deduction in the amount of \$ _____ has been made from the voucher and the remaining payment in the amount of \$ _____ has been made.			
SIGNATURE – REPRESENTATIVE, Division of Accounting and Finance, Office of the Controller			DATE

NRC FORM 292 (1-92)

OFFICE OF THE CONTROLLER

Exhibit 23

Example of Ratification of Unauthorized Action

U.S. NUCLEAR REGULATORY COMMISSION
DIVISION OF CONTRACTS AND PROPERTY MANAGEMENT
REQUEST FOR RATIFICATION OF AN UNAUTHORIZED
COMMITMENT

STATEMENT OF FACTS

1. Contract No. NRC-XXXXXXX for moving services with XXXXXXXXXXXXXXXXXXXXXXXXXXXX commenced on November 1, 1988 and continued through December 31, 1990. This is a fixed price requirements contract with work to be issued by work order. The contract ceiling is \$140,194.81. The amount obligated during this period was \$126,000.00.
2. In November 1990, a final invoice in the amount of \$4,765.94 was received for payment. This invoice exceeds the obligated amount under the contract by \$3,444.90. 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 \$3,444.90. This will raise the obligated amount from \$126,000.00 to \$129,444.90.
3. The prices as fixed under Contract No. NRC-XXXXXXX, were fair and reasonable.
4. 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 payment; and
6. Certified funds are available for the unauthorized commitment.

Exhibit 23 (continued)

NRC-
XXX
Page 2

Therefore, it is recommended that this unauthorized commitment be ratified for services rendered by Alliance and that additional funding be certified in the amount of \$3,444.90.

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 for moving services incurred by XXXXXXXXXXXXXXXXXXXXXXXXXXXX is hereby certified as complete and accurate.

Date

XXXXXXXXXXXXXXXXXX, Project Officer
Property and Procurement Branch
Division of Contracts
Office of Administration

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 this Request for Ratification of an Unauthorized Commitment for services incurred by XXXXXXXXXXXXXXXXXXXXXXXXXXXX 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

Mary Jo Mattia, Contracting Officer
Contract Administration Branch No. 2
Division of Contracts
Office of Administration

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 moving services has been () approved () disapproved for payment.

Date

Edward L. Halman
Competition Advocate

Index

A

Advance procurement plan (APP), 4, 5, 3-1, 3-8,
4-1, 4-6, 4-7, 5-1, 5-6, A-1
Advisory and assistance services, 6-8, 6-9
Audit, 3, 6
Award notification, 9-8, 9-13

B

BankCard, 10-2, 10-9
Best and final offer (BAFO), 9-7, A-1
Best value, 1, 4-3, 6-9, 9-8
Bidders mailing list, 6-7, 7-4, A-1
Blanket purchase agreement (BPA), 10-1, 10-2,
10-9, 10-10, A-1
Broad agency announcement (BAA), 9-15, 9-16,
A-1

C

Cancellation, 7-5, 10-9
Chairman, 2, 3, 6, 4-7, 5-10, 9-4
Claim, 2, 5, 6, 3-4, 3-6, 3-7, 8-2, 10-9, 11-4, 11-16,
11-17, 11-22
Closeout, 1-1, 3-4, 3-5, 3-7, 8-2, 11-1, 11-7, 11-14,
11-22
Commerce Business Daily, 7, 5-3, 5-5, 5-16, 6-7,
6-8, 7-2, 7-3, 7-4, 7-5, 9-8, 9-10, 9-11, 9-12,
9-14, 9-15, 9-20, 10-5, A-1
Commercial item, 6, 2-1, 4-4, 4-5, 5-3, 9-9
Competition Advocate, 6, 4-3, 5-3, 5-4, 5-8, 9-20,
11-14, 11-18, 11-19
Competition requirement, 5-2
Competitive negotiated procurement, 7-3, 9-1,
9-11

Competitive range, 3-2, 3-4, 3-8, 5-14, 5-15, 5-16,
9-4, 9-5, 9-6, 9-7, 9-9, 9-10

Conflict of interest, 2, 5, 3-2, 3-7, 4-6, 5-1, 5-7,
5-13, 5-14, 5-15, 6-8, A-1

Consultants, 5-7

Contract specialist, 5, 1-2, 3-3, 3-5, 3-6, 3-7, 3-8,
4-2, 4-5, 4-6, 5-1, 5-7, 5-13, 5-14, 5-15, 6-6,
6-7, 6-8, 6-11, 6-12, 6-13, 7-1, 7-3, 7-4, 7-5,
8-2, 8-3, 8-4, 8-5, 9-1, 9-2, 9-3, 9-4, 9-5, 9-6,
9-7, 9-8, 9-9, 9-10, 9-11, 9-13, 9-14, 9-15,
9-20, 9-21, 10-9, 11-2, 11-3, 11-6, 11-8, 11-9,
11-10, 11-11, 11-13, 11-14, 11-15, 11-16, 11-17,
11-21, A-1

Contracting officer, 2, 5, 6, 7, 3-1, 3-3, 3-4, 3-5,
3-6, 3-7, 3-8, 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 5-1,
5-2, 5-3, 5-4, 5-5, 5-6, 5-7, 5-9, 5-14, 6-7, 6-8,
6-9, 6-10, 6-12, 6-13, 7-1, 7-3, 7-4, 8-1, 9-1,
9-2, 9-3, 9-5, 9-6, 9-7, 9-8, 9-9, 9-10, 9-11,
9-12, 9-14, 9-16, 9-19, 9-20, 9-21, 10-1, 10-3,
10-4, 10-5, 10-6, 10-8, 10-9, 10-11, 11-1, 11-2,
11-3, 11-4, 11-5, 11-6, 11-7, 11-8, 11-9, 11-10,
11-11, 11-13, 11-14, 11-15, 11-16, 11-17, 11-18,
11-19, 11-20, 11-21, 11-22, A-1

Contractor performance, 3-3, 11-3, 11-10, 11-17

Contractor spending plan, 7-4, 11-2

Cost overrun, 8-2, 11-14, 11-15

Cost reimbursement, 3-6, 6-2, 7-4, 8-1, 8-3, 10-10,
11-3, 11-4, 11-7, 11-8, 11-14

Cost-plus-fixed-fee, 8-3, 11-9, A-1

D

Debriefing, 5-14, 5-16, 7-2, 9-5, 9-9

Delivery order, 5, 9-21, 10-4, 10-6, 10-11

Deputy Executive Director, 3, A-1

Designating official, 2, 5, 3-4, 3-8, 5-3, 5-4, 5-11,
5-12, 5-13, 5-14, 6-6, 6-12, 7-3, 7-5, 9-2, 9-5,
9-8, 9-14, 9-16, 10-3, 11-5, 11-13, 11-18,
11-19, A-1

Differing professional view, 11-19, 11-20, 11-21,
A-1

Volume 11, Procurement
NRC Acquisition of Supplies and Services
Handbook 11.1 Index

Director, Division of Contracts, 5, 6, 3-4, 4-3, 5-3,
5-4, 5-8, 7-5, 9-16, 9-18, 10-3, 10-10, 11-17,
11-18

Director, Office of Administration, 3, 4-3, 5-4, 5-7

Director, Office of Information Resources
Management, 4

Director, Office of Personnel, 4

Director, Office of Small Business and Civil Rights,
4

Director, Office of the Controller, 7

Disputes, 2, 3-6, 11-2, 11-15, 11-16, 11-17

E

Economy Act, 9-20, 9-21

8(a) set-aside, 4-6, 4-7, 5-1, 5-2, 5-6, 5-7, 7-1, 7-3,
9-19

Electronic commerce, 2-1, 6-8

Equipment, 3-2, 3-3, 3-6, 3-7, 4-3, 4-4, 5-1, 5-2,
5-10, 6-1, 6-3, 6-4, 6-6, 6-12, 8-2, 10-3, 10-7,
10-8, 10-9, 11-3, 11-4, 11-7, 11-13

Evaluation criteria, 3-2, 5-1, 5-13, 5-14, 5-15, 6-1,
6-9, 6-10, 6-11, 6-12, 6-13, 7-1, 9-1, 9-3, 9-7,
9-8, 9-11, 9-13, 9-14, 9-16, 9-18

Executive Director for Operations, 3, 6, 5-3, 5-7,
5-10, 7-3, 9-20, A-1

Extension, 1-2, 4-4, 9-2, 10-3, 11-7, 11-13

F

FACNET, 6-7, 6-8, 10-1, 10-4, 10-5, A-2

Final evaluation report, 3-2, 3-4, 5-14, 5-15, 9-7,
9-8, 9-9

FIP acquisition, 5-5, 5-6, 5-11

Fixed price, 6-2, 8-1, 8-2, 8-3, 8-4, 9-12, 9-14,
11-4, 11-8

Former NRC employees, 3, 5-6, 5-7

G

General Counsel, 2, 5, 3-2, 3-5, 3-8, 5-13, 5-15,
7-4, 9-5, A-2

Grants and cooperative agreement, 8-6

GSA Federal schedule, 10-10

H

Head of Agency, 3, 5-3, 9-20, 9-21

Head of Contracting Activity, 5, 6, 5-4, 9-18

I

Imprest fund, 5, 10-1, 10-2, 10-3

Indefinite delivery, 8-4, 10-6, 10-11

Independent Government cost estimate (IGCE),
6-6, 6-13, A-2

Indirect cost rate, 11-14

Inherently governmental function, 4-2, 6-8

Instructions to offerors or bidders, 7-3

Interagency agreements, 1, 3-7, 4-6, 4-7, 5-1, 5-8,
5-11, 9-20, 9-21, 11-8

Invitation for bid, 6-7, 7-1, 7-3, 9-12, 9-13, 9-14,
A-2

Invoice, 10-1, 10-3, 11-8, 11-9, 11-10, 11-11, 11-12,
11-15

J

Justification for other than full and open
competition (JOFOC), 5-3, 5-4, 5-5, 5-6, 9-10,
9-11, A-2

L

Labor hour, 7-4, 8-4, 11-4

Letter contract, 5-12, 8-4

Limited competition, 5-2, 5-4, 5-6, 10-2

M

Micropurchase, 2-1, 10-1, 10-2, 10-3, 10-4, 10-9
Modification, 2, 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 3-7,
4-1, 5-10, 9-2, 11-2, 11-4, 11-5, 11-12, 11-13,
11-16

N

Negotiations/Discussions, 9-5, 9-6, 9-11, 10-7,
11-14

O

Office directors, 5, 3-1, 3-2, 4-1, 7-3, 9-18, 9-20,
9-21, 11-5, 11-20, 11-21
Office of Administration (ADM), 1-1, 3-1, 4-1,
5-1, 6-1, 8-5, 9-2, 10-2, A-1
Office of Federal Procurement Policy, 4-2, 6-8,
A-2
Office of Information Resources Management
(IRM), 5-8, 10-8
Office of Management and Budget (OMB), 1-1,
2-1, 4-2, 6-11, A-2
Office of Management and Budget (OMB) Circular
A-76, 3, 4, 6, 4-2, 4-3
Office of Nuclear Regulatory Research (RES), 4-6
Office of Personnel (OP), 4-3, A-2
Office of Small Business and Civil Rights (SBCR),
4-7, 5-6, 5-16, 6-13, 9-8
Office of the Controller (OC), 4-3, 5-13, 10-9,
11-22, A-2
Office of the General Counsel (OGC), 3-2, 3-5,
5-13, 5-15, 7-4, 9-5, A-2
Office of the Inspector General (OIG), 11-20, A-2
Option, 4-3, 4-4, 5-8, 5-10, 6-7, 9-12, 10-10, A-2
Oral presentation, 6-12
Other than full and open negotiated procurements,
9-10
Oversight of service contracting, 6-8

P

Past performance, 6-7, 6-10, 6-11, 6-12, 7-4, 9-6,
9-8, 9-10, 10-5, 10-6, 11-3
Performance problem, 1-2, 3-3, 11-16
Personal service, 3-7, 4-1, 4-2
Post-award, 3-6, 11-2
Prebid conference, 9-1, 9-12
Procurement Executive, 3, 5-4, 5-7
Procurement integrity, 2-1, 3-5, 3-8, 4-3, 5-16, A-2
Procurement specialist, 3-7, 10-3, 10-8
Progress report, 3-3, 3-7, 11-2, 11-15
Project officer, 5, 1-2, 3-1, 3-2, 3-3, 3-4, 3-5, 3-6,
3-7, 3-8, 4-2, 4-6, 5-8, 5-10, 6-5, 6-6, 6-8,
6-12, 6-13, 7-3, 9-2, 9-10, 9-19, 11-1, 11-2,
11-3, 11-4, 11-5, 11-6, 11-8, 11-9, 11-10,
11-11, 11-13, 11-14, 11-15, 11-16, 11-17, 11-21,
A-2
Property, 2-1, 3-2, 3-4, 3-5, 3-6, 3-7, 3-8, 4-3, 5-2,
5-11, 6-3, 8-4, 10-2, 10-7, 10-8, 11-1, 11-7,
11-8, 11-22
Proposal evaluation, 3-2, 9-3, 9-4, 9-20
Protest, 2, 3-5, 5-14, 7-5, 9-10
Purchase order, 5, 3-8, 4-4, 10-1, 10-4, 10-6, 10-7,
10-8, 10-9, 11-8, 11-11, 11-12

R

Ratification, 2, 7, 3-5, 10-3, 11-18, 11-19
Receipt of proposal or bid, 9-2
Regional administrators, 5, 7-3, 9-20, 10-3, 11-18,
11-20, 11-21
Request for procurement action (RFPA), 5, 1-1,
1-2, 3-1, 3-2, 3-5, 5-1, 5-4, 5-6, 5-8, 5-11,
5-12, 5-13, 6-1, 6-4, 6-5, 6-6, 6-7, 6-12, 6-13,
7-5, 8-5, 9-11, 9-18, 11-5, 11-19, A-2

S

Sealed bid, 7-1, 7-2, 7-3, 9-1, 9-10, 9-11, 9-12,
9-13, 9-14, 9-20, 10-7
Security, 3-2, 3-6, 3-7, 4-6, 5-3, 5-8, 5-9, 5-10,
6-12, 7-2, 9-8, 9-13, 9-16, 9-18, 11-3, 11-4,
11-6, 11-22
Classified information, 3-2, 5-8, 5-9, 5-10, 11-4,
11-22

Volume 11, Procurement

NRC Acquisition of Supplies and Services

Handbook 11.1 Index

Clearances, 3-6, 4-6, 5-8, 5-9, 5-10, 7-2, 9-8, 9-13
Key personnel, 6-12, 9-16, 9-18, 11-3, 11-6
Service contracting, 6-8
Simplified Acquisition
 Advance procurement plan (APP), 4, 5, 3-1, 3-8, 4-1, 4-6, 4-7, 5-1, 5-6, A-1
 BankCard, 10-2, 10-9
 Blanket purchase agreement (BPA), 10-1, 10-2, 10-9, 10-10, A-1
 FACNET, 6-7, 6-8, 10-1, 10-4, 10-5, A-2
 GSA Federal schedule, 10-10
 Imprest fund, 5, 10-1, 10-2, 10-3
 Micropurchase, 2-1, 10-1, 10-2, 10-3, 10-4, 10-9
 Purchase order, 5, 3-8, 4-4, 10-1, 10-4, 10-6, 10-7, 10-8, 10-9, 11-8, 11-11, 11-12
Small and disadvantaged business, 5-6, 10-4
Small business, 4, 1-2, 3-5, 4-7, 5-1, 5-2, 5-6, 5-16, 6-7, 6-13, 7-1, 9-8, 9-10, 9-20, 10-1, 10-2, 10-4, A-3
Small business set-aside, 5-1, 5-2, 5-6, 6-7, 9-10, 9-20, 10-4
Sole-source acquisition, 5-2, 5-4, 5-5, 5-6, 9-11
Solicitation, 2, 1-2, 2-1, 3-2, 3-5, 3-8, 4-4, 5-5, 5-8, 5-12, 5-13, 5-16, 6-1, 6-4, 6-6, 6-7, 6-8, 6-9, 6-10, 6-11, 6-12, 6-13, 7-1, 7-2, 7-3, 7-4, 7-5, 8-5, 9-1, 9-2, 9-3, 9-8, 9-11, 9-13, 9-15, 9-19, 10-4, 10-5, 10-6, 10-7, 11-5, 11-13, 11-20, 11-22
Source evaluation panel (SEP), 2, 3-2, 3-4, 3-5, 3-8, 4-2, 4-7, 5-12, 5-13, 5-14, 5-15, 5-16, 6-1, 6-6, 6-9, 6-10, 6-11, 6-12, 6-13, 7-3, 7-4, 9-1, 9-2, 9-3, 9-4, 9-5, 9-6, 9-7, 9-8, 9-9, 9-10, 9-11, 9-14, 11-13, 11-21, A-3
Source selection, 3-5, 5-12, 5-15, 5-16, 6-10, 9-5, 9-9, 9-15
Specification, 2-2, 3-5, 3-8, 4-6, 5-5, 5-8, 6-3, 6-4, 6-5, 9-2, 9-10, 9-12, 9-13, 9-14, 10-7, 11-1, 11-7, 11-12
Statement of work (SOW), 3-1, 3-3, 3-7, 3-8, 4-2, 5-8, 5-10, 5-14, 5-16, 6-1, 6-2, 6-3, 6-4, 6-5, 6-9, 6-10, 6-11, 6-12, 6-13, 7-1, 7-3, 7-4, 8-2, 9-12, 9-19, 11-5, 11-6, 11-16, 11-18, A-3

T

Task order, 3, 3-2, 3-6, 3-7, 4-1, 5-7, 5-11, 5-12, 6-3, 8-5, 11-2, 11-5, 11-6, 11-7, 11-8, 11-9, 11-14
Technical report, 3-4
Termination of contract, 2, 5, 6, 11-7, 11-9, 11-16, 11-18
Time and material, 8-4
Types of Contracts
 8(a) set-aside, 4-6, 4-7, 5-1, 5-2, 5-6, 5-7, 7-1, 7-3, 9-19
 Broad agency announcement (BAA), 9-15, 9-16, A-1
 Cost reimbursement, 3-6, 8-1, 8-3, 11-3, 11-4, 11-7, 11-8, 11-14
 Cost-plus-fixed-fee, 8-3, 11-9
 Delivery order, 9-21, 10-4, 10-6, 10-11, 5
 Fixed price, 6-2, 8-1, 8-2, 8-3, 8-4, 9-12, 9-14, 11-4, 11-8
 Grants and cooperative agreement, 8-6
 Indefinite delivery, 8-4, 10-6, 10-11
 Interagency agreements, 1, 3-7, 4-6, 4-7, 5-1, 5-8, 5-11, 9-20, 9-21, 11-8
 Labor hour, 7-4, 8-4, 11-4
 Letter, 5-12, 8-4
 Service contracting, 6-8
 Small business set-aside, 5-1, 5-2, 5-6, 6-7, 9-10, 9-20, 10-4
 Task order, 3, 3-2, 3-6, 3-7, 4-1, 5-7, 5-11, 5-12, 6-3, 8-5, 11-2, 11-5, 11-6, 11-7, 11-8, 11-9, 11-14
 Time and material, 8-4

U

Unauthorized commitments, 2, 10-3, 11-16, 11-18, 11-19
Unsolicited proposals, 5, 9-16, 9-17, 9-18, 9-19

V

Voucher, 3-3, 3-6, 10-1, 11-8, 11-9, 11-11